

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

FIFTH SECTION

CASE OF SAVIN v. UKRAINE

(Application no. 34725/08)

JUDGMENT

STRASBOURG

16 February 2012

FINAL

16/05/2012

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



In the case of Savin v. Ukraine,

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

Dean Spielmann, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger,
André Potocki, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 24 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 34725/08) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vyacheslav Yuryevich Savin ("the applicant"), on 15 June 2008.

2. The applicant, who had been granted legal aid, was represented by Mr A. Kristenko, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev, succeeded by Ms V. Lutkovska.

3. The applicant alleged that he had been ill-treated while in unlawful detention and that the authorities had failed to carry out an effective investigation into the matter within a reasonable time, thus allowing the perpetrators to escape all responsibility.

4. On 10 March 2010 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The Russian Government, having been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), indicated that they did not wish to exercise that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1972 and lives in Kharkiv, Ukraine.

A. Events of 18 and 19 October 1999

7. As submitted by the applicant and established by the domestic courts (see paragraphs 22 and 28 below), in the afternoon of 18 October 1999 the applicant attended at the Dzerzhynskyy District Police Station, at the investigator's summons, as a witness in a fraud-related criminal investigation. At about 7 p.m., officer K. questioned him. Not being satisfied by the applicant's explanations and seeking to obtain his confession to the fraud, K. tied the applicant's hands behind his back with a belt, made him sit on a chair and punched him at least eight or ten times in the head. Thereafter K. took the applicant into the corridor, threw him face down against the floor and raised his tied arms behind his back seven or eight times. K. also kicked the applicant several times in the ribs.

8. According to K.'s report to the police unit on duty, later found to be knowingly false (see paragraph 22 below), he had apprehended the applicant in the street for swearing in public. As a result, an administrative offence report was drawn up and the applicant was arrested. According to the police records, he was released at 8.40 p.m. on 18 October 1999. As it was later established, the applicant was in fact held in the room for detainees until 9 a.m. on 19 October 1999.

9. In addition to the aforementioned account established by the court, the applicant alleged that two other police officers, under the leadership of K., had also beaten him.

B. The applicant's health

10. According to the medical documentation, the applicant had been in good health before the aforementioned events of October 1999.

11. On 21 October 1999 he was examined by a doctor who documented the following injuries: multiple bruises on the face, scalp, left ear, neck and chest, as well as a closed head injury with concussion of the left frontal lobe and an intracerebral haematoma. The doctor concluded that these injuries had been caused by blunt objects and could have dated from 18 or 19 October 1999.

12. On the same date, 21 October 1999, the applicant was admitted to a neurological hospital, where he underwent treatment until 23 November 1999.

13. The head injury sustained by the applicant in October 1999 had negative consequences for his health. As a result, he was hospitalised many times during the years to follow. In particular, he underwent in-patient treatment on that account during the following periods: from 17 January to 7 February 2000, from 9 to 30 January 2001, from 18 April to 6 May 2002, from 12 to 22 November 2002, from 11 to 25 April 2003, and during subsequent unspecified periods.

14. In 2002 the applicant was recognised as falling into the third category of disability (the mildest) on account of the residual effects of the head injury and post-traumatic encephalopathy.

15. From 2004 onwards his condition was classified as a disability of the second category (more serious), as the post-traumatic encephalopathy had worsened.

16. From October 1999 eight forensic medical expert examinations were carried out with a view to verifying the applicant's ill-treatment allegation (see paragraph 17 below). According to the examination reports the applicant had sustained a craniocerebral injury with subarachnoid haemorrhage, brain concussion, and numerous haematomas on various parts of the head, neck, back and chest. All the examinations found the applicant's account as to the time and origin of his injuries to be plausible. While originally the injuries were classified as grievous, the experts later reclassified them as being of medium severity. Their consequences were described as follows: lasting health deterioration, namely, a cerebral cicatrix, liquor hypertension syndrome, right-side sensory and motor impairment, and a convulsive disorder, which all together had led to the loss by the applicant of thirty per cent of his general working capacity and fifty per cent of his professional working capacity. The last forensic medical examination, which was conducted between 5 May and 14 June 2007, established that the applicant's disability was a direct result of the injuries sustained by him in October 1999.

C. Investigation of the applicant's allegations of unlawful detention and ill-treatment

17. From 19 October 1999 the applicant lodged numerous complaints with prosecution authorities concerning unlawful detention and torture by the police.

