

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

FIFTH SECTION

CASE OF SIZAREV v. UKRAINE

(Application no. 17116/04)

JUDGMENT

STRASBOURG

17 January 2013

FINAL

17/04/2013

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



In the case of Sizarev v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 11 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 17116/04) 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 Konstantin Konstantinovich Sizarev ("the applicant"), on 14 May 2004.

2. The Ukrainian Government ("the Government") were most recently represented by their Agent, Mr Nazar Kulchytskyy.

3. The applicant complained, in particular, about the lawfulness and length of his pre-trial detention, the conditions in which he had been detained, the failure of the authorities to ensure his physical safety in detention and to duly investigate the incident of assault of which he had complained, as well as about being handcuffed while in hospital.

4. On 21 March 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Yevpatoriya.

6. He formerly worked as an assistant in a local court. Before the events in question, he did not have a criminal record.

A. Criminal proceedings against the applicant and his detention

7. On 3 October 2003 a Mr K. complained to the police that the applicant had beaten him up.

8. Although it initially found no reason to prosecute, on 24 February 2004 the Yevpatoriya City Prosecutor's Office opened a criminal case against the applicant on suspicion of the deliberate infliction of bodily harm of a medium degree of severity on Mr K. (an offence punishable by a maximum of three years' imprisonment – see paragraph 82 below).

9. On 18 March 2004 the applicant was ordered not to leave town.

10. On 25 March 2004 he appointed his wife, Ms D., as his representative.

11. From 8 to 29 April 2004, the applicant was on sick leave owing to a leg injury. As a result, he failed to appear before the investigator in answer to a summons.

12. On 19 April 2004 the investigator applied to the Saky City Court ("the Saky Court") with a request for the applicant's pre-trial detention as a more appropriate preventive measure, given his failure to comply with the summons and also the fact that his actual place of residence was unknown.

13. On 22 April 2004 the Saky Court ordered the police to ensure the applicant's appearance.

14. On the morning of 27 April 2004 the applicant was arrested.

15. On the same date the Saky Court allowed the investigator's applications at a hearing which was attended by the applicant and the prosecutor. The applicant's request for his wife to be present was, however, rejected.

16. The Saky Court noted that while pre-trial detention was normally ordered in cases where the likely penalty was more than three years' imprisonment, it was possible to make an exception. The court noted that the applicant had failed to appear in response to a number of the investigator's summonses, that he did not actually live at the address he had given to the investigating authorities as his place of residence, and that he had left Yevpatoriya on many occasions without informing the investigator, and in breach of the obligation not to leave town. Furthermore, the victim, Mr K., complained that the applicant had threatened him. The court observed that all those factors sufficed to consider the applicant's case exceptional within the meaning of Article 155 § 1 of the Code of Criminal Procedure and to order pre-trial detention as a preventive measure pending his trial (see paragraph 84 below).

17. Also, on 27 April 2004, Ms D. lodged an appeal against that decision on the applicant's behalf. She submitted that putting the applicant in pre-trial detention was contrary to the criminal procedural legislation given the minor nature of the crime in question. She further argued that the Saky Court had failed to take into account the fact that, as confirmed by medical records, the applicant had been undergoing medical treatment since 8 April 2004 and therefore had a valid reason for his failure to attend the

investigation. She also pointed out that the court had disregarded the fact that the applicant had two children of minor age and that she herself (as his wife) was disabled. Lastly, Ms D. complained that the hearing of the Saky Court on 27 April 2004 had taken place in her absence.

18. On 28 April 2004 the police questioned Ms D. as a witness in the criminal proceedings against the applicant and accordingly informed her that she was no longer permitted to represent him.

19. On an unspecified date the applicant then appointed a Mr N. as his lawyer.

20. On 3, 4 and 11 May 2004 the applicant requested that Ms D. be readmitted to the proceedings as his representative but his requests were turned down.

21. On 7 May 2004 another lawyer, a Mr L., joined the proceedings as the applicant's representative.

22. On 19 May 2004 the charge against the applicant was extended to include intent to intimidate the victim (leading to the maximum possible sentence of five years – see paragraph 82 below).

23. On the same day the applicant's wife, Ms D., was readmitted as his representative in the proceedings, in addition to the two lawyers, Mr N. and Mr L., who were already representing him.

24. On 1 June 2004 the Court of Appeal of the Autonomous Republic of Crimea ("the Crimea Court of Appeal"), in the presence of the applicant's lawyers, excluding Ms D, examined the applicant's appeal against his being taken into pre-trial detention. It upheld both the reasoning and the operative part of the ruling of the Saky Court of 27 April 2004.

25. On 22 June 2004 the Zaliznychnyy District Court of Simferopol ("the Zaliznychnyy Court") commenced the trial. It noted in its ruling following the preparatory hearing that the "preventive measure [had been] chosen correctly and there [were] no reasons for lifting or changing it".

26. On 5 and 7 July 2004 the Zaliznychnyy Court rejected the applicant's two requests for release (the case file does not contain copies of these decisions).

27. On 7 July 2004 the Zaliznychnyy Court, on a request by the investigator, ordered a psychiatric assessment of the applicant in order to establish his fitness to stand trial. The reasons given by the investigator were as follows: firstly, there was a disparity between the applicant's various character references; secondly, no investigation had been made into his aggressive and motiveless behaviour at the time of the crime or his persistent evasiveness during the initial investigation before his arrest; and, finally, he had suffered a head injury which could have affected his mental state. The applicant's lawyer, Mr L., supported the investigator's request, whereas the applicant and his wife opposed it. The court found that a psychiatric assessment was indeed necessary in order to gain a comprehensive view of the applicant's personality.

28. On 1 October 2004 the Zaliznychnyy Court found the applicant guilty of negligently inflicting bodily harm of a medium degree of severity

on Mr K. and sentenced him to a one-year suspended term of imprisonment. The court released the applicant subject to an obligation not to leave town.

29. On 14 December 2004 the Crimea Court of Appeal quashed the aforementioned judgment and remitted the case to the first-instance court for fresh examination.

