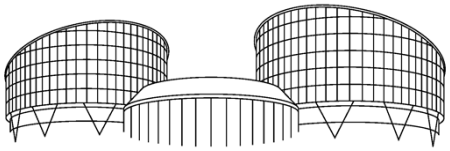

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF CHENCHEVIK v. UKRAINE

(Application no. 56920/10)

JUDGMENT

STRASBOURG

18 July 2019

This judgment is final but it may be subject to editorial revision.

In the case of Chenchevik v. Ukraine,

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

Yonko Grozev, *President,*
Gabriele Kucsko-Stadlmayer,
Lado Chanturia, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 25 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 56920/10) 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 Vitaliy Andreyevich Chenchevik ("the applicant"), on 30 September 2010.

2. The applicant was represented by Mr G. Tokarev, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, Mr I. Lishchyna.

3. On 7 December 2016 the Government were notified of the applicant's complaints concerning his alleged ill-treatment in police custody and the lack of an effective investigation in that connection, his questioning by the investigator on 1 April 2010 and his handcuffing while at the hospital, the unlawful detention between 4 p.m. on 31 March 2010 and 1 a.m. on 1 April 2010, and the complaint concerning his absence from the court's hearing on 2 and 9 April 2010. The remainder of the application was declared inadmissible pursuant to Rule 54 §3 of the Rules of Court.

4. The Government did not object to the examination of the application by a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and is detained in Kharkiv. He had had a number of criminal convictions in the past, including for drugs-related offences, and at the time of the events had been released on probation.

A. The applicant's arrest and detention and his alleged ill-treatment by the police

6. At about 2.30 p.m. on 31 March 2010 on the basis of information that the applicant had still been engaged in criminal activity, the police

conducted a sting operation. In the course of the purchase, the applicant sold a psychotropic drug to a police agent. Following that, according to the applicant, he was approached by police officers and "invited" to follow them to the Zhovtnevy district police station in Kharkiv ("the police station"). The fact of the applicant's selling the drug and his "arrest" in the course of the test purchase was reported by a police officer to the head of the police station, and an entry had been made in the police station logbook attesting that the applicant had been delivered to the police station at 3 p.m.

7. Following the applicant's arrival at the police station a visual examination was performed in the presence of attesting witnesses, from 3 to3.15 p.m. according to the relevant records; money, which had been allegedly used as payment for the drugs was seized from the applicant. From 3.15 p.m. to 3.30 p.m. swabs of the applicant's hands were taken, to reveal if he had touched the marked banknotes. The relevant records do not contain any entry suggesting that the applicant had any visible injuries at the time. Following that, when there was nobody in the room, the applicant left the police station, and took a taxi home. According to him, he did so as he had realised that the police officers had been falsifying evidence against him.

8. At about 4.30 p.m., according to the applicant, he was caught by the police near his place of residence and forcefully taken back to the police station. The relevant entry in the police station logbook, as referred to in the court's decision of 23 April 2010 (see paragraph 24 below), suggests that the applicant arrived back to the police station at 7.30 p.m.

9. On the same day "explanations" were obtained from him in which he confessed to several episodes of drug trafficking and provided the details. He also stated in that document that he had no complaints against the police and that no physical or psychological coercion had been applied to him during his questioning. Neither the applicant's formal status nor the time when the "explanations" were given is indicated in the document.

10. The applicant states that, once he had been brought to the police station for the second time, three police officers had firstly handcuffed him to a chair and beaten him. They had then made him lie down on the floor with his face down and for about ten minutes, kicking and beating him severely in an attempt to force him to confess to having manufactured and sold drugs and as a punishment for his escape. As a result, he had sustained serious injuries which had been later recorded at the hospital (see paragraph 14 below). As he had been unable to bear the pain, the applicant had signed documents attesting to his involvement in drug trafficking, including the "explanations" referred to in the preceding paragraph.

11. At an unspecified time on the same day criminal proceedings were instituted against the applicant in connection with the manufacture and sale of drugs. No copy of the relevant decision has been made available to the Court.

