

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

FIFTH SECTION

CASE OF STROGAN v. UKRAINE

(Application no. 30198/11)

JUDGMENT

STRASBOURG

6 October 2016

FINAL

06/01/2017

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



In the case of Strogan v. Ukraine,

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

Angelika Nußberger, *President,*
Ganna Yudkivska,
Khanlar Hajiyev,
Erik Møse,
Faris Vehabović,
Síofra O'Leary,
Carlo Ranzoni, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 13 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 30198/11) 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 Yakov Ilkovich Strogan ("the applicant"), on 10 May 2011.

2. The applicant, who had been granted legal aid, was represented by Ms A. Mukanova, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented, most recently, by their Agent, Mr I. Lishchyna.

3. The applicant alleged under Article 3 of the Convention that he had been ill-treated by police officers and that there had been no effective investigation of those events. He further complained that his arrest and pre-trial detention had violated Article 5 §§ 1 and 3 of the Convention. The applicant also complained under Article 5 § 4 of the Convention that he had not had access to any effective procedure for review of the lawfulness of his detention and that he could not claim compensation in respect of his complaints of unlawful arrest and detention, in breach of Article 5 § 5 of the Convention.

4. On 4 May 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Kharkiv.

6. Late in the evening of 15 August 2010 the applicant had a fight with his neighbour. The neighbour complained to the police that the applicant had injured him.

A. Alleged ill-treatment and detention between 16 and 19 August 2010

7. On the morning of 16 August 2010 the police took the applicant to the Kyivskyy District police station in Kharkiv ("the district police"). The applicant was at the police station from 7 a.m. to 9.45 a.m. and gave evidence in relation to the fight with his neighbour. The applicant claimed that he had acted in self-defence. According to the Government, at 9.45 a.m. the applicant left the police station and had no further contact with the police during the period at issue. His presence at the police station from 7 a.m. to 9.45 a.m. was noted in the police's records.

8. According to the applicant, at 9.45 a.m., as he left the police station, police officers took him and drove him to a forest where they beat him up and tortured him using handcuffs and an electric shock device. The police officers then took the applicant to another part of the police station that he had just left, where they continued to ill-treat him. During that time the police officers put pressure on the applicant to admit that he had intended to murder his neighbour. On 19 August 2010 they released him.

9. On 21 August 2010, following the applicant's complaint to the internal security unit of the Kharkiv Region police, he was examined by a forensic medical expert. The latter found that the applicant had sustained bruises on his head, nose, upper lip and chest. The expert considered those injuries as being minor and that they could have been caused by blunt, solid objects during a period of three to five days before the medical examination.

10. On 25 August 2010 the assistant prosecutor of the Kyivskyy District prosecutor's office of Kharkiv ("the prosecutor's office") inspected the premises of the police station where the applicant had allegedly been ill-treated. He found traces of a brown substance on the floor, wall, and balcony, as well as on the pillowcase and two mattress covers. Samples of the substance were taken and submitted to an expert for examination.

11. On 26 August 2010 the expert stated that the brown substance was blood.

12. The prosecutor's office then questioned police officers A., M.B., M.A. and G. They all denied the allegations of ill-treatment and submitted that the applicant had sustained the injuries before being taken to the police

station, namely during the scuffle with his neighbour. The officers stated that the applicant's nose had been injured before and that it bled from time to time, that he had been offered an antiseptic tissue, that he had declined an offer by the police officers to go to a hospital and that he had continued voluntarily to give evidence about the fight with his neighbour. They also mentioned that the applicant had gone on to the balcony to have a smoke where he might have left traces of blood.

13. On 7 and 8 October 2010 the applicant submitted further complaints of ill-treatment to the internal security unit of the Kharkiv Region police and the prosecutor's office.

14. On 29 October 2010 the prosecutor's office, having completed its pre-investigation inquiry, refused to initiate criminal proceedings concerning the applicant's allegations that he had been ill-treated by police officers between 16 and 19 August 2010. According to that decision, the applicant had only been present at the district police station between 7 a.m. and 9.45 a.m. on 16 August 2010 and there had been no evidence suggesting that the police officers had been involved in any alleged ill-treatment or unlawful detention. The applicant challenged that decision in the courts.

15. On 23 February 2011 the Kyivskyy District Court of Kharkiv ("the District Court") found that the decision of 29 October 2010 by the prosecutor's office had been lawful and substantiated. The applicant appealed.