30. On 25 November 2005 the Zaliznychnyy Court found the applicant guilty of the deliberate infliction of injuries of medium-severity on Mr K. with the intent to intimidate him and sentenced him to two years' imprisonment. The court also changed the preventive measure imposed on the applicant from the order not to leave town to one of detention, without further explanation. The applicant was arrested on the court premises.

31. The applicant and his representatives appealed against the judgment, alleging that it was based on a distorted assessment of the facts of the case and unreliable witness statements.

32. On 24 January 2006 the Crimea Court of Appeal dismissed those appeals. However, it dispensed the applicant from serving the sentence and released him on the ground that he had two children of minor age.

33. The applicant lodged a cassation appeal, seeking acquittal.

34. On 25 January 2007 the Supreme Court found against him.

B. The incident involving the applicant in the Yevpatoriya Temporary Detention Facility and the subsequent investigation

35. On 27 April 2004, at 7 p.m., the applicant was put in cell no. 10 of the Yevpatoriya Temporary Detention Facility ("the ITT") which housed approximately ten detainees. About an hour later, the ITT administration discovered that he had sustained multiple injuries while in that cell.

36. Between 29 April and 14 May 2004 a forensic medical examination was conducted. It concluded that the applicant's injuries (see also paragraph 54 below) were light and could have been sustained on 27 April 2004.

37. On 7 May 2004 the Yevpatoriya City Prosecutor's Office refused to institute a criminal investigation into the incident. It stated that, as the applicant had admitted himself, he had accidentally fallen out of the top bunk in the cell and had injured himself. There was therefore no case to answer.

38. On 11 May 2004 the applicant's lawyer complained to the Yevpatoriya and Crimea prosecutors' offices that the applicant had been beaten up in the ITT on 27 April 2004. He submitted that the ITT administration had wrongly placed his client in a communal cell shared by other detainees including, possibly, criminals with previous convictions, whereas because the applicant had been facing a criminal charge for the first time and had previously worked in the court service, legislation called for him to be held separately.

39. On 12 May 2004 the Crimea Prosecutor's Office quashed the ruling of 7 May 2004 as premature and sent the case back for additional investigation. It was noted that the applicant, a former court employee, had been placed in a cell with convicted criminals. This matter therefore required further examination.

40. On 24 May 2004 the Yevpatoriya Prosecutor's Office refused to institute criminal proceedings against the ITT officials in respect of the incident of 27 April 2004 (no copy of this decision has been made available in the case file).

41. On 31 May 2004 the Yevpatoriya police department sent a letter to the applicant's lawyer outlining its version of the events of 27 April 2004. It noted that at the time of the applicant's arrest the ITT had been overcrowded, holding, in total, eighty-six detainees. The situation was compounded by the fact that one of the cells was under reconstruction. The applicant had been placed in the least heavily occupied cell. According to the letter, the applicant had not mentioned anything about having previously worked in the court service and the officer on duty could not have known that.

42. On 22 June 2004 the Chief of the Yevpatoriya police department reprimanded the ITT officials for having put the applicant into a cell with convicted criminals0, in breach of Section 8 of the Pre-Trial Detention Act (see paragraph 78 below).

43. On 30 July 2004 the Yevpatoriya City Prosecutor's Office refused to open a criminal case against the ITT officials as it was unable to find evidence of a crime having been committed. It appears that the earlier refusal of 24 May 2004 had been quashed in the meantime.

44. On 4 August 2004 the Crimea Prosecutor's Office quashed that refusal and opened a criminal case under Article 125 § 2 of the Criminal Code (deliberate infliction of light bodily injuries – see paragraph 83 below) in respect of the applicant's allegation of having been beaten. The investigation, at that stage, concerned the fact of the beating and was not targeted at any particular person.

45. On 10 March 2005 the Crimea Department of the Ministry of the Interior completed its own internal enquiry into the matter. Its conclusions were as follows: there was no information about the police's involvement in the alleged beating of the applicant; it had, however, been established that the applicant had been put in a communal cell in breach of legislation and the officials responsible for that decision had been disciplined. That measure was considered adequate in the circumstances.

46. The investigation was continued in order to determine the involvement of the other detainees in the incident. It included, in particular, the questioning of the applicant's cellmates at that time.

47. On 20 December 2005 Mr Y., one of the detainees who had been held in cell no. 10 of the ITT on 27 April 2004, confessed to having beaten the applicant up.

48. On 19 March 2007 the Saky Court found Mr Y. guilty of the deliberate infliction of light injuries on the applicant and sentenced him to two years' restriction of liberty. According to information set out in the judgment, by April 2004 Mr Y. already had four criminal convictions to his name.

49. The court dismissed as unsubstantiated the applicant's submission that the ITT officials had deliberately put him into a cell with convicted criminals in order to "teach him a lesson". No evidence was found to support the applicant's allegation that two of the other inmates, Mr D. and an unidentified individual, had joined Mr Y. in beating him up. The applicant also submitted that the ITT governor, Mr F., had ordered the blood and other traces of the assault to be cleaned up immediately after the incident and that he had instructed everybody to say that the applicant had accidentally fallen from the upper bunk. Furthermore, the applicant stated that he had been taken back to cell no. 10 in the evening of 27 April 2004, while awaiting transfer to hospital, and that Mr Y. had intimidated him in order to make him say that he had injured himself by accident. The applicant also claimed that Mr D. had later been put in the same hospital ward, where he had continued to threaten the applicant, and had been present during all his interviews. Most of the inmates claimed that the applicant had provoked Mr Y. into a fight by being noisy and aggressive. One of the ITT staff confirmed the applicant's story that the ITT governor had ordered the blood stains in cell no. 10 to be cleaned up and that the applicant had been taken back to the same cell before his transfer to hospital. This staff member had been reprimanded for having placed the applicant in the same cell as convicted criminals. However, according to his statement, it had been impossible to ensure compliance with the legal requirement concerning the isolation of detainees, because the ITT had been housing double its capacity of inmates. A woman who had been detained in the ITT at the same time as the applicant confirmed that she had cleaned up the blood in the cell, the corridor and in the investigation room following an order from the authorities. In his statement, Mr D. denied having beaten the applicant, but confirmed having been hospitalised with him in the same ward. Two detainees submitted that after the applicant had been removed from the cell following the incident the cell door had remained open for a couple of minutes and they had seen the ITT governor and some other officers hitting the applicant several times. The court dismissed this submission, however, as it was not corroborated by other evidence.