18. During the period from 1999 to 2008 the prosecutors refused on six occasions to institute criminal proceedings against the police officers, having discerned no indication of a crime in their actions. All these decisions were subsequently quashed by higher-level prosecution authorities

as premature, unlawful and based on a perfunctory investigation not aimed at establishing the truth.

19. Meanwhile, on 20 December 1999, the Dzerzhynskyy District Prosecutor's Office opened a criminal investigation in respect of infliction of grievous bodily injuries on the applicant by unknown persons. Subsequently, on 2 December 2002, the charge was re-classified as "infliction of injuries of medium severity". The investigation was stayed several times for failure to identify the offenders.

20. On 27 March 2006 the Ordzhonikidze District Prosecutor's Office (hereafter – "the Ordzhonikidze Prosecutor") applied to the Dzerzhynskyy District Court ("the Dzerzhynskyy Court") for discontinuation of the proceedings regarding the infliction of bodily injuries of medium severity on the applicant by unknown persons as being time-barred.

21. On 6 July 2006 the Dzerzhynskyy Court rejected that application as unfounded and premature. It noted that the investigation had failed to comply on many occasions with the instructions of the Kharkiv Regional Prosecutor's Office and the General Prosecutor's Office.

22. On 30 July 2008 the Ordzhonikidzhe Prosecutor instituted criminal proceedings against K. under Article 365 § 2 of the Criminal Code on suspicion of abuse of power, associated with violence and degrading treatment. That investigation established the facts as they are summarised in paragraphs 7 and 8 above.

23. On 23 January 2009 K. was formally charged, and the applicant was assigned victim status.

24. On 27 January 2009 the applicant brought a civil claim within the criminal proceedings seeking compensation for pecuniary and non-pecuniary damage.

25. On 29 January 2009 the Ordzhonikidzhe Prosecutor refused to open a criminal case against the other two police officers in respect of the applicant's ill-treatment, having discerned nothing criminal in their actions.

26. On 19 February 2009 the case was referred to the Ordzhonikidzhe District Court ("the Ordzhonikidzhe Court") for trial.

27. The court adjourned its hearings several times because K. was receiving medical treatment for excessive hypertension, proctologic problems, and an accidental fall.

28. On 2 March 2010 the Ordzhonikidzhe Court upheld the investigation's findings and found K. guilty as charged. It held that K. had breached the applicant's rights under Articles 28 and 29 of the Constitution, as well as Article 365 § 2 of the Criminal Code. The court, however, released K. from criminal liability as the statutory limitation period of ten years had expired.

29. On 9 March 2010 the Ordzhonikidzhe Court modified the above-mentioned ruling in order to specify that K. was released from both

criminal liability and punishment. It also decided to leave the applicant's civil claim without examination.

30. Both K. and the public prosecutor appealed. K. submitted that the criminal proceedings against him should be terminated for lack of evidence of his guilt. The public prosecutor emphasised that K. had committed a serious premeditated crime in the course of his professional activities, thus undermining the authority of the law-enforcement bodies and the State. He noted that K. had never admitted his guilt, had not drawn any conclusions, had not compensated the applicant for any pecuniary or non-pecuniary damage, and showed no remorse about what he had done. The public prosecutor therefore considered that a guilty verdict would be the right outcome to this case.

31. On 1 July 2010 the Kharkiv Regional Court of Appeal rejected both appeals.

D. K.'s career within the law-enforcement authorities

32. At the time of the events of October 1999 K. held the post of detective officer *(«оперуповноважений»)* in the Dzerzhynskyy District Police Department.

33. On 15 June 2000 he was promoted to the post of senior detective officer *(«старший оперуповноважений»)*.

34. At a later unspecified date K. was promoted to the post of Deputy Chief of the Zolochevskyy District Police Department.

35. On 23 January 2009, after the formal charges were brought against K., the Ordzhonikidze Prosecutor suspended him from his duties.

36. On 2 March 2010 the Ordzhonikidzhe Court issued, in addition to the aforementioned judgment (see paragraph 28 above), a special ruling by which it informed the Kharkiv Regional Police Department of the termination of the proceedings against K. as being time-barred and indicated that he should be restored to his post within the law-enforcement authorities.

37. K. apparently continues to work in the police force.

II. RELEVANT DOMESTIC LAW AND PRACTICE

38. Articles 28 and 29 of the Constitution of Ukraine are cited in *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 121, 21 April 2011.