16. On 11 April 2011 the Court of Appeal upheld the District Court decision of 23 February 2011. The applicant lodged an appeal on points of law.

17. On 9 February 2012 the Higher Specialised Court for Civil and Criminal Matters quashed the District Court decision of 23 February 2011 as unfounded and remitted the case to the District Court for fresh consideration.

18. On 10 May 2012 the District Court reversed the decision of the prosecutor's office of 29 October 2010, finding that the measures taken to examine the applicant's allegations had been insufficient. The court ordered a further pre-investigation inquiry to establish the applicant's whereabouts between 16 and 19 August 2010 and the circumstances in which he had sustained his injuries.

19. On 27 June 2012 the prosecutor's office refused to initiate criminal proceedings against the police officers for lack of *corpus delicti*. According to the decision, which referred to the explanations by the police officers and other evidence, the applicant had left the police station at 9.45 a.m. on 16 August 2010 and there had been no involvement of the officers in any unlawful action in relation to the applicant.

20. On 19 May 2014 the applicant lodged a complaint under the Code of Criminal Procedure of 2012 ("the CCP of 2012"), alleging that he had been ill-treated by police officers.

21. On 11 August 2014 the Kharkiv Region prosecutor's office commenced a pre-trial investigation in relation to the alleged events of 16 to 19 August 2010.

22. On 13 November 2014 a forensic medical expert issued a report repeating the findings of the forensic report of 21 August 2010 as regards the documented injuries.

23. On 15 December 2014 the Kharkiv Region prosecutor's office terminated the investigation, finding that the applicant's allegations had been refuted by the statements of the police officers, other witnesses, and documentary and medical evidence which suggested that the applicant might have sustained minor injuries during his fight with the neighbour on 15 August 2010.

B. Criminal proceedings against the applicant

24. On 15 September 2010 a forensic medical expert issued a report stating that the applicant's neighbour had sustained three incised wounds, one of which had been on the neck.

25. On 23 September 2010 the district police opened criminal proceedings in relation to the moderately severe injuries sustained by the applicant's neighbour during the fight of 15 August 2010. Subsequently, the case was classified as attempted murder.

26. At 2.45 p.m. on 9 December 2010 an investigator with the district police arrested the applicant on suspicion of attempted murder. The investigator relied on Article 115 of the Code of Criminal Procedure of 1960 ("the CCP of 1960"). As regards the grounds for the applicant's arrest without a court decision, the investigator cited the three sub-paragraphs of the first paragraph of Article 106 of the CCP of 1960 (see paragraph 45 below). He further noted in his report that the applicant had been suspected of attempted murder, that he had a record of serious offences, and that his arrest would prevent the applicant from absconding and impeding the execution of a judgment. The investigator then charged the applicant and questioned him in relation to the case.

27. On 10 December 2010 the District Court ordered the applicant's pre-trial detention. It stated that the applicant had been charged with a serious crime, that he had two criminal offences on his record, and that he had no official income. The court concluded that there was a risk that if the applicant remained at liberty he might impede the establishment of the truth, hide evidence, influence the investigation, abscond or reoffend. The court further considered that a personal guarantee, which had been offered by an NGO in respect of the applicant, would not ensure his proper conduct

during the criminal proceedings. Furthermore, there had been no suggestion that the applicant could not be held in a detention facility for health reasons.

28. On 16 December 2010 the Kharkiv Regional Court of Appeal ("the Court of Appeal") dismissed an appeal by the applicant against the decision of 10 December 2010, finding that there were sufficient grounds to keep him in custody.

29. On 4 February 2011 a bill of indictment was approved by the prosecutor and the case file was sent to the District Court.

30. On 25 February 2011 the District Court committed the applicant for trial on a charge of attempted murder. As regards the preventive measure, the court ruled that the applicant should be held in custody. It stated that the applicant had been charged with a serious offence, that he was unemployed, had refused to admit his guilt, and that he had two serious offences on his criminal record. The court pointed out that no new information had been added to the material which had been examined earlier by the District Court and the Court of Appeal when deciding on keeping the applicant in custody.

31. On 11 May, 1 July and 29 September 2011 the District Court dismissed applications by the applicant for a change in the preventive measure and maintained its earlier decision to keep him in custody. The court stated that the applicant had been charged with a serious offence, was unemployed, had a criminal record, and had refused to admit his guilt. As to the question of bail, the court noted that no document had been produced to suggest that any funds were available for that purpose.