50. The applicant appealed against the judgment of 19 March 2007.

51. On 15 May 2007 the Crimea Court of Appeal rejected his appeal as unsubstantiated. It considered that the first-instance court had examined the case with due diligence and in accordance with the criminal procedural legislation.

52. The applicant lodged a cassation appeal reiterating his grievances.

53. On 11 October 2007 the Supreme Court rejected his request for leave to appeal as unsubstantiated.

C. The applicant's medical condition and treatment

54. On 27 April 2004, at 10.50 p.m., the ITT administration took the applicant to Yevpatoriya City Hospital, where he was diagnosed with and treated for the following conditions: concussion, hematomas beneath the eyelids, bruising to the left superciliary arch, bruises to the soft facial tissue, bruises to the tongue, injuries to both ears, bruises to the nose, and bruising of the soft tissue in the chest and lumbar regions. Other medical conditions were also noted, namely, two chronic inflammatory conditions (mesotympanitis and epitympanum) of the ear, nasal septum deviation, varicose veins on the lower extremity, saline diathesis, and chronic hepatitis in the remission stage.

55. As can be seen from a letter dated 17 May 2004 from the hospital administration to the applicant's lawyer, the applicant was treated in the hospital under the supervision of a neurosurgeon, the head of the ear, nose and throat department, a dental surgeon, and an eye surgeon. Furthermore, meetings were held with specialists, including the heads of the cardiology, urology and traumatology departments.

56. On 13 May 2004 the applicant was discharged from the hospital in "a satisfactory state of health". It was noted in the medical report that he could be kept in detention on condition that he took the medication prescribed for him and that his state of health was monitored by an ear, nose and throat specialist, a neurologist, and a surgeon. It was also recommended that the applicant be examined by an audiologist given that he complained of hearing problems.

57. On 13 May 2004 the applicant's wife requested the Court to indicate to the Government, as an interim measure under Rule 39 of the Rules of Court, to transfer him to a hospital from the SIZO due to his deteriorating state of health.

58. On 14 May 2004 her request was allowed. The Government were asked to ensure that the applicant was transferred immediately to a hospital or other medical institution where he could receive the appropriate treatment for his medical condition. The Government were requested to inform the Court by 31 May 2004 of the steps taken.

59. On 14 May 2004 the applicant was taken to Semashko Republic Clinical Hospital, where he was examined by an audiologist, a maxillofacial surgeon and an oncologist. The audiologist's conclusion was that the applicant did not require any treatment and could be held in pre-trial detention. The maxillofacial surgeon recommended further examination by a neurologist. The oncologist diagnosed the applicant with a chronic tongue ulcer and recommended a histological test.

60. The applicant was then transferred to the Yevpatoriya City Hospital, where he was further examined, during the period till 27 May 2004, by doctors specialising in different areas of medicine including an oncologist, a neurosurgeon, an oculist, an ear-nose-throat specialist, and a generalist, as well as the Deputy Chief Doctor in charge of surgical services. Furthermore,

on 18 May 2004 a histological test (recommended on 14 May – see above) was performed, with no malignant tumour having been discovered. As per the medical records, during the period from 24 to 27 May 2004 the applicant did not complain of any pain syndromes. Having regard to the results of the tests and examinations undertaken, the doctors concluded that the applicant did not require inpatient medical treatment and could be held in detention.

61. On 28 May 2004 the Government informed the Court of the above, and on 1 June 2004 they submitted the respective medical certificates.

62. On 5 July 2004 the President of the Chamber to which the case was allocated lifted the interim measure.

D. The handcuffing of the applicant in hospital

63. During his stay in Yevpatoriya City Hospital from 27 April to 13 May 2004 the applicant was handcuffed to his bed. The ward in which he was held had bars on its windows and a lock on its door. Three police officers guarded the applicant at all times.

64. On 11 May 2004 the applicant's lawyer complained to the Yevpatoriya and Crimea prosecutor's offices about the applicant's permanent handcuffing in hospital, which, according to him, was an unnecessary and humiliating measure unsupported by any legal grounds.

65. On 22 May 2004 the Yevpatoriya police department, to which the above-mentioned complaints had been forwarded, completed its "internal investigation" into the matter. It concluded that the handcuffing of the applicant during his treatment in hospital was not contrary to Section 18 of the Pre-Trial Detention Act, which prohibited this measure only in respect of specific categories of detainee (pregnant women, the elderly, the disabled and minors), into none of which the applicant fitted (see paragraph 81 below). Moreover, the applicant had remained under constant medical supervision. In addition, the handcuffs had been removed during meals, when the applicant took his medicine, during hygienic procedures, and additionally for a further thirty to forty minutes per day.

E. Conditions of the applicant's detention in the Yevpatoriya ITT

66. According to the applicant, following his discharge from hospital, on 13 May 2004 he had been placed in cell no. 12 of the ITT, measuring 1.7 by 2.1 metres. Two other detainees were already held there. One of them had tuberculosis, and the other one had scabies. The cell had no windows and was lit by a weak electric bulb. It was infested with lice. There was no furniture. The three detainees slept in turns on two mattresses on the concrete floor, with their legs resting in the non-separated toilet area, on account of the lack of space. There was no washbasin, and the detainees had to wash themselves using water from the toilet flush, which was also the only source of drinking water. The cell was poorly ventilated. The detainees

could not go for walks or have showers. Furthermore, the applicant required a special diet because of his tongue injury. In its absence and given the ITT administration's refusal to accept food for him from his relatives, he went hungry.

67. On 19 May 2004 the applicant was transferred to cell no. 6, which had better living conditions. He claimed that the transfer had only been made on account of a visit to the ITT by the Ombudsman.

68. On 21 May 2004 the applicant was transferred back to cell no. 12, which he shared once again with two other detainees.