12. From 12.25 to 12.45 a.m. on 1 April 2010 the police drew up an arrest report according to which the applicant had been arrested by an investigator at 12.25 a.m. on 1 April 2010 on the basis of Article 115 of the Code of Criminal Procedure of 1960 ("the CCP") and that he was suspected of having sold drugs. When signing the report, the applicant stated in writing that he had not committed any crime and that he wished to be assisted by a lawyer. The case file further suggests that the applicant refused to give any evidence in the absence of a lawyer.

13. Following that, the applicant was transferred to a temporary detention facility ("the ITT") but his admission was refused by the ITT administration and he was returned to the police station. According to the applicant, his admission was refused because of his injuries. The authorities suggested that this had been because the applicant had complained about his state of health.

14. At about 5 a.m. on 1 April 2010 police officers on duty called an ambulance, and at around 6 a.m. the applicant was taken to the Kharkiv emergency hospital ("the hospital"). According to the available medical records, the applicant complained both to the emergency team and at the hospital that he had been beaten by the police some twelve hours before his arrival there. His medical examination at the hospital established that he had a fracture of his ninth and tenth ribs on the left side, chest trauma, and a head injury. He was also diagnosed with pneumothorax, for which he twice underwent surgery that same morning. The applicant remained in hospital for inpatient treatment until 13 April 2010. According to him, he was handcuffed to his bed at almost all times and was constantly guarded by three police officers.

15. Still on 1 April 2010, within several hours of surgery the applicant was visited by the investigator in the criminal case against him and from 4.40 to 6.10 p.m. he was questioned as a suspect. Before the questioning he had been apprised of his procedural rights and waived his right to legal assistance as he wished to defend himself in person. During questioning, the applicant confirmed his self-incriminating statements made earlier to the police. He further submitted that his injuries had been caused by accidently falling on the stairs next to a pharmacy while being drunk, apparently on 31 March 2010. According to the applicant, he was forced to make all the above statements and to waive his right to legal assistance, as earlier on that day he had been visited by a police officer who had ill-treated him. The officer had demanded that the applicant confirm his self-incriminating statements to the investigator and threatened him with further physical harm in the event of his refusal to "cooperate" with the police.

16. On 2 April 2010 the applicant made a written statement to the head of the police station attesting that he had no complaints against the police officers as the injury for which he had been taken to the hospital had been self-inflicted following "a fall". He provided no details in this connection

and submitted that neither physical force nor psychological pressure had been applied to him by the police. In his subsequent complaint to the prosecutor's office and in his submissions to the Court the applicant asserted that he had been forced to make such a statement by the same police officer who had visited him the day before.

17. On the same date the police applied to the Oktyabrskiy District Court in Kharkiv ("the District Court") for the applicant's continued detention for two months. The District Court examined the application on the same day and decided not to apply a preventive measure at that stage. It noted that further information about the applicant and the relevant circumstances were necessary in order to duly decide on the investigator's request. In view of this, and given the fact that the applicant was undergoing medical treatment in hospital, the District Court extended the applicant's police custody to ten days.

18. On 9 April 2010, while the applicant was still in hospital, he was questioned by the investigator as an accused. The applicant denied his guilt and refused to give any evidence unless represented by a lawyer. Having noted that the applicant was undergoing post-traumatic treatment and was unable to adequately judge reality, the investigator allowed the applicant's request for legal assistance. On the same day a lawyer, V., was admitted to the proceedings.

19. Also on the same date, the investigator applied to the District Court for the applicant's detention to be ordered as a preventive measure. The applicant informed the District Court in writing that he was still undergoing inpatient treatment at the hospital and requested that the term of his police custody be extended. Later on the same date, in the presence of the prosecutor and his lawyer, V., the District Court decided not to apply a preventive measure but extended the term of the applicant's police custody to fifteen days. This decision was not subject to appeal.

20. According to the applicant's submissions, shortly after his admission to the proceedings, V. visited him in hospital. He took pictures of the applicant showing him handcuffed to his bed and that he had a number of injuries, including large bruises on his hip and arms. Those pictures were made available to the investigating authorities during their examination of the applicant's complaint of ill-treatment (see paragraph 30 below) and to the Court.