32. On 12 March 2012 the applicant was released from custody after giving a written undertaking not to abscond. The District Court stated that the trial was in its final stages so the applicant could no longer impede the establishment of the truth. The applicant also had a permanent place of residence where he lived with his family.

33. On 13 August 2012 the District Court convicted the applicant of inflicting minor bodily injuries on his neighbour. The court found that attempted murder had not been established during the trial. It sentenced the applicant to two years of restriction of liberty. Having regard to the period of the applicant's pre-trial detention, the court found that the sentence had been served.

34. On 14 February 2013 the Kharkiv Court of Appeal upheld the judgment of 13 August 2012.

C. Alleged ill-treatment on 9 and 10 December 2010

35. On 9 December 2010, following his arrest and questioning (see paragraph 26 above), the applicant was placed in a police cell. According to the applicant, on the evening and night between 9 and 10 December 2010 police officers beat him up at the police station.

36. As the applicant had complained about his health, he was examined late in the evening of 9 December 2010 by a panel of doctors who found no injuries on his body.

37. On 10 December 2010 the hearing before the District Court concerning the preventive measure in the applicant's case was interrupted because the applicant had to be provided with medical care. The ambulance team which arrived at the court stated that the applicant had concussion, a haematoma by the left eye and a bruise on his chest. The applicant complained that the injuries had been inflicted by police officers.

38. On the same day the deputy prosecutor of the Kyivskyy District of Kharkiv ordered that the applicant be examined and asked the medical expert to detail, among other things, the nature, quantity, location, and severity of his injuries. He also asked the expert to state whether the injuries could have been inflicted by the applicant himself.

39. On 11 December 2010, following the court decision of 10 December 2010 to hold the applicant in custody (see paragraph 27 above), he was taken under escort to the Kharkiv pre-trial detention centre. Upon arrival he was examined by the medical staff who documented the following injuries: a haematoma by the left eye, bruises on the left abdominal area and neck, a haematoma on the right thigh, and swelling in his genitals.

40. On 13 December 2010 a doctors' panel examined the applicant and found that he had sustained bruising on the soft tissue of his head and had a haematoma on his left eyelid.

41. On 14 December 2010 the applicant was examined by a forensic medical expert as requested (see paragraph 38 above). In his report of 15 December 2010 the expert stated that the applicant had sustained bruises on his face, neck, chest, left shoulder, right leg and right shin. The expert considered the injuries to be minor and that they had been inflicted by blunt, solid objects during a period of between three to six days before the examination. The expert added that all the injuries could have been self-inflicted.

42. On 21 December 2010 the prosecutor's office, having concluded its pre-investigation inquiry, refused to open criminal proceedings concerning alleged police brutality against the applicant on 9 and 10 December 2010. According to the decision, there had been no evidence suggesting that the applicant's injuries documented after the alleged ill-treatment had been caused by police officers. The decision referred to the police officers' statements that the applicant had inflicted the injuries on himself.

43. The applicant challenged that decision before the District Court, but received no reply. In 2012, 2013 and 2015 he made applications to the District Court in relation to his complaint, but to no avail.

II. RELEVANT DOMESTIC LAW

A. Constitution of 28 June 1996

44. The relevant part of Article 29 of the Constitution reads:

"... In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately if, within seventy-two hours of the moment of detention, he or she has not been provided with a reasoned court decision in respect of the detention. ...

Everyone who has been detained has the right to challenge his or her detention in court at any time. ..."

B. Code of Criminal Procedure of 28 December 1960 (in force until 20 November 2012)

45. Relevant provisions of this Code provide:

Article 106. Arrest of a suspect by the body of inquiry

"The body of inquiry shall only be entitled to arrest a person suspected of a criminal offence for which a penalty in the form of deprivation of liberty may be imposed on one of the following grounds:

(1) if the person is discovered whilst or immediately after committing an offence;

(2) if eyewitnesses, including victims, directly identify this person as the one who committed the offence;

(3) if clear traces of the offence are found either on the body of the suspect, or on his clothing, or with him, or in his home.

If there is other information giving rise to grounds for suspecting a person of a criminal offence, a body of inquiry may arrest that person if the latter attempts to flee, or does not have a permanent place of residence, or if the identity of that person has not been established.

..."

Article 115. Arrest of a suspect by an investigator

"An investigator may arrest and question a person suspected of a crime according to the procedure envisaged by Articles 106, 106-1, and 107 of the Code."

Article 165-2. Procedure for selection of a preventive measure

"At the stage of the pre-trial investigation, a non-custodial preventive measure shall be selected by the body of inquiry, or investigator, or prosecutor.