69. On 27 May 2004 he was transferred to Simferopol SIZO no. 15 ("the SIZO"), where he was held in the hospital wing.

70. On 3 June 2004 he was taken back to the ITT and placed once more in cell no. 12.

71. On 10 June 2004 the applicant was transferred to the SIZO again.

F. Civil proceedings brought by the applicant for damages

72. On 14 October 2004 the applicant lodged a civil claim with the Yevpatoriya Court seeking compensation, in the amount of 3 million Ukrainian hryvnias (UAH), from the State Treasury of Ukraine and the Yevpatoriya police department for non-pecuniary damage in respect of the following: the conditions of his detention in the ITT; the failure of the ITT administration to ensure his safety; the fact of his having been handcuffed in hospital, the alleged lack of provision of any food or water between 27 April and 5 May 2004; the failure to provide him with the necessary medication; and the refusal to allow his wife and the priest to see him.

73. On 7 April 2005 the Yevpatoriya Court allowed the claim in part. It concluded that by having placed the applicant in a cell with other detainees, including convicted criminals, the ITT administration had not ensured his safety and that, as a result of this lapse, he had been beaten up. The court also established that, in breach of section 9 of the Pre-Trial Detention Act, the applicant had not been provided with daily one-hour walks. Furthermore, the conditions of his detention in cell no. 12 had not conformed with the requirements of section 11 of the Pre-Trial Detention Act. The court awarded the applicant UAH 6,000 (at that time equivalent to 880 euros) in respect of non-pecuniary damage and rejected the rest of his complaints on lack of grounds.

74. The above-mentioned judgment was provided to the Court by the Government along with their observations on the admissibility and merits of the case. The applicant did not refer to it in his submissions at the time.

75. In May 2012 the applicant sent the Court a copy of the ruling of the Higher Civil and Criminal Specialised Court of 14 March 2012 (see below), without commenting on its substance. It appears from this ruling that the judgment of 7 April 2005 was quashed on appeal and the case was remitted to the same first-instance court for a fresh examination. On 18 November

2008 the Yevpatoriya Court once again allowed the applicant's claim in part and awarded him UAH 6,000. The reasoning of its judgment was similar to that of 7 April 2005. On 8 April 2009 the Crimea Court of Appeal increased that award to UAH 25,000 (at the time equivalent to EUR 2,230).

76. By a ruling of 14 March 2012 the Higher Civil and Criminal Specialised Court upheld the lower courts' decision. It noted that the applicant had suffered inhuman and degrading treatment on account of the conditions of his detention and the failure of the authorities to ensure his physical safety while in detention. It considered that the compensation awarded in respect of non-pecuniary damage was fair.

77. By a letter of 18 June 2012, the Registry of the Court transmitted to the Government for information a copy of the aforementioned ruling of 14 March 2012. No reaction followed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Pre-Trial Detention Act 1993 (as worded at the material time)

78. Section 8 reads as follows:

> "... Detainees shall be held in cells in compliance with the following isolation requirements:
>
> ... persons against whom criminal proceedings have been instituted for the first time: separately from those with a previous criminal conviction;
>
> persons who have served prison sentences – separately from those who have not been imprisoned;
>
> persons suspected or accused of crimes classified as serious or particularly serious – separately from other detainees;
>
> persons who have previously worked in the judicial authorities and courts – separately from other detainees ..."

79. Pursuant to section 9, detainees are entitled, in particular, to a daily walk of one hour and a sleeping period of eight hours.

80. Under section 11, detainees must be provided with everyday conditions that meet sanitary and hygiene requirements. The cell area for one person may not be less than 2.5 square metres in area.

81. Section 18, which sets out the rules governing the use of handcuffs, is summarised in the Court's judgment in *Okhrimenko v. Ukraine* (no. 53896/07, § 61, 15 October 2009).

B. Criminal Code 2001 (as worded at the material time)

82. Article 122 provided for correctional works for up to two years, or restriction of liberty for up to three years, or deprivation of liberty for up to three years, as a punishment for the crime of deliberate inflicting bodily injuries of medium severity (§ 1). The same crime committed with the intention of intimidating the victim was punishable with a sentence of three to five years' imprisonment (§ 2).

83. Article 125 § 2 penalised the crime of deliberately inflicting light injuries leading to short-time health disorder with public works of one hundred and fifty to two hundred and forty hours, or correctional works for up to one year, or arrest for up to six months, or restriction of liberty for up to two years.

C. Code of Criminal Procedure 1960 (as worded at the material time)

84. The first paragraph of Article 155 reads as follows:

> "Detention on remand as a preventive measure shall be applied in cases concerning offences for which the law envisages a penalty of more than three years' imprisonment. In exceptional situations this preventive measure can be applied in cases concerning offences for which the law envisages imprisonment for less than three years."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S BEATING AND THE CONDITIONS OF HIS DETENTION IN THE YEVPATORIYA ITT

85. The applicant complained under Article 3 of the Convention that the State authorities had been responsible for his having been beaten up by a cellmate in the Yevpatoria ITT and that the incident had not been duly investigated. He also complained that he had been detained there in inhuman conditions in cell no. 12. Article 3 of the Convention, relied on by the applicant, reads as follows:

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

A. Admissibility

86. The Government submitted that the applicant could no longer claim to be a victim of the above-mentioned violations. They argued that the domestic authorities had duly investigated his complaint of ill-treatment and had punished the perpetrator, Mr Y. They further pointed out that the ITT staff responsible for having placed the applicant in the cell with convicted criminals and thus having exposed him to the risk of ill-treatment had been disciplined. Furthermore, the Government noted that the applicant had been awarded reasonable compensation in respect of the above complaints concerning both his ill-treatment by a cellmate and the conditions of his detention. They relied in this connection on the judgment of the Yevpatoriya Court of 7 April 2005 (see paragraph 73 above).

87. The applicant disagreed in general terms. He maintained his position also later on, in the light of the ruling of the Higher Specialised Civil and Criminal Court of 14 March 2012, which he sent to the Court in May 2012 (see paragraphs 75-76 above).