39. Article 166 of the Criminal Code (1960) provided for three to eight years' imprisonment with a prohibition on holding certain office or carrying out certain activities for a period of up to five years as punishment for abuse of power, associated with violence or degrading treatment of the victim.

40. Following the entry into force of the new Criminal Code in 2001, its Article 365 § 2 provided for the same punishment for this offence, except that the bar from office was limited to three years.

41. Articles 1 and 2 of the Law of Ukraine "On the Procedure for the Compensation of Damage caused to Citizens by the Unlawful Actions of Bodies in charge of Operational Enquiries, Pre-trial Investigation Authorities, Prosecutors or Courts" ("the Compensation Act")" (as worded before the amendments of 1 December 2005) can be found in the following judgments respectively: *Kobtsev v. Ukraine*, no. 7324/02, § 35, 4 April 2006, and *Afanasyev v. Ukraine*, no. 38722/02, § 52, 5 April 2005).

42. Following the amendments to the Compensation Act of 1 December 2005, the list of cases where the right to compensation would arise was expanded by inclusion of the following point:

> "(1-1) where ... unlawfulness of remand and holding in custody ... has been established by a conviction or other judgment of a court (save for rulings on remittal of cases for additional investigation)".

III. RELEVANT INTERNATIONAL MATERIALS

43. The relevant extracts from the Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 9 to 21 September 2009 [CPT/Inf (2011) 29] read as follows:

> "14. ... the frequency and consistency of the allegations received by the CPT's delegation during the 2009 visit suggest that methods of severe ill-treatment/torture continue to be used with impunity by Internal Affairs officers. It is clear that continued determined action, bringing together in a joint effort all relevant State agencies, is needed to combat this phenomenon. ...
>
> 16. ... The CPT recommends that a firm message of "zero tolerance" of ill-treatment continue to be delivered at regular intervals to all Internal Affairs staff. It should be made clear that the perpetrators of ill-treatment and those condoning or encouraging such acts will be subject to severe sanctions."

44. Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, which were adopted on 30 March 2011, provide for the following among the general measures for the prevention of impunity:

> "... 7. States should ... establish mechanisms to ensure the integrity and accountability of their agents. States should remove from office individuals who have been found, by a competent authority, to be responsible for serious human rights violations or for furthering or tolerating impunity, or adopt other appropriate disciplinary measures. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant complained that he had been ill-treated in police custody, which he considered to amount to torture, and about the subsequent investigation. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

46. Referring to the ongoing domestic proceedings regarding the applicant's complaint of ill-treatment, the Government submitted that he had not exhausted the remedies available to him under domestic law, as required by Article 35 § 1 of the Convention. They noted that courts at two levels of jurisdiction had established the fact of the applicant's ill-treatment, although they had discontinued the proceedings against the police officer concerned as being time-barred. The Government underlined that that decision could still be appealed against on points of law.

47. The Government considered the circumstances of the present case to be similar to those in the case of *Misiak v. Poland* (no. 43837/06, 3 June 2008), in which the Court had dismissed the applicant's complaint of ill-treatment as premature because the domestic investigation into the matter was still pending (§ 32).

48. Lastly, the Government noted that the applicant had not availed himself of the domestic civil procedure for seeking compensation for damages in respect of his ill-treatment.

49. The applicant disagreed. He contended that the domestic investigation in his case had lasted for over ten years and had been ineffective, thus allowing the police officer in question to escape criminal liability. The applicant noted that no further appeals would be able to remedy that.

50. As to the civil proceedings, the applicant maintained that, in the absence of the criminal prosecution of his offender, compensation alone could not offer sufficient redress for his sufferings.

51. The Court observes, from the outset, that the only remedies Article 35 of the Convention requires to be exhausted are those that are available and sufficient and relate to the breaches alleged (see *Derman v. Turkey*, no. 21789/02, § 22, 31 May 2011).

52. The Court further reiterates that the obligations of the State under Article 3 cannot be satisfied merely by an award of damages (see *Okkalı v. Turkey*, no. 52067/99, § 58, ECHR 2006-XII (extracts)). This is so because if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible (see *Vladimir Romanov v. Russia*, no. 41461/02, §§ 78 and 79, 24 July 2008).

53. It follows from the above that an effective investigation is required, in addition to adequate compensation, to provide sufficient redress to an applicant complaining of ill-treatment by State agents (*Kopylov v. Russia*, no. 3933/04, § 130, 29 July 2010).