If there are grounds for applying a custodial preventive measure, the body of inquiry or the investigator, following the prosecutor's consent, shall lodge a request with the court. ...

The request shall be considered within seventy-two hours of the arrest of the suspect or accused.

If the request concerns the detention of a person who is at liberty, the judge shall have the power to issue a warrant for the arrest of such a person and for escorting him to the court. In such cases the preliminary detention shall not exceed seventy-two hours; and if the person concerned is outside the locality in which the court operates, it shall not exceed forty-eight hours from the time the arrested person has been taken to the locality.

Upon receiving the request, the judge shall examine the material in the case file submitted by the body of inquiry, or investigator, or prosecutor. A judge shall question the suspect or the accused and, if necessary, hear evidence from the person who is in charge of the criminal case, obtain the opinion of the prosecutor, the defence counsel, if the latter appeared before the court, and take a decision:

(1) refusing to apply the [custodial] preventive measure if there are no grounds for doing so;

(2) applying the custodial preventive measure.

If it refuses to apply a custodial preventive measure, the court shall have the power to apply a non-custodial preventive measure in respect of the suspect or the accused. ..."

C. Code of Criminal Procedure of 13 April 2012 (in force since 20 November 2012)

46. The relevant provisions of the Code can be found in the decision in the case of *Nagorskiy v. Ukraine* (no. 37794/14, § 38, 12 January 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained that on two occasions, in August and December 2010, he had been ill-treated by police officers and that there had been no effective investigation of those events. 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

48. The Government did not make any objections as to the admissibility of the above complaints. The applicant maintained his complaint.

49. The Court notes that this part of application 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

1. The alleged ill-treatment in August 2010

(a) Procedural aspect of Article 3 of the Convention

50. The applicant argued that the State had failed to investigate his allegations of ill-treatment effectively.

51. The Government contended that the domestic authorities had taken all reasonable steps in order to discharge their procedural obligations under Article 3 of the Convention. They specified that the examination of the applicant's complaint had been carried out with the requisite expediency and thoroughness.

52. The Court reiterates that where an individual makes an arguable claim that he has been ill-treated by the State authorities, in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports of Judgments and Decisions* 1998-VIII, and *Mikheyev v. Russia*, no. 77617/01, §§ 107 et seq., 26 January 2006).

53. As to the present case, the Court, having regard to the medical expert's findings of 21 August 2010 (see paragraph 9 above), considers that the applicant made an arguable complaint of ill-treatment before the domestic authorities which triggered their procedural obligation under Article 3 of the Convention to carry out an effective investigation of the allegation. The Court further notes that between 2010 and 2012 the applicant's allegation was examined by means of a pre-investigation inquiry without a full-scale investigation being opened. However, that investigative procedure did not comply with the principles of an effective remedy because the inquiring officer could only take a limited number of steps and the victim had no formal status, meaning his effective participation in the

procedure was excluded (see *Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, §§ 310-312, and *Savitskyy v. Ukraine*, no. 38773/05, § 105, 26 July 2012). It is noteworthy that on 10 May 2012 the domestic court quashed the decision of 29 October 2010 to refuse to initiate criminal proceedings on the grounds that the inquiry had been incomplete and that further measures had been required (see paragraph 18 above). It is regrettable, however, that it took more than one year and a half for the domestic court to reach such a conclusion.

54. The Court considers that the pre-investigation inquiries carried out in that period did not ensure a thorough investigation of the circumstances in which the applicant sustained his injuries. The medical evidence implicating the police officers was discarded, essentially on the basis of statements by those same police officers, and it does not appear that any further steps to scrutinise the applicant's allegations were taken. The authorities did not duly examine why multiple blood traces were found in the room where the applicant had allegedly been ill-treated (see paragraph 10 above) and did not establish whether the blood found there belonged to the applicant.

55. As regards the subsequent pre-trial investigation pursuant to the CCP of 2012, the applicant submitted his complaint under that new procedure on 19 May 2014. It appears that the applicant lodged his complaint after a certain delay and that fact is relevant to the assessment of the overall length of the domestic proceedings. However, it does not affect the Court's examination of the thoroughness of the investigation which the authorities were obliged to ensure. In that regard it can be noted that the authorities were aware of the possible ill-treatment from at least 21 August 2010 when the applicant lodged a complaint for the first time. As to the applicant's complaint of 19 May 2014, the domestic authorities commenced the pre-trial investigation after a three-month delay (see paragraph 21 above). They later terminated the investigation apparently without taking any tangible measures to examine the alleged circumstances (see paragraphs 22 and 23 above).

56. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to carry out a thorough investigation of the applicant's allegation of ill-treatment. There has therefore been a violation of Article 3 of the Convention under its procedural limb in relation to the investigation of the events of August 2010.

(b) Substantive aspect of Article 3 of the Convention

(i) The parties' submissions

57. The applicant maintained his complaint and insisted that he had not had any injuries before being taken to the police station.

58. The Government submitted that the applicant's injuries documented on 21 August 2010 might have been sustained during the fight with his

neighbour, which took place before the alleged ill-treatment. Furthermore, in their opinion the applicant had made contradictory allegations of ill-treatment which had not been supported by relevant evidence. In that regard the Government pointed out that the applicant's injuries were not consistent with his claims that he had received electric shocks and that several police officers had ill-treated him over a period of four days.

(ii) The Court's assessment

59. Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess that evidence, the Court adopts the standard of proof of "beyond reasonable doubt" but notes that such proof may also follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many authorities, *Bouyid v. Belgium* [GC], no. 23380/09, § 82, ECHR 2015, with further references).

60. There is no dispute between the parties about the fact that early on the morning of 16 August 2010 the applicant was taken to the police station to give evidence about the fight with his neighbour that had occurred on the evening of the preceding day. The parties disagree as to the time when the applicant ceased to be under the control of the police. According to the Government, the applicant was released at 9.45 a.m. on 16 August 2010, while the applicant contended that he was taken at that time to a forest and then to another part of the police station where he was ill-treated until 19 August 2010. The parties disagree about the origin of the injuries the applicant displayed on 21 August 2010. The Government suggested that the injuries might have been sustained during the fight with the neighbour and that they had therefore pre-dated the applicant's contact with the police.

61. In his submissions before the Court the applicant did not allege that he had been ill-treated at the police station in the period between 7 a.m. and 9.45 a.m. on 16 August 2016. His allegations of ill-treatment relate to the subsequent period which ended on 19 August 2010. In that regard the Court notes that there is no supporting material to suggest that the applicant remained under the control of police after 9.45 a.m. on 16 August 2010.

62. The Court further notes that a medical examination of the applicant only took place on 21 August 2010 when the applicant requested such examination for the first time. Given the considerable intervening period such medical evidence cannot conclusively implicate the police officers. Furthermore, the injuries documented by the medical expert (see paragraph 9 above) do not support the applicant's allegations as to the specific methods of his ill-treatment, namely that he was given electric shocks on his body. At the same time the medical report did not expressly exclude that the displayed injuries might have been sustained by the applicant during the fight with his neighbour, as maintained by the Government.

63. The Court then observes that blood spots were identified on the premises of the police station which could correspond to the applicant's allegation that at certain point of time he had been taken back from the forest to the police station where the alleged ill-treatment continued. However, it was not established whether the blood spots were attributable to the applicant. The lack of this information has been viewed by the Court as a procedural failing when considering procedural aspect of Article 3 of the Convention (see paragraph 56 above).

64. In conclusion, on the basis of the available material it cannot be established that the applicant was under the control of the police for longer than was admitted by the Government, that subsequently he was taken to a forest, that handcuffs were used to ill-treat him or that he was given electric shocks on his body and that he was brought back to another part of the police station where the ill-treatment continued (see paragraph 8 above).

65. There has therefore been no violation of Article 3 of the Convention under its substantive limb on account of the inhuman and degrading treatment of the applicant in August 2010.

2. The alleged ill-treatment in December 2010

(a) Procedural aspect of Article 3 of the Convention

66. The applicant submitted that the pre-investigation inquiry in relation to his allegations of ill-treatment had been manifestly incompatible with the procedural requirements of Article 3 of the Convention. His attempt to challenge the decision of 21 December 2010 had been unsuccessful and he had had no information on whether the District Court had considered his complaint.

67. The Government contended that the authorities had carried out an effective investigation of the applicant's allegations of ill-treatment. In particular, the applicant had been examined by a doctor, and the authorities had questioned the applicant, his lawyer, the police officers and doctors.

68. The Court finds that the applicant's injuries were serious enough (see paragraphs 37, 39-41 above) and that his complaint of ill-treatment was arguable for the purpose of Article 3, requiring therefore that the domestic authorities carry out an effective investigation. The Court further notes that the applicant's allegation was only investigated by way of a pre-investigation inquiry which, as noted above (see paragraph 53 above), does not comply with the principles of an effective remedy.