88. The Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-193, ECHR 2006-V).

89. Turning to the present case, the Court notes that the applicant's complaints concern the following two issues: firstly, the material conditions of his detention and, secondly, his ill-treatment by a cellmate while in detention. The Court will examine whether the applicant can be regarded as having lost his victim status in respect of each of these two complaints.

1. Victim status as regards the conditions of detention

90. The Court observes that by the final judicial decision of 14 March 2012 the domestic authorities admitted that the applicant had suffered inhuman and degrading treatment on account, in particular, of the poor conditions of his detention in cell no. 12 of the Yevpatoriya ITT, which is also the subject matter of his application before this Court. The domestic courts assessed various aspects of the conditions in which the applicant had been detained and their cumulative effects on him (see paragraphs 73 and 75-76 above and, see also *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The Court is therefore satisfied that the authorities have acknowledged a violation of Article 3 of the Convention on that account.

91. It remains to be seen whether appropriate and sufficient redress was provided to the applicant at national level. In assessing this, the Court will have regard to all the circumstances of the case, taking into account, in particular, the nature of the Convention violation at stake (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010).

92. The Court observes that in the present case the domestic courts awarded the applicant compensation equivalent to about EUR 2,230 in respect of the non-pecuniary damage he suffered on account of his detention in substandard conditions during a period of about two weeks. This compensation also covered his wrongful confinement in the same cell as convicted criminals, which had led to his having been beaten up by a cellmate (see paragraphs 73 and 75-76 above).

93. The Court reiterates that the question whether the applicant received compensation comparable to just satisfaction as provided for under Article 41 of the Convention for the damage caused by the ill-treatment contrary to Article 3 is an important indicator for assessing whether a breach of the Convention has been redressed (see *Shilbergs v. Russia*, no. 20075/03, § 72, 17 December 2009, and, *mutatis mutandis, Gäfgen,* cited above, §§ 126-127).

94. At the same time, the Court notes that compensation which is lower than the amount it would itself award may nevertheless be considered reasonable, provided that the relevant decision of the domestic courts is consonant with the legal tradition and standard of living in the country concerned and is speedy, reasoned and executed quickly (see *Scordino*, cited above, §§ 189 and 206, and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

95. As regards the present case, the Court considers that the amount of the compensation awarded to the applicant could be regarded as reasonable if it covered only the conditions of detention. However, according to the judgment of 18 November 2008, it also covered the ill-treatment sustained by the applicant.

96. Further the Court notes certain delays in the examination of the case caused, in particular, by its remittal to the first-instance court and the lengthy examination of the cassation appeal. It remains unknown whether the judgment awarding compensation has been enforced.

97. Consequently, having regard, in particular, to the much delayed adjudication of the applicant's complaint regarding his poor detention conditions, the Court concludes that he cannot be regarded as having obtained appropriate and sufficient redress in that respect (see, by contrast, *Iliev and Others v. Bulgaria*, nos. 4473/02 and 34138/04, § 43, 10 February 2011).

98. In the light of the foregoing, the Court dismisses the Government objection that the applicant has lost his victim status in respect of his complaint concerning the conditions of his detention.

2. Victim status as regards the authorities' failure to safeguard the applicant's physical safety

99. The Court notes that the question whether the applicant in the present case may still claim to be a victim as regards his complaint of ill-treatment in the detention facility on 27 April 2004, is closely linked to the

substance of his complaint regarding the effectiveness of the subsequent investigation into the matter. The Court therefore joins this issue to the merits of that complaint (see *Vladimir Romanov v. Russia*, no. 41461/02, § 53, 24 July 2008). The adequacy of the subsequent compensation will also be assessed at that stage (see *Aleksakhin v. Ukraine*, no. 31939/06, § 60, 19 July 2012).

3. Otherwise as to admissibility

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

B. Merits

1. As regards the applicant's conditions of detention

101. The applicant maintained his complaint in general terms.

102. Referring to their objection as to the applicant's victim status, the Government did not submit any observations on the merits of this complaint.

103. The Court notes from the outset that the applicant spent a total of not more than two weeks in inadequate conditions (see paragraphs 66-71 above). A question may therefore arise as to whether the distress and hardship suffered by him attained the minimum threshold of severity for the purposes of Article 3 of the Convention.

104. The Court observes that conditions of detention for a comparable and even a much shorter period have been previously found to be incompatible with the requirements of Article 3 (see, for example, *Fedotov v. Russia*, no. 5140/02, §§ 66-70, 25 October 2005, where the applicant was detained for twenty-two hours with no food and water or access to a toilet; *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, §§ 100-111, 24 January 2008, where the applicants were detained in poor conditions for periods of fifteen and eleven days; and *Mkhitaryan v. Armenia*, no. 22390/05, § 55, 2 December 2008, where the length of the impugned detention was ten days). The Court thus concludes that, while the length of a period of detention may be a relevant factor in assessing the gravity of suffering or humiliation caused to a detainee by the inadequate conditions of his detention (see, for example, *Dougoz*, cited above, § 48, and *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI), the relative brevity of such a period alone will not automatically exclude the treatment complained of from the scope of Article 3 if all other elements are sufficient to bring it within the scope of that provision (see *Mkhitaryan*, cited above, § 55).

105. Having regard to the nature of the hardships suffered by the applicant in the present case, in particular, the overcrowding, lack of natural

light, appalling sanitary conditions, lack of an individual place to sleep and no outdoor walks or other activities, and noting that he was subjected to these conditions just having been discharged from hospital, the Court considers that the minimum threshold of severity for the purposes of Article 3 of the Convention was attained.

106. The Court further notes that it has already found a breach of this provision in respect of the conditions in which another detainee was held in the same detention facility during more or less the same period of time (see *Tsygoniy v. Ukraine,* no. 19213/04, §§ 45-47, 24 November 2011).

107. In the light of the foregoing, the Court concludes that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in cell no. 12 of the Yevpatoriya ITT.

2. As regards the beating of the applicant in the Yevpatoriya ITT

(a) The authorities' duty to ensure the applicant's safety in detention

108. The applicant submitted that the authorities had knowingly put him at risk of physical violence at the hands of his cellmates by having placed him, contrary to the national legal requirements, in the same cell with convicted criminals.

