



## Numerous rights abuses during Ukraine's Maidan protests

In today's Chamber judgments<sup>1</sup> in the cases of **Shmorgunov and Others v. Ukraine** (applications no. 15367/14 and 13 others), **Lutsenko and Verbytskyy v. Ukraine** (12482/14 and 39800/14), **Kadura and Smaliy v. Ukraine** (42753/14 and 43860/14), **Dubovtsev and Others v. Ukraine** (21429/14 and 9 others) and **Vorontsov and Others v. Ukraine** (58925/14 and 4 others) the European Court of Human Rights held, unanimously, that there had been:

**multiple violations of Article 3 (prohibition of torture and inhuman and degrading treatment) of the European Convention on Human Rights,**

**multiple violations of Article 5 §§ 1 and 3 (right to liberty and security),**

**multiple violations of Article 11 (freedom of assembly and association),**

**a violation of Article 2 (right to life), and**

**a violation of Article 8 (right to respect for private and family life)**

The cases concerned events around the Maidan protests in Kyiv and other cities in Ukraine, including dispersal of the protestors, their detention, the kidnapping of activists and their ill-treatment, and the related proceedings. The applicants had all had encounters with the police or non-State agents under police control (*titushky*). They alleged, among other things, police brutality, a denial of their right to protest, unjustified detention, and even in one case death.

The Court found in particular that the authorities had used ill-treatment deliberately, and that the State had been responsible for the murder of one protester. It noted that many of the detention orders had been arbitrary. It considered that the authorities had deliberately tried to disrupt initially peaceful protests, using excessive violence and unlawful detention to achieve that.

Overall, it noted that the abuses found appeared to have been a strategy on the part of the authorities. It also found that the investigations into the events had in many instances been ineffective.

### Principal facts

The 38 applicants in these five cases are Ukrainian nationals and one applicant is an Armenian national (for further details, please refer to the individual judgments). All of them were present at or played a role in the Maidan protests.

### Background

Between November 2013 and February 2014 a series of protests took place in Ukraine in response to the suspension of the preparations for the signing of the Ukraine-European Union Association Agreement. These protests became known as "Euromaidan" or "Maidan". The protests led to the ousting of the President of Ukraine and a series of political and constitutional changes.

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

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

Initially the protesters numbered up to 100,000 people rising to up to 800,000 people. Special police forces were mobilised to disperse the protests which led to clashes. Non-State agents aligned with the police (*titushky*), who are alleged to have carried out numerous assaults, kidnappings and murders of protesters, were also involved. The protests spread across the State and on 22 December 2013 the Maidan People's Union was created to coordinate activities (Mr Lutsenko, one of the applicants, was on the Union's council).

In central Kyiv the protesters erected stages for addressing crowds, and eventually barricades. They occupied several State buildings at different times. Above all, the protesters continuously occupied and operated from Maidan Nezalezhnosti (Independence Square) in central Kyiv. The State responded by bringing in thousands of police officers and troops, including specialist units. Reportedly there were over 100 deaths (including 70 by gunfire) and thousands injured between both the protestors and the police.

The authorities launched various investigations into the events at issue, most of which were relatively recently taken over by the State Bureau of Investigations. There are criminal proceedings pending, including against senior Government officials and the then president. Cases have been taken against police officers. The effectiveness of the official investigations into the Maidan events was assessed by the International Advisory Panel, constituted by the Secretary General of the Council of Europe, in its report published on 31 March 2015.

### Facts in the cases at hand

The events in *Shmorgunov and Others* relate to the dispersal of protests in central Kyiv between 30 November 2013 and 18 February 2014. The other cases are concerned with protests in Kyiv and other Ukrainian cities on different dates.

#### *Shmorgunov and Others*

The events took place in the early morning of 30 November 2013, when several of the applicants were taking part in a vigil on Maidan Nezalezhnosti; 1 December 2013 (Mr Zagorovka and Mr Cherevko); 11 December 2013 (Mr Dymenko and Mr Ratushnyy); 23 January 2014 (Mr Poltavets); and on 18 February 2014 (Mr Zadoyanchuk). Police officers used force, including stun grenades, tear gas and plastic bullets, among other methods to disperse or control crowds, including the applicants. Several were beaten, some even to the point of losing consciousness. One (Mr Zagorovka) allegedly had his head stood on. One (Mr Cherevko) was allegedly taken to a courtyard and beaten for several hours. Mr Poltavets was beaten unconscious and recovered in a police station, where he was arrested, with no charges ultimately being brought. Several other of the applicants were also detained or formally arrested in connection with the protests.