69. The pre-investigation inquiry was limited essentially to the medical examination of the applicant and the questioning of the police officers, the applicant and the other persons concerned. No further measures were taken in order to resolve the contradiction between the version of events given by the police officers that the applicant had inflicted the injuries on himself, and the applicant's version of events. No specific measures were taken to

scrutinise the applicant's allegations of having been beaten by the police officers. As to the police officers' statements, they were premised on a reference to the medical report of 15 December 2010, which noted that the injuries could have been inflicted by the applicant himself. However, it appears that the forensic expert made that remark in order to answer a specific question from the authorities, rather than to reflect his own opinion on the most probable manner of inflicting the injuries (see paragraph 38 above). Furthermore, in accordance with that report the injuries had been inflicted by blunt solid objects (see paragraph 41 above). However, there was no suggestion at any point during the domestic inquiry that any such objects had been available to the applicant during his detention in the police cell, and no such objects were found or examined. The Court finds that further scrutiny was required in order to establish the manner in which the applicant sustained his injuries while in police custody.

70. The foregoing considerations are sufficient to enable the Court to conclude that there was no effective investigation of the applicant's allegation of ill-treatment. There has therefore been a violation of Article 3 of the Convention under its procedural limb in relation to the investigation of the events of December 2010.

(b) Substantive aspect of Article 3 of the Convention

71. The applicant maintained that he had been ill-treated by police officers between 9 and 10 December 2010.

72. The Government denied the applicant's allegations and submitted that it could not be established that the injuries had been inflicted by the police officers. On the contrary, the domestic inquiry and the medical report of 15 December 2010 had suggested that the applicant could have inflicted the injuries on himself.

73. The Court notes that the applicant was arrested at 2.45 p.m. on 9 December 2010 (see paragraphs 26 and 35 above) and that late in the evening of the same day the panel of doctors stated that the applicant had no injuries (see paragraph 36 above). However, on 10, 11, 13 and 14 December 2010 the applicant was examined and numerous injuries were documented (see paragraphs 37 and 39-41 above). Throughout all that period of time the applicant had remained under the control of the authorities. Accordingly, the Court finds that it was for the State to provide a satisfactory and convincing explanation of the circumstances in which the applicant sustained his injuries. The State's failure to discharge that burden of proof may prompt the Court to accept the applicant's account of events.

74. The Government denied the applicant's allegations of ill-treatment by the police officers and suggested that he could have inflicted the injuries on himself. However, that version of events was based essentially on the police officers' own submissions which cannot be viewed as unbiased. No material has been provided to suggest why the applicant would inflict

numerous injuries on his body. The medical report, referred to by the Government, is not conclusive (see paragraph 69 above). The Court therefore finds it unconvincing that several injuries on different parts of the applicant's body could have resulted in the manner advanced by the Government. It notes that the medical evidence, the nature of the applicant's injuries, as well as the lack of plausible and detailed explanation on the part of the Government as to the cause of the injuries, give rise to a strong adverse inference that the applicant was subjected to ill-treatment on the part of police officers (see *Yaroshovets and Others v. Ukraine*, nos. 74820/10, 71/11, 76/11, 83/11, and 332/11, § 85, 3 December 2015).

75. In those circumstances the Court holds that the State must be held responsible for the ill-treatment, which should be classified as inhuman and degrading.

76. It follows that there has been a violation of Article 3 of the Convention under its substantive limb on account of the inhuman and degrading treatment of the applicant in December 2010.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

77. The applicant complained that between 16 and 19 August 2010 he had been held in unrecorded detention. He further complained that his arrest and detention on the basis of the investigator's decision of 9 December 2010 had been unlawful.

78. The applicant relied on Article 5 § 1 of the Convention which provides, in so far as relevant, as follows:

> "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;"

A. The alleged unrecorded detention of the applicant between 16 and 19 August 2010

79. The applicant maintained that he had been arbitrarily detained until 19 August 2010 by the police officers. The Government denied that allegation, submitting that the applicant had arrived at the police at 7 a.m. on 16 August 2010 for the purposes of being questioned in relation to the fight with his neighbour. At 9.45 a.m. on the same day he had left the police station.