109. The Government did not comment on the merits of this complaint.

110. The Court notes that the principal facts of the case were not disputed by the parties. In particular, it was established that the applicant had been beaten by a cellmate shortly after his confinement in cell no. 10 of the Yevpatoriya ITT. As a result, he sustained the following injuries: concussion, hematomas beneath the eyelids, bruising to the left superciliary arch, bruises to the facial soft tissue, bruises to the tongue, injuries to both ears, bruises to the nose, and bruises to the soft tissue of the chest and lumbar region (see, in particular, paragraphs 48 and 54 above).

111. These injuries are a sufficient indication for the Court that the applicant suffered ill-treatment attaining the minimum threshold of severity for Article 3 of the Convention to apply.

112. The Court reiterates that Article 3 of the Convention imposes an obligation on the Contracting States not only to refrain from causing ill-treatment, but also to take the necessary preventive measures to preserve the physical safety and well-being of persons deprived of their liberty who find themselves in a vulnerable position by virtue of being under the control of the authorities (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III, *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX, and *Premininy v. Russia*, no. 44973/04, § 73, 10 February 2011).

113. At the same time the Court has consistently interpreted that obligation in such a manner as would not impose an impossible or disproportionate burden on the authorities (see *Pantea v. Romania*, no. 33343/96, § 189, ECHR 2003-VI).

114. Turning to the present case, the Court observes that the Ukrainian legislation on pre-trial detention provided for certain requirements for confinement in isolation aimed at preserving the safety of detainees: in particular, persons facing criminal proceedings for the first time were to be detained separately from those with a criminal record, and, furthermore, persons who had previously worked in the court service (such as the applicant in the present case) were to be isolated from other detainees (see paragraph 78 above).

115. As established by the domestic courts, neither of these precaution requirements was complied with in the applicant's case. The authorities failed to ensure his safety and were therefore responsible for his ill-treatment by a cellmate (see paragraphs 73-76 above).

116. Accordingly, there has been a violation of Article 3 of the Convention in this regard.

(b) Effectiveness of the domestic investigation

117. The applicant maintained his complaint in general terms.

118. The Government contended that the authorities had thoroughly investigated the incident involving the applicant, had acknowledged their failure to take action and had brought all those responsible to justice.

119. The Court reiterates that when an individual makes an arguable claim that he has suffered treatment infringing Article 3 of the Convention, at the hands of agents of the State, it is the duty of the national authorities to carry out "an effective official investigation" capable of establishing the facts and identifying and punishing those responsible (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII. Such a positive obligation cannot be considered, in principle, to be limited solely to cases of ill-treatment by State agents (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII).

120. At the same time, this obligation does not necessarily require the provision of a criminal law remedy in every case (see *Ciechońska v. Poland*, no. 19776/04, § 66, 14 June 2011). Thus, compensation for non-pecuniary damage should, in principle, be part of the range of available remedies if the infringement of the right to personal safety is not caused intentionally or in cases which do not concern the inflicting of ill- treatment contrary to Article 3 of the Convention, but rather a failure by the authorities to protect persons from a breach of their rights under this provision. This consideration, however, by no means diminishes the duty to investigate, particularly where an applicant is in custody and under the care and responsibility of the authorities (see *Gorgiev v. "the former Yugoslav Republic of Macedonia"*, no. 26984/05, §§ 62 and 64, 19 April 2012).

121. The investigation into serious allegations of ill-treatment must be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et

seq., *Reports of Judgments and Decisions* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of those responsible will risk falling foul of this standard.

122. In the present case, the Court discerns a number of deficiencies undermining the effectiveness of the domestic investigation. For example, it notes the steps taken by the ITT administration immediately after the incident. While cleaning up the spilt blood in the cell was an understandable measure to maintain standards of hygiene, it appears that no attempts were made to secure any forensic evidence at all. The least that could reasonably be expected from the administration would have been to carry out an inspection of the scene and to make a report about its findings. No such report is known to have been produced.

123. Furthermore, given the closed cell environment in which the incident had taken place, it was also essential to question the eyewitnesses without delay, with safeguards in place to protect them from being influenced or intimidated. However, such questioning was apparently only undertaken almost a year after the incident (see paragraph 46 above).

124. The Court is also struck by the administration's decision to put the applicant immediately back into the cell where he had suffered ill-treatment, while his transfer to hospital was being organised (see paragraph 49 above). He was put at risk of both a repeat of the ill-treatment and of intimidation as a result of complaints he may have made.

125. The risk of the applicant's intimidation by his cellmates persisted during his stay in hospital, when he had to share his ward with one of those cellmates, Mr D. (ibid.).

126. Although the applicant pointed out those deficiencies to the domestic prosecution and judicial authorities, his concerns apparently remained unaddressed.

127. The Court also observes that the investigation was discontinued and subsequently resumed three times (see paragraphs 37, 39-40 and 43-44 above), which in itself may be regarded as an indication of deficiencies in the domestic prosecution system (see *Aleksandr Smirnov v. Ukraine*, no. 38683/06, § 61, 15 July 2010).

128. The Court notes that the inmate who had beaten the applicant was convicted (see paragraph 48 above). As to the ITT officials, they were eventually disciplined for having put the applicant in the same cell as other detainees, including convicted criminals. The Court doubts that this reprimand issued to staff members who apparently had no practical means to act differently, was, in fact an effective measure. It was already known that the ITT was overcrowded and that it had not been possible to comply

with the requirements for the isolation of some detainees under the applicable legislation (see paragraphs 41 and 49 above).

129. In the light of all these circumstances, the Court is not convinced that the domestic authorities acted promptly and in good faith or that they took all reasonable efforts to establish what exactly had happened to the applicant within the walls of the detention facility and why, and to bring those responsible to justice.

(c) Adequacy of compensation in respect of the applicant's ill-treatment

130. As to the compensation which was eventually awarded to the applicant, the Court observes that it was equivalent to about EUR 2,200 and was intended to compensate for the damage the applicant had suffered in respect of both the inadequate conditions of his detention and his exposure to the risk of ill-treatment (see paragraphs 75 and 95 above). While that amount could be regarded as sufficient redress for the poor conditions of his detention, the Court does not consider that it was adequate compensation for the ill-treatment suffered as a result of both the general prison conditions and the specific incident of physical violence while the applicant was under the authorities' control.