21. On 15 April 2010, in the presence of the prosecutor, the applicant and his lawyer, the District Court ordered the applicant's detention on the grounds that he posed a danger to society and was liable to reoffend.

22. On 17 April 2010 the applicant was taken to the temporary detention centre ("the SIZO") in Kharkiv.

23. On 19 April 2010 the applicant's lawyer complained to the District Court that the applicant's detention from the moment of his actual arrest until the drawing up the arrest report by the investigator had been unlawful.

24. On 23 April 2010 the District Court rejected the above complaint as unsubstantiated. It established, *inter alia*, that at about 3 p.m. on 31 March 2010 the applicant had been taken to the police station with a view to obtaining his "explanations" with regard to his selling drugs. Once the necessary checks had been conducted, the investigator concluded at 12.25 a.m. on 1 April 2010 that there were grounds for the applicant's formal arrest as a suspect. The District Court noted that it was the investigator's right and not obligation to arrest a person, and that he had the right to do so also after the necessary investigative steps had been performed and the relevant circumstances clarified, provided that there were grounds set forth in Article 106 of the CCP for taking such a decision. It was further established by the District Court, on the basis of the police station logbook, that the applicant had arrived at the police premises at 3 p.m. on 31 March 2010 to give a statement; that he had deliberately left the police premises; and that on 7.30 p.m. had again been taken to the police station with a view to obtaining the "explanations". It thus concluded that starting from 3.30 p.m. his freedom of movement had not been limited in any way, and that he had been effectively deprived of his liberty at 12.25 a.m. on 1 April 2010 by the investigator's decision. The applicant did not appeal against that decision.

25. Since 27 August 2010 the applicant has been represented by Mr G. Tokarev, who replaced V.

26. On 18 October 2011 the applicant was released from detention under an undertaking not to abscond.

27. On 4 November 2013, after the applicant's criminal case had been returned to the investigator several times for additional investigation, the proceedings against him were terminated. Because changes had been made to the official list of substances whose circulation was restricted, the applicant was no longer considered to have committed a crime.

B. Investigation into the complaints of the applicant's ill-treatment

28. On 12 April 2010 the applicant's lawyer, V., complained to the Kharkiv regional police force of the unlawful detention of the applicant on 31 March 2010 and his ill-treatment by the police on the same date. He requested, *inter alia*, that the applicant be given a forensic medical examination in order to record his injuries and establish their origin and that the material relevant to those allegations be separated from the case file with a view to their examination by a prosecutor.

29. On 14 April 2010 the investigator granted the lawyer's request in the part which concerned ordering the forensic medical examination of the applicant and rejected the reminder of his claim, having noted that no data as to the circumstances in which the applicant had sustained the injuries had

been available to the investigating authorities because the applicant had refused to give any evidence.

30. On 15 and 16 April 2010 the applicant's mother and his lawyer, acting on his behalf, lodged a criminal complaint with the Oktyabrskiy district prosecutor's office in respect of the applicant's ill-treatment by the police on 31 March 2010. The photos of the applicant's injuries, taken at the hospital by his lawyer, were enclosed with the lawyer's complaint.

31. On 30 April 2010 the investigator in the applicant's criminal case ordered a forensic medical examination of the applicant following his request (see paragraph 28 above) and put the following questions before the expert: did the applicant sustain any injuries and, if so, what were their nature, place and origin? What was the date of infliction of the injuries? Could the injuries have been sustained as a result of a traffic accident? Could the injuries have been self-inflicted by falling on the stairs? What had been the applicant's body position when he sustained the injuries? How serious had the injuries been? The applicant's medical file and his criminal case file were made available to the expert.

32. On 5 May 2010 the prosecutor ordered a forensic medical examination of the applicant aimed at answering the following questions: Had the applicant sustained any injury? If so, how serious had the injuries been and what had been their nature, location, date of infliction and origin? Could the injuries have been sustained in the circumstances and in the period indicated by the applicant?