80. The Court notes that the applicant's presence at the police station from 7 a.m. to 9.45 a.m. on 16 August 2010 was noted in police records, has been admitted by the Government and is not disputed by the parties. The present complaint relates to the period which started after 9.45 a.m. on 16 August 2010. The Court has examined the applicant's complaint under Article 3 of the Convention, which also related to that period until 19 August 2010. It has found that there was no material in the case file to establish that the applicant remained under the control of the police for any period longer than that admitted by the Government (see paragraphs 8 and 64 above). In the light of that finding, the Court dismisses the present complaint as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. The alleged arrest and detention of the applicant on the basis of the investigator's decision of 9 December 2010

1. Admissibility

81. The Government did not make any objections as to the admissibility of the above complaints. The applicant maintained his complaint.

82. The Court notes that this part of application 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.

2. Merits

83. The applicant complained that he had been arrested and detained in breach of Article 5 § 1 (c) of the Convention. He argued that the investigator had had no grounds to arrest him on 9 December 2010 and that the reasons given in the arrest report had not been supported by the circumstances of the case.

84. The Government submitted that the applicant had been arrested and detained in that period in accordance with domestic law, on the basis of a reasonable suspicion that he had committed a serious offence.

85. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to the substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 a failure to comply with domestic law entails a breach of the Convention, and the Court can and should review whether that law has been complied with (see, among many other references, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III, and *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II).

86. The "lawfulness" of detention under domestic law is the primary, but not always the decisive element. The Court must, in addition, be satisfied that the detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary manner (see *Oleksiy Mykhaylovych Zakharkin v. Ukraine*, no. 1727/04, § 84, 24 June 2010). In order for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is executed in conformity with national law; it must also be necessary in the circumstances (see *Khayredinov v. Ukraine*, no. 38717/04, § 27, 14 October 2010 and *Korneykova v. Ukraine*, no. 39884/05, § 34, 19 January 2012).

87. The Court notes that at 2.45 p.m. on 9 December 2010 the investigator decided to arrest the applicant on the basis of his own decision (see paragraphs 26, 35 and 45 above), without obtaining a preliminary arrest warrant from a court, as required by Article 165-2 § 4 of the CCP of 1960. In doing so the investigator relied on Articles 106 and 115 of the CCP of 1960 which provided exceptional grounds for the arrest of an individual without a court decision. The Court recalls that a period of detention is, in principle, "lawful" if it is based on a court order (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 116, ECHR 2005-II (extracts)). Therefore the above domestic law provisions, setting out exceptions from the general rule requiring a court decision for the arrest of an individual, had to be interpreted narrowly. Furthermore, specific grounds justifying the application of such an exceptional measure had to be established unequivocally at the time of the taking of such a measure.

88. The arrest report stated that the applicant was suspected of attempted murder, that he had a record of serious offences, and that there had been risks justifying his detention. However, before assessing those issues it had to be established whether the applicant's case fell within the scope of the exceptions providing the investigator with the power to effect an arrest without a court decision. In that regard the arrest report only repeated the relevant parts of Article 106 of the CCP of 1960 without referring to any specific circumstances explaining why that provision of domestic law could be applied to the applicant's case. Without that specific information, the arrest report did not constitute a meaningful guarantee against arbitrary depravation of liberty (compare *Grinenko v. Ukraine,* no. 33627/06, § 83, 15 November 2012; *Malyk v. Ukraine*, no. 37198/10, §§ 27-29, 29 January 2015; and *Kotiy v. Ukraine*, no. 28718/09, § 45, 5 March 2015). Indeed, the applicant was arrested in connection with an event which had taken place about four months earlier. It could not therefore be claimed that the authorities faced an urgent situation such as, for example, a situation of *in flagrante delicto*. There is nothing to suggest that the general requirement of a preliminary arrest warrant issued by a court could not or should not have been adhered to.

89. Having regard to the above considerations, the Court finds that the applicant's arrest and detention between 9 and 10 December 2010 on the basis of the investigator's decision was incompatible with the requirements of Article 5 § 1 of the Convention. There has therefore been a violation of Article 5 § 1.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

90. The applicant complained under Article 5 § 3 of the Convention that during the whole period of his pre-trial detention the courts did not set out relevant and sufficient reasons for that preventive measure.

91. Article 5 § 3 of the Convention provides:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

93. The applicant complained that the overall length of his pre-trial detention had been excessive and that the courts had failed in their obligations under Article 5 § 3 of the Convention.

94. The Government submitted that the courts had taken not only the gravity of the charges against the applicant but also other factors into account, and had provided reasons for his pre-trial detention which had been relevant and sufficient.