54. At the same time, the Court notes that an applicant cannot be reproached for not pursuing a domestic investigation, which is found to be ineffective (see *Lotarev v. Ukraine*, no. 29447/04, § 93, 8 April 2010).

55. The Court observes that, unlike in the present case, the applicant in the case of *Misiak v. Poland*, cited by the Government, did not allege that the domestic investigation into his allegation of ill-treatment had proved ineffective. Accordingly, the Court held that he should have waited its completion before bringing that complaint to this Court.

56. In the present case, however, it is impossible to establish whether or not the applicant was under such an obligation before an examination of the merits of his complaint about the alleged ineffectiveness of the domestic investigation in question.

57. The Court therefore joins this objection of the Government to the merits of the applicant's complaint under the procedural limb of Article 3 of the Convention (see *Lotarev v. Ukraine*, cited above, § 74, and *Oleksiy Mykhaylovych Zakharkin v. Ukraine*, no. 1727/04, § 50, 24 June 2010).

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

B. Merits

1. The applicant's ill-treatment

59. It is not in dispute between the parties that the applicant was ill-treated by police officer K. in October 1999.

60. The Court notes that where allegations are made under Article 3 of the Convention it must apply a particularly thorough scrutiny. Where domestic proceedings have taken place, however, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in

normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Gäfgen v. Germany* [GC], no. 22978/05, § 93, 1 June 2010, with further references).

61. In assessing the treatment to which the applicant was subjected during his two-day police custody in October 1999, the Court therefore refers, first of all, to the findings of the domestic investigation culminating in the judicial decisions of 2 March and 1 July 2010 (see paragraphs 7, 8, 22 and 28 above). It was established that police officer K. had tied the applicant's hands behind his back and had subjected him to extensive beating to the head and other parts of his body. The domestic authorities also established that the aim of the aforementioned ill-treatment had been to coerce the applicant into confessing to a criminal offence. Lastly, the Court attaches weight to the forensic medical experts' findings according to which the applicant's disability was a direct result of the ill-treatment in question (see paragraph 16 above).

62. These findings alone – that is, regardless of the applicant's additional allegation about the involvement of two other police officers in his beating (see paragraph 9 above) – are sufficient for the Court to conclude that the applicant was subjected to torture in the present case. The key considerations leading the Court to this conclusion are, firstly, the severity of the ill-treatment, which impaired the applicant's health to such an extent that he became disabled, and, secondly, the intentional nature of that ill-treatment in that it was aimed at extracting from the applicant a confession to a crime (see *Selmouni v. France* [GC], no. 25803/94, §§ 97 and 101, ECHR 1999-V, and *Nechiporuk and Yonkalo v. Ukraine*, cited above, § 149).

63. The Court therefore finds that the applicant has been subjected to torture in violation of Article 3 of the Convention.

2. Effectiveness of the investigation

64. As to the domestic investigation into the matter, the applicant maintained that it had been slow and ineffective. Moreover, he considered that it had been intentionally protracted beyond the statutory limitation period with a view to relieving those responsible from criminal liability. He further observed that, at certain stages, the investigation had been carried out by the police and could not therefore be regarded as independent. Overall, the applicant considered that the investigation in his case, being marred by numerous remittals, unnecessary forensic medical examinations and unjustified delays, and having, in the end, failed to lead to the punishment of those responsible, fostered a "sense of impunity" in police officers and in fact demonstrated the State's tolerance to ill-treatment.

65. The Government contended that the investigation had been thorough and effective. They cited, in particular, the numerous forensic medical examinations which had been carried out. The Government also noted that

the investigation had eventually reached a conclusion favourable to the applicant, having found his allegation of ill-treatment substantiated and having brought police officer K. to trial.

66. The Court notes that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision requires by implication that there should be an effective official investigation capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards of effectiveness defined by the Court's case-law include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III).

67. Furthermore, the Court has held in its case-law that when an agent of the State is accused of crimes involving torture or ill-treatment, the criminal proceedings and sentencing must not be time-barred and the granting of an amnesty or pardon should not be permitted (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004).

68. The Court also reiterates that where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance that he or she be suspended from duty during the investigation and trial, and should be dismissed if convicted (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 63, 20 December 2007, and *Serdar Güzel v. Turkey*, no. 39414/06, § 42, 15 March 2011, both with further references).

69. Compliance with the above requirements is inherent in a State's commitment to prevent impunity for ill-treatment and to demonstrate in practice its zero tolerance towards this phenomenon (see also the relevant international materials quoted in paragraphs 43 and 44 above).