Several of the applicants were examined by doctors soon after these events, others had to wait a day or two. Many different injuries of varying degrees of severity were reported, including traumatic brain injury in the case of Mr Zagorovka (he was taken to hospital but not allowed to remain there). Their injuries were also examined as part of the investigations.

Several criminal investigations were opened into those events, leading to the trials of a number of current and former police officers and the then chair of the Kyiv State Administration. Mr Zagorovka, among other applicants, submitted a video of his alleged beating. Hundreds of officers and many protestors were questioned. Video and photographic evidence was examined, and a reconstruction was carried out. Many of the applicants were questioned, in some cases more than once. Mr Sirenko refused to cooperate with the investigation. The Government alleged that in 2016 five more of the applicants stopped cooperating with the investigators.

Mr Zagorovka and Mr Cherevko lodged criminal complaints regarding police ill-treatment in 2013, which led to one conviction in 2016. The judgment stated that the Maidan protestors had not violated public order. There are still criminal proceedings ongoing. Mr Ratushnyy and Mr Dymenko likewise

lodged complaints of police ill-treatment. Three officers were indicted. One absconded but the proceedings against the other two are ongoing. Proceedings concerning a complaint by Mr Poltavets of police ill-treatment are ongoing.

In 2014 Ministry of the Interior internal inquiries twice found in effect some violations of public order on the part of the police on 30 November 2013 and that they had been provoked and attacked later. Separately, it was found that no officer responsible for the ill-treatment of 1 December 2013 could be identified. The inquiry into the events involving Mr Ratushnyy and Mr Dymenko found that the officers in charge had failed to control the use of force and that some other officers and troops had used excessive force.

Disciplinary proceedings were initiated against the judges in the cases and several breaches of the law and procedure were found.

#### *Lutsenko and Verbytskyy*

This case concerns the abduction and ill-treatment of the first applicant and the second applicant's brother. The latter was allegedly murdered.

Mr Verbytskyy's brother was injured in the protests early on the morning of 21 January 2014 and Mr Lutsenko took him to hospital. They were kidnapped a couple of hours later by *titushky*. They were taken to a remote area, bound and severely ill-treated. Mr Lutsenko was left about 50 km outside Kyiv in freezing temperatures. Mr Verbytskyy's brother's body was found in a forest not far from Kyiv. He had been hit using a blunt object at least 30 times and had died from hypothermia.

Murder and abduction investigations were opened and joined. Suspects were identified and some were notified. The ill-treatment was qualified as "torture". Many other investigative steps were performed and evidence pointing to the complicity of police officers and their leaders was unearthed, which led to a separate investigation being opened.

The proceedings in these cases are still ongoing.

#### *Kadura and Smaliy*

At the relevant time, Mr Kadura was an activist in Automaidan, a group supporting the protests. Mr Smaliy was a lawyer representing one of the organisers of Automaidan.

On 5 December 2013, in the course of a traffic stop, Mr Kadura was put in a van by two men in civilian clothes. He alleged that he had been beaten there, and then in the courtyard of the investigators' offices in Kyiv. He was examined in hospital and then brought to a police holding cell.

Mr Kadura was brought to court on 6 December 2013. His lawyers alleged ill-treatment orally and in writing, but the courts did not address them. He later complained to a prosecutor several times, to no avail.

Criminal proceedings were commenced on 5 December 2013 in connection with, among other things, hijacking of a vehicle later used in the protests, and the applicant was detained on remand. His car and other property were seized. On 24 January 2014, Mr Kadura was given amnesty and released.

An investigation into the presiding judge was ordered. Irregularities not amounting to a breach of oath were found.

On 6 December 2013 criminal proceedings were opened in respect of Mr Smaliy for verbal abuse and assault of a judge. At 3 p.m. three days later, while representing another client at a police station, he was arrested and allegedly beaten. His phone and other items were seized. On entry to the holding cell, numerous injuries were found on his body. He was taken to hospital and returned to the cells. He was only allowed to see a lawyer at 11.55 p.m.