2. The Court's assessment

95. Article 5 § 3 of the Convention requires that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The arguments for and against release, including a risk that the accused might hinder the proper conduct of the proceedings, must not be taken *in abstracto*, but must be supported by

factual evidence. The danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Taran v. Ukraine*, no. 31898/06, § 69, 17 October 2013, with further references).

96. The Court notes that decisions on the applicant's detention were couched in general terms and contained repetitive phrases. They do not suggest that the courts made an appropriate assessment of the facts relevant to the question of whether such a preventive measure was necessary in the circumstances. Moreover, the applicant's pre-trial detention lasted for one year and three months and with the passage of time the applicant's continued detention required more justification, but the courts did not provide any further reasoning. The fact that he was released on 12 May 2012 before his conviction (see paragraph 32 above) does not counterbalance the previous failures by the domestic courts to make a fact-specific assessment of the applicant's preventive measure in the preceding period. The Court points out that when maintaining the applicant's detention the courts referred to the applicant's failure to admit his guilt. That part of the reasoning appears to be irrelevant as it runs counter to important elements of the concept of a fair trial, such as freedom from self-incrimination and the presumption of innocence (see *Lutsenko v. Ukraine,* no. 6492/11, § 72, 3 July 2012).

97. The Court has often found violations of this Convention provision in respect of Ukraine in similar circumstances (see, for example, *Doronin v. Ukraine*, no. 16505/02, §§ 63-64, 19 February 2009; *Osypenko*, cited above, §§ 76-80; and *Kharchenko v. Ukraine*, no. 40107/02, §§ 79-81, 99 and 101, 10 February 2011). It considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

98. There has therefore been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

99. The applicant also complained under Article 5 § 4 of the Convention that the courts had failed properly to examine his individual situation, as requested by the defence, and that they had failed to examine the possibility of his release.

100. Having regard to the finding of a violation under Article 5 § 3 of the Convention and the reasoning leading to it, the Court considers that the present complaint is admissible, but does not give rise to any issues separate from those already examined under Article 5 § 3 of the Convention.

101. The Court holds that it is not necessary to examine separately the complaint under Article 5 § 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

102. The applicant complained under Article 5 § 5 of the Convention that he did not have an enforceable right to compensation in respect of his unlawful detention.

103. Article 5 § 5 of the Convention provides:

> "5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

104. The Court finds 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

105. The applicant maintained his complaint.

106. The Government disagreed and argued that there had been no violation of Article 5 § 5 of the Convention because the applicant would have been able to claim compensation if the domestic authorities had established that his detention had been unlawful.

107. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of deprivation of liberty if it was effected in conditions conflicting with paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see, for example, *Włoch v. Poland (no. 2)*, no. 33475/08, § 25, 10 May 2011). The effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, 17 January 2012, with further references).

108. The Court notes that there has been no finding of a violation of the preceding paragraphs of Article 5 of the Convention at the domestic level. However, in the present judgment the Court has found violations of Article 5 §§ 1 and 3 of the Convention. It follows that Article 5 § 5 of the Convention is applicable and it must be determined whether or not the applicant has an enforceable right to compensation within the domestic

jurisdiction on the basis of the finding of violations of Article 5 by this Court.

109. In that regard the Court notes that this issue has been examined in previous cases. It has found that a right to compensation under Article 5 § 5 of the Convention is not ensured in the domestic legal system when the Court establishes a violation of any of the preceding paragraphs of that Article and there was no domestic judicial decision establishing the unlawfulness of the detention (see *Taran,* cited above*,* § 89, with further references). The Court finds no reason to reach a different conclusion in the present case.

110. It follows that there has been a violation of Article 5 § 5 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

113. The Government contended that the claim was groundless.

114. The Court considers that the applicant must have suffered anguish and distress on account of the facts giving rise to the finding of violations in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

115. The applicant did not submit any claims under this head. The Court therefore makes no award.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the unrecorded detention of the applicant between 16 and 19 August 2010 inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb in relation to the investigation of the events of August 2010;

3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb on account of the inhuman and degrading treatment of the applicant in August 2010;

4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb in relation to the investigation of the events of December 2010;

5. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb on account of the inhuman and degrading treatment of the applicant in December 2010;

6. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's arrest and detention between 9 and 10 December 2010 on the basis of the investigator's decision;

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

8. *Holds* that there is no need to examine separately the complaint under Article 5 § 4 of the Convention;

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

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 10,000 (ten thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 6 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Deputy Registrar	Angelika Nußberger President