70. Turning to the present case, the Court observes that the investigation into the applicant's allegation of torture lasted for more than ten years, during which investigators refused to institute criminal proceedings against the police officers six times, all these decisions later being quashed by higher-level prosecution authorities as premature, unlawful, and based on a perfunctory investigation (see paragraph 18 above). Having regard to the reasons for these remittals, and given the investigators' disregard for the instructions of the higher-level prosecutors, which seemed to be a regular practice (see paragraph 21 above), the Court considers that such remittals disclose serious deficiencies in the investigation being a structural problem

in Ukraine (see *Aleksandr Smirnov v. Ukraine*, no. 38683/06, § 61, 15 July 2010).

71. The Court further notes that the case against police officer K. was dropped on 2 March 2010 as the statutory time-limit had expired. As a result, he faced no criminal liability or sanctions. Moreover, during the ten years, while the investigation was going on, K. was suspended from his duties only once, from January 2009 to March 2010. Otherwise, the investigation did not in any way impede his career within the law-enforcement bodies. To the contrary, K. was promoted at least twice during that time and apparently still continues to work in the police force (see paragraphs 33, 34, 36 and 37 above). This situation thus shows the lack of any meaningful efforts to prevent future similar violations and the virtually total impunity for torture or ill-treatment being afforded to the law-enforcement agencies (see and compare with *Pădureţ v. Moldova*, no. 33134/03, § 77, 5 January 2010).

72. The foregoing considerations, even without the analysis of the applicant's additional arguments as to the purported lack of independence of the investigation authorities, provide a sufficient basis for the Court to conclude that the State fell short of its obligation to conduct an effective investigation into the applicant's allegation of torture by the police.

73. The Court therefore dismisses the Government's objection as to the exhaustion of domestic remedies, previously joined to the merits (see paragraph 57 above), and finds that there has been a violation of Article 3 of the Convention under its procedural limb too.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

74. The applicant complained that he had been detained unlawfully between 18 and 19 October 1999 and that the domestic authorities had failed to effectively investigate his allegations in this connection, in breach of Article 5 § 1 of the Convention, which reads in so far as relevant:

> "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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

A. Admissibility

75. In so far as the domestic investigation into the applicant's allegation of ill-treatment equally concerned his complaint about the alleged unlawfulness of his detention, the Government reiterated their objection as to the exhaustion of domestic remedies raised concerning the applicant's complaint under Article 3 (see paragraphs 46-48 above). They noted, in particular, that, like the applicant's ill-treatment, the unlawfulness of his detention on 18 and 19 October 1999 had been acknowledged by the domestic courts and it remained open to the applicant to seek damages on that account.

76. The applicant disagreed, referring mainly to the inordinate length of the investigation which eventually barred prosecution of those responsible for his unlawful detention.

77. The Court is mindful of the delayed acknowledgement by the domestic authorities of the unlawfulness of the applicant's detention. As to his prospects of obtaining damages, the Court has already considered a similar issue in comparable circumstances in the case of *Lopatin and Medvedskiy v. Ukraine*, nos. 2278/03 and 6222/03, §§ 76 and 77, 20 May 2010) and found that the remedies in question, be it under the Civil Code or under the specialised Compensation Act, could not be deemed effective under the circumstances and did not have to be exhausted.

78. The Court has no reason to hold otherwise in the present case and dismisses the Government's objection.

79. Having found no other ground for declaring this complaint inadmissible, the Court declares it admissible.

B. Merits

80. The applicant maintained his complaint.

81. Referring to their objection as to the exhaustion of domestic remedies, the Government did not submit any further observations on the merits of this complaint.

82. The Court notes that, as established by the domestic investigation, the applicant's detention on 18 and 19 October 1999 was based partly on a knowingly false administrative offence report, and was partly unrecorded (see paragraphs 8, 22 and 28 above).

83. The Court has held on many occasions that placing a person under administrative arrest to ensure his availability for questioning as a criminal suspect – which in fact happened in the present case – is arbitrary under Article 5 of the Convention (see *Doronin v. Ukraine*, no. 16505/02, § 56, 19 February 2009; *Oleksiy Mykhaylovych Zakharkin v. Ukraine*, cited above, § 88; and *Nechiporuk and Yonkalo v. Ukraine*, cited above, § 178).

84. The Court also emphasises that unrecorded 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 *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III).

85. In the light of the foregoing, the Court concludes that there has been a violation of Article 5 § 1 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 1,800 and 40,000 euros (EUR) in respect of pecuniary and non-pecuniary damage respectively.