A complaint alleging unlawful arrest and detention, and police ill-treatment, among other things, was lodged on Mr Smaliy's behalf on 10 December 2013. It was dismissed. His detention on remand, in

conditions which he alleged had been inadequate, was ordered. Marks from blunt force trauma on his body were noted in a forensic medical examination. He was declared a “political prisoner” by Parliament, with the criminal investigation later discontinued on those grounds.

A criminal investigation into his ill-treatment was launched on 9 December 2013. According to the Government, that investigation also concerned the unlawful seizure of his property. Police officers were questioned alongside other investigative steps. Although the cases against three of the suspects were terminated for lack of evidence, the investigation is ongoing.

#### *Dubovtsev and Others*

There were a total of 14 applicants in this case. They were arrested in Dnipro on 26 January 2014 following protestor clashes with police and *titushky*. They were held on suspicion of mass disorder, with nearly identical arrest notifications being used. The applicants were released between 31 January and 12 February 2014, with house arrest being ordered in some of the cases. The investigations were ultimately discontinued owing to lack of evidence of a crime.

Proceedings for damages were commenced by 11 of the applicants. These resulted in some awards for unlawful detention, which were confirmed on appeal. Not all of the awards have been paid.

Following requests by some of the applicants, criminal proceedings were initiated against some of the prosecutors, police officers and other officials involved in the cases, along with two judges. The case against one judge is pending, while the other has been suspended. Disciplinary proceedings were initiated against those judges and several breaches of the law and procedure were found.

#### *Vorontsov and Others*

All the applicants were present at a Maidan protest outside the Ministry of the Interior academy for internal troops in Kharkiv in which all bar Mr Romankov were taking part. They were arrested on suspicion of disobeying the lawful orders of the police, questioned, and charged with that administrative offence. The judges found them guilty, and furthermore that some of them had used obscene language *vis-à-vis* the police, and that Mr Vorontsov had admitted his guilt. However, they were given amnesty and released.

Criminal proceedings were initiated against several of the police officers involved. Disciplinary proceedings were initiated against the judges in the cases and several breaches of the law and procedure were found.

## Complaints, procedure and composition of the Court

Relying, in particular, on Article 3, some of the applicants complained of their ill-treatment by the authorities, in several cases asserting that it had amounted to torture. Mr Zagorovka also complained under Article 3 of inadequate medical treatment while in detention. The applicants also complained that there had been no effective investigation into these events.

Relying on Article 2, Mr Verbytskyy complained of the murder of his brother.

Relying on Article 5, several applicants complained that their detention had been arbitrary and unlawful.

Relying on Article 5 §§ 1, 2, 3 and 5 several of the applicants complained that their arrest had been arbitrary; that detention had been without reasonable suspicion; that there had been no enforceable right to compensation for the violations.

Relying on Article 8, Mr Smaliy complained of the search and seizure of his telephone and documents.

Relying on Article 11 (in some cases also on Articles 7, 10 and/or 14) some of the applicants complained that they had been prevented from taking part in the Maidan protests and thus expressing

their political views, or that they had been ill-treated and/or detained to that effect. Mr Verbytskyy complained that his brother's murder had been for exercising his right to free assembly.

The applications were lodged with the European Court of Human Rights on various dates in 2014 and 2015.

Judgments were given by a Chamber of seven judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,  
Yonko **Grozev** (Bulgaria),  
Ganna **Yudkivska** (Ukraine),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lado **Chanturia** (Georgia),  
Angelika **Nußberger** (Germany), *judges*

and also Victor **Soloveytchik**, *Section Registrar*.

## Decision of the Court

### Admissibility

The Court declared Mr Sirenko's application (no. 9078/14), Mr Zadoyanchuk's Article 3 complaints and Mr Smaliy's complaints under Articles 5 §§ 1 and 3 and 18 concerning his detention inadmissible for failure to exhaust the relevant domestic remedies. Mr Kadura's complaint under Article 5 § 1 concerning the allegedly insufficient evidence to support a reasonable suspicion for his detention was rejected as manifestly ill-founded. Mr Cherevko's Article 11 complaint was also rejected as unsubstantiated. Nine of the 14 applicants in *Dubovtsev and Others* had received compensation and had lost their victim status as regards their complaints under Article 5 § 1 and so their applications were inadmissible. All other applications were admissible.