(d) Conclusions

131. The above considerations are sufficient to enable the Court to conclude that the applicant can still claim to be a victim of a violation of Article 3 with regard to the beating he suffered at the hands of his cellmate on 27 April 2004. It therefore dismisses the Government's objection previously joined to the merits of this complaint in this regard (see paragraph 99 above).

132. In view of the foregoing, the Court finds that there has been a violation of Article 3 of the Convention on account of the authorities' failure to ensure the applicant's safety in detention and to duly investigate the incident.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S HANDCUFFING IN HOSPITAL

133. The applicant also complained under Article 3 of the Convention about being handcuffed to his bed from 27 April to 13 May 2004, while in the city hospital.

A. Admissibility

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

B. Merits

135. The applicant submitted that the handcuffing he had undergone while in hospital had been unlawful, unjustified and humiliating.

136. The Government contended that the applicant had been handcuffed in compliance with domestic legislation and that it had been a necessary measure given the applicant's attempts to leave the hospital ward, as well as the attempts of his supporters to enter it.

137. The Court notes that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports* 1997-VIII, and *Hénaf v. France*, no. 65436/01, §§ 50-53, ECHR 2003-XI).

138. Turning to the present case, the Court notes that the applicant was continuously handcuffed throughout his sixteen-day stay in hospital, with some brief respite. According to the Government's submissions, this was necessitated, in particular, by his supposedly numerous attempts to leave the hospital ward, as well as the attempts of his supporters to enter the ward (see paragraph 136 above). The Court is not convinced by this explanation. As suggested by the facts of the case (namely, the applicant's admission to the hospital late in the evening on 27 April 2004 and the fact that he was handcuffed on that very date), the applicant was restrained from the very outset of his stay there and not following any attempt to escape. Having regard to these circumstances, the Court finds it difficult to imagine how the applicant could have undertaken "numerous attempts" to escape while shackled to his bed. The Government's submission in that respect lacks supporting evidence.

139. The Court further notes that the applicant was guarded by three police officers at all times, the windows of his ward were barred and the door was equipped with a lock. These measures appear largely sufficient to prevent the applicant's escape, as well as any unauthorised visits to him. The Court also notes that at no point was it asserted that the applicant had behaved aggressively towards the hospital personnel or the police, posed a threat to his own safety or been likely to commit suicide.

140. In these circumstances the Court considers that the handcuffing of the applicant in the hospital was disproportionate to the requirements of security and an unjustifiable humiliation, whether or not intentional. It thus amounted to inhuman and degrading treatment.

141. There has therefore been a violation of Article 3 of the Convention on this account too.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE MEDICAL TREATMENT PROVIDED TO THE APPLICANT

142. The applicant also complained under Article 3 of the Convention about the alleged inadequacy of the medical care he had received following the incident of 27 April 2004. He submitted that his hospitalisation had not been prompt enough and that his treatment had not been sufficiently thorough.

143. The Court notes that the applicant was taken to a civilian hospital from the SIZO about three hours after the incident in question (see paragraphs 35 and 54 above). There is no indication that this delay was so significant that to have impaired his treatment.

144. The Court next observes that the applicant underwent inpatient medical treatment for his condition, which included mainly bruises, concussion and an ear inflammation, in the Yevpatoriya City Hospital for sixteen days. The doctors involved in his treatment included a neurosurgeon, the head of the ear, nose and throat department, a dental surgeon, and an eye surgeon, as well as the heads of the cardiology, urology and traumatology departments (see paragraph 55 above).

145. On the day of the applicant's discharge from the hospital, 13 May 2004, his wife wrote to the Court that his health was deteriorating and insisted on the necessity of his medical treatment in a hospital setting as an interim measure to be applied under Rule 39 of the Rules of Court. This request was allowed on the following day. The Court notes that the Ukrainian authorities ensured the applicant's medical examination in a hospital setting on the very day when the aforementioned interim measure was indicated (see paragraphs 57-60 above). Given that doctors specialising in various areas of medicines concluded that there was no need for his inpatient medical treatment, the Court lifted the interim measure on 5 July 2004 (see paragraph 62 above).

146. The Court reiterates that it is not in a position to speculate on the adequacy of the medical treatment prescribed to the applicant in the civil hospitals (see *Okhrimenko v. Ukraine*, no. 53896/07, § 71, 15 October 2009).

147. In the present case it appears that the applicant was provided with prompt and comprehensive medical supervision and treatment.

148. The Court therefore rejects this complaint as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

149. Relying on Article 5 § 1 of the Convention, the applicant complained that his initial confinement in custody, as well as his continued detention thereafter, had been without legal basis or justification. He further complained, relying on Article 6 §§ 1 and 3 (b) and (c) of the Convention,

that the court had ordered his pre-trial detention at a hearing attended by the prosecutor but not his own representative. He also complained, under Article 5 §§ 3 and 4 of the Convention, that his appeal against the detention order had been examined only after an unreasonable delay.

150. Being master of the characterisation to be given in law to the facts of the case and having regard to the substance of the applicant's complaints, the Court decides to examine them as follows:

- the complaints concerning the lack of relevant and sufficient reasons given by the domestic courts for the applicant's remand in custody and continued pre-trial detention, under Article 5 §§ 1 and 3 of the Convention (see, for example, *Khayredinov v. Ukraine*, no. 38717/04, §§ 29-31 and 41-43, 14 October 2010);

- the complaint regarding the alleged unfairness of the detention hearing on 27 April 2007, falling also to be examined under this provision as pertaining to the procedure by which the applicant was "brought before a judge" (see *Lebedev v. Russia*, no. 4493/04, §§ 74-77, 25 October 2007); and lastly,

- the complaint regarding the lack of speediness of the appellate review, to be examined under Article 5 § 4 of the Convention.