88. In substantiation of the pecuniary damage claim, he submitted a certificate from the Institute of Neurology, Psychiatry and Narcology of 11 June 2010, with a detailed list of medications he had been prescribed for the treatment of his head injury sustained in October 1999. The applicant also submitted copies of the relevant receipts from pharmacies.

89. The Government contested the claim, noting that it remained open to the applicant to seek compensation before the domestic courts.

90. The Court has no doubt that the applicant suffered pain and distress on account of his unlawful detention and ill-treatment at the hands of the police, which was not acknowledged, let alone compensated, for over ten years. Given the seriousness of the violations found in the present case, and ruling on an equitable basis, the Court awards in full the applicant's claim of EUR 40,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

91. Furthermore, having regard to all the documents in its possession, the Court also considers it reasonable to award the applicant the claimed sum of EUR 1,800 in respect of pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

1. Legal representation in the domestic proceedings

92. The applicant also claimed EUR 1,400 for the costs and expenses incurred before the domestic courts. He submitted copies of agreements signed by himself and a lawyer on the following dates in respect of his legal representation in the domestic proceedings regarding his ill-treatment by the police in October 1999: 25 April 2006 – for legal fees of 1,500 Ukrainian hryvnias (UAH), paid by the applicant on that date; 12 July 2007 – for UAH 4,600, paid on 15 August and 15 September 2007; 16 March 2009 – for UAH 3,000, paid on that date; 21 May 2010 – for UAH 2,000, paid on that date.

93. The Government contested this claim. They contended that the applicant could still obtain that compensation domestically.

94. Having regard to the documentary evidence submitted by the applicant, the Court considers that the costs and expenses indicated by him were both necessarily and actually incurred (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324). It therefore awards the claimed amount of EUR 1,400 in full.

2. Legal representation in the proceedings before the Court

95. The applicant further claimed EUR 8,550 for the costs and expenses incurred before the Court. In support of this claim he submitted a copy of the contract signed by himself and Mr A. Kristenko for his representation in the proceedings before the Court, dated 1 July 2008. It stipulated that the applicant was to pay Mr Kristenko, after the completion of the proceedings, EUR 60 per hour of work, with the total amount, however, not exceeding the Court's award under this head. The applicant submitted four time-sheets and expense reports completed by Mr Kristenko in respect of the work done over the period 2008-2010. According to them, Mr Kristenko worked on the case for 129 hours, 100 of which he spent studying the Government's observations.

96. The Government considered the claim to be exorbitant.

97. The Court notes that although the applicant has not yet paid the legal fees, he is bound to pay them pursuant to a contractual obligation. As can be seen from the case-file materials, Mr Kristenko represented the applicant throughout the proceedings before the Court and is therefore entitled to seek payment of his fees under the contract. Accordingly, the Court considers those fees to have been "actually incurred" (see *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 106, 8 October 2009). However, the Court considers that the claim is excessive and awards it in part, in the amount of EUR 2,000, less EUR 850 as the sum received by

way of legal aid, and plus any value-added tax that may be chargeable to the applicant.

3. Other expenses

98. Lastly, the applicant claimed EUR 690 for the cost of travelling from Kharkiv to Kyiv for meetings with the General Prosecutor's Office. In substantiation he submitted copies of train tickets.

99. The Government contested this claim as being irrelevant to the case.

100. Regard being had to the information and documents in its possession, the Court rejects this claim.

C. Default interest

101. 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. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint under Article 3 of the Convention concerning his alleged torture by the police, and dismisses it after having examined the merits of that complaint;

2. *Declares* the application admissible;

3. *Holds* that the applicant has been subjected to torture in violation of Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's allegation of torture by the police;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention on 18 and 19 October 1999;

6. *Holds*

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

into Ukrainian hryvnias at the rate applicable on the date of settlement, plus any tax that may be chargeable to the applicant:

(i) EUR 40,000 (forty thousand euros) in respect of non-pecuniary damage;

(ii) EUR 1,800 (one thousand eight hundred euros) in respect of pecuniary damage;

(iii) EUR 1,400 (one thousand four hundred euros) in respect of costs and expenses related to the applicant's legal representation in the domestic proceedings;

(iv) EUR 1,150 (one thousand one hundred and fifty euros) in respect of costs and expenses related to the applicant's legal representation in the proceedings before the Court;

(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;

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

Done in English, and notified in writing on 16 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President