### Articles 3 and 2

The Court reiterated that the prohibition on torture and inhuman or degrading treatment was one of the most fundamental values in a democratic society. It also reiterated that the obligation to carry out an effective official investigation into arguable allegations of treatment infringing Article 3 suffered at the hands of State agents was well established in the Court's case-law, applying even in difficult security conditions.

The Court noted, in particular, the amount of time that had passed in the investigations into the applicants' clearly arguable claims of ill-treatment. Furthermore, it was undisputed that the police had used force against many of the applicants. The Court found that much of the ill-treatment had been a deliberate strategy on the part of the authorities. The Court noted that the ill-treatment had caused pain and suffering and in three cases had been severe and cruel, amounting thus to torture. In the case of Mr Zagorovka, the Court noted that, following police torture, the authorities had failed to react adequately to his resulting medical problems. The Court noted that in many cases the State had failed to investigate the alleged abuses adequately or with sufficient expedience.

The Court found that there had been a failure to conduct an effective investigation into Mr Verbytskyy's brother's abduction, ill-treatment and death, noting in particular that the domestic authorities had classified it as murder and that the State was responsible.

The Court concluded that there had been a violation of Article 3 of the Convention in its substantive and/or its procedural limb in many of the cases, and of Article 2 in its substantive and procedural limb in Mr Verbytskyy's case.

## Article 5

The Court must establish whether any periods of detention were based on a reasonable suspicion that a criminal offence might have been committed and, if so, whether the grounds for detention were “sufficient” and “relevant”.

The Court noted that in many cases the Government had not submitted police statements in respect of the arrests or these statements were couched in identical general terms. In many cases, the domestic courts’ reasoning amounted to reproductions of the investigator’s arguments. The Court found that, as with the Article 3 abuses, these detention orders appeared to be part of a strategy on the part of the authorities. In the case of Mr Lutsenko and Mr Verbytskyy’s brother, the Court found that they had been in fact abducted by *titushky* acting under the aegis of the State.

In sum, the Court found well-founded most complaints that the detention had been arbitrary and thus that there had been violations of Article 5 § 1 of the Convention. In respect of one applicant (Mr Kadura), the Court found that no relevant and sufficient reasons had been given for his continued detention in violation of Article 5 § 3.

## Article 11

The Court reiterated that the right to freedom of assembly is fundamental in democracies.

The Court observed that the excessive and sometimes brutal force used against the Maidan protesters disrupted the initially peaceful conduct of the protests and resulted in, if not contributed to, an escalation of violence. Increasingly, the clashes between the police and the protesters became more violent and generally the security situation in central Kyiv deteriorated considerably. While the material before the Court contained references to incidents of violence against the police by individual protesters during some of the relevant events, there was no information indicating that the protesters’ original goal or approach – which was obstructive, but peaceful – had changed and there was no evidence demonstrating that during their participation in the protests the applicants intended to commit or engaged in acts of violence or offered any resistance to the police.

The Court thus considered that the applicants concerned enjoyed the protections of Article 11. It found that the interference by the authorities had been disproportionate and unwarranted in a democratic society because of the unjustified use of force against most of them, the unjustified detention of one of them and the increasingly violent dispersal of the protests which had the potential of deterring the protesters and the public at large from taking part and more generally from participating in open political debate.

## Article 8

The Court found a violation of Mr Smaliy’s rights due to the seizure of his telephone and documents because there were no safeguards against the authorities arbitrarily accessing information subject to his professional privilege as a lawyer.

## Overall conclusions

The Court observed that it had found multiple violations of several Articles as a result of how the authorities had conducted themselves during the Maidan protests and the absence to date of an independent and effective mechanism within Ukraine for the investigation of crimes committed by law-enforcement officers and non-State agents. These judgments pointed to a deliberate strategy on the part of the authorities to hinder and put an end to a protest, the conduct of which was initially peaceful, with rapid recourse to excessive force which resulted in, if not contributed to, an escalation of violence.

### Just satisfaction (Article 41)

The Court held that Ukraine was to pay some of the applicants the awards in respect of pecuniary and non-pecuniary damage and costs and expenses set out in the relevant judgments.

*The judgments are available only in English.*

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