151. Article 5 of the Convention provides, as far as relevant:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

1. Fairness of the procedure by which the applicant was "brought before a judge"

152. The Government submitted that the applicant had taken part in the detention hearing on 27 April 2004. They emphasised that he was himself a lawyer and therefore the presence of his representative had not been essential for equality of arms between the prosecution and the defence.

153. The applicant maintained that the absence of his representative had rendered the procedure by which he was "brought before a judge" unfair.

154. The Court considers that the applicant had the requisite legal qualifications to plead his own case at the hearing, while it is unclear whether his wife, whose admission he had unsuccessfully sought, had any legal background.

155. Having regard to all the material before it, the Court does not discern any unfairness in the court hearing at issue on account of the absence of the applicant's representative.

156. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. Other complaints

157. The Court notes that the remaining complaints under Article 5 §§ 1, 3 and 4 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Complaint under Article 5 §§ 1 and 3 of the Convention

158. The applicant maintained there had been no reasons for placing and keeping him in pre-trial detention.

159. The Government argued that the applicant's detention had been based on judicial decisions taken in compliance with the domestic law. They noted that the applicant had not obeyed the order not to leave town imposed on him earlier and that he had threatened the victim, Mr. K. Therefore, his detention had been justified.

160. According to the Court's case-law, justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004, and *Castravet v. Moldova*, no. 23393/05, § 33, 13 March 2007). The Court has held that a further function of a reasoned decision is to demonstrate to the parties that they have been heard. While Article 5 of the Convention does not impose an obligation on a judge examining an appeal against detention

to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee which would be capable of casting doubt on the "lawfulness" of the deprivation of liberty (see *Ignatenco v. Moldova*, no. 36988/07, §§ 77-78, 8 February 2011, with further references).

161. Turning to the present case, the Court notes that the Saky Court decided to remand the applicant in custody even though such a strict measure was not normally applied in similar cases (see paragraph 16 above). The justification advanced by the prosecution and accepted by the court was the applicant's supposedly inappropriate behaviour during the pre-trial investigation: namely, his failure to appear on summons, his living at an address different from that declared, his leaving the town without authorisation, and his threats to the victim, Mr. K. The Court notes that the applicant's sick-leave certificate stating his inability to work and thus his inability to participate in the investigation was not considered. As to threats he had supposedly made to the victim, their existence appeared to be based solely on the latter's statement, the court decision not having been supported by any evidence in that regard. The same holds true for the court's findings concerning some unauthorised trips made by the applicant; no details of these were referred to, even summarily, in the ruling.

162. In summary, the Court considers that the reasoning advanced by the domestic courts for the applicant's deprivation of liberty on 27 April 2004 was couched in general terms and failed to have regard to his concrete and relevant argument against this exceptionally strict, in his circumstances, preventive measure.

163. Furthermore, there is nothing in the case file to show that this reasoning evolved with the passage of time and that the applicant's continued detention thereafter, until his release on 1 October 2004, was duly justified (see paragraphs 24-26 above).

164. The Court therefore concludes that there has been a violation of Article 5 §§ 1 and 3 of the Convention in this regard.

2. Complaint under Article 5 § 4 of the Convention

165. The Court notes that the appeal by the applicant's representative about the applicant's having been taken into custody was lodged with the Crimea Court of Appeal on 27 April 2004 and examined on 1 June 2004, that is, one month and five days later.

166. In the Court's opinion, the issues raised before the appellate court were not overly complex. Nor is there anything in the material before the Court to suggest that either the applicant or his representative contributed to the length of the appeal proceedings. In fact, the entire length of the appeal proceedings was attributable to the authorities. The Court reiterates that where an individual's personal liberty is at stake, it has very strict standards concerning the State's compliance with the requirement of a speedy review

of the lawfulness of the detention (see, for example, *Kadem v. Malta*, no. 55263/00, §§ 44-45, 9 January 2003, where the Court considered excessive a period of seventeen days to decide on the lawfulness of the applicant's detention excessive, and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the length of appeal proceedings lasting twenty-six days was found to be in breach of the "speediness" requirement of Article 5 § 4).

167. The Court therefore considers that the length of the appeal proceedings for the review of the lawfulness of the applicant's pre-trial detention is not compatible with the "speediness" requirement of Article 5 § 4 of the Convention. There has been a violation of that provision.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

168. The applicant further complained under Article 3 of the Convention, as well as with reference to Article 13, that the domestic authorities had not given due attention to his various complaints. He next complained that the court rulings of 27 April and 7 July 2004 had been contrary to the requirements of Article 6 § 2 of the Convention. He also complained under Article 6 § 3 (c) that his wife had been banned from representing him from 27 April to 19 May 2004. Furthermore, the applicant complained that the Crimea Court of Appeal had failed to question all the defence witnesses on 1 June 2004. Lastly, he complained that his conviction had been unfair.

169. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

170. 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

171. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

172. The Government contested the claim as excessive and irrelevant.

173. The Court considers that the applicant suffered non-pecuniary damage which cannot be compensated for by the mere finding of a violation of his Convention rights. Having regard to the circumstances of the case, including the domestic award of compensation to the applicant, and ruling on an equitable basis, as required by Article 41, the Court awards him EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

174. The applicant did not make any claim under this head. The Court therefore makes no award.

C. Default interest

175. 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 applicant's victim status in respect of his complaint under Article 3 of the Convention concerning the authorities' failure to ensure his safety in detention, and dismisses it after having examined the merits of that complaint;

2. *Declares* the complaints concerning the conditions of the applicant's detention, the failure of the authorities to protect him from the violence of the other detainees, the ineffectiveness of the domestic investigation into the incident, the applicant's handcuffing in hospital, as well as the complaints concerning the alleged unlawfulness and length of his pre-trial detention and the lack of its speedy judicial review admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in cell no. 12 of the Yevpatoriya ITT;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to ensure the applicant's safety in detention;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the ineffectiveness of the domestic investigation into the applicant's ill-treatment in the Yevpatoriya ITT;

6. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's handcuffing in hospital;

7. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's remand in custody on 27 April 2004;

8. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the applicant's continued pre-trial detention;

9. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of speedy judicial review of the lawfulness of the applicant's detention;

10. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President