33. The forensic medical examination under the above-mentioned investigator's and prosecutor's orders was performed by the expert on the basis of the case file and lasted from 25 to 28 May 2010 (see paragraph 36 below).

34. In the meantime, the prosecutor questioned the applicant, the police officers involved in the alleged ill-treatment and those on duty on 31 March, and an attesting witness who had been present at the police station during the visual inspection of the applicant and the sample-taking (see paragraph 7 above). The applicant maintained that he had been ill-treated by the police. He provided his account of events, and submitted that all his statements to the contrary had been given under police duress. The officers denied any use of physical force or psychological pressure against the applicant at the police station. Two officers submitted that, when apprehending the applicant after his escape from the police station, one of them had applied a combat technic, an armlock, and had put handcuffs on the applicant. The attesting witness submitted that the applicant had not raised any complaint in respect of his state of health during his inspection at the police station.

35. On 14 May 2010 the prosecutor refused to institute criminal proceedings against the police officers in view of the lack of constituent elements of a crime in their actions. He cited the testimonies of the police officers and the attesting witness, and the written statement which the

applicant had made to the police on 2 April 2010 (see paragraph 16 above). The prosecutor's also noted that no information had been available as to the applicant's injuries as the forensic medical examination was pending.

36. On 28 May 2010 the expert D. delivered two reports (no. 2283-ая/10 and no. 2284-ая/10) in which he submitted that he had not been in a position to answer the investigator's and prosecutor's questions (see paragraphs 31 and 32 above) on the basis of the available material. According to him, the applicant's medical file did not suggest that he had any visible injury; the existence of the head injury recorded at the hospital was not confirmed by objective forensic medical data; it appeared impossible to make any conclusion as to the chest injury as the available X-ray scans were of low quality and could not be assessed. The expert suggested that it would be possible to answer the relevant questions once a control X-ray examination of the applicant's chest had been performed.

37. On the same date the applicant underwent an X-ray examination and another forensic medical examination was ordered by the investigator in the applicant's criminal case to answer the same questions as those which had been put in her order of 30 April 2010 (see paragraph 31 above).

38. On 6 July 2010 the expert D. issued a report (2604-ая/10) in which, on the basis of the X-ray image of the applicant's chest of 28 May 2010, he diagnosed the applicant with a healed fracture of the ninth rib. The tenth rib area had not been covered by the picture and no assessment in this connection had been made by the expert accordingly. The expert concluded that the rib fracture could have originated from a blunt firm object on the date referred to in the investigator's request. He stated that the possibility that the injury had been caused by falling on the stairs could not be excluded. The expert further reiterated that the existence of the applicant's head injury had not been confirmed in the course of his examination and that he had been prevented by the low quality of the available X-ray scans from assessing whether the applicant had had a chest trauma, as recorded at the hospital. Lastly, he submitted that it had been impossible to reply to the second and fourth questions of the investigator (see paragraph 31 above) because of the lack of objective forensic medical data.

39. On 29 March 2011, following the applicant's complaint, the prosecutor's decision of 14 May 2010 not to institute criminal proceedings was annulled by a senior prosecutor as premature and incomplete.

40. On 5 April 2011 the prosecutor again refused to institute criminal proceedings against the police officers. In addition to the police officers' statements, he referred to a statement of a taxi driver who had allegedly driven the applicant home after he had left the police station on 31 March 2010. According to the prosecutor, the driver submitted that before getting into the taxi the applicant had fallen down on the road and hit the left side of his chest. He further cited the conclusions of the forensic report of 28 May 2010 (see paragraph 36 above).

41. On 2 September 2011, the District Court annulled the above decision of the prosecutor as premature and ordered that an additional forensic medical examination be conducted, which had to include an examination of the applicant in person and a control X-ray being performed.

42. On 6 October 2011, following the District Court's instructions, the prosecutor ordered an additional forensic medical examination. The expert was required to answer the question of what the nature and degree of severity of the applicant's bodily injuries had been. The examination was carried out from 13 to 19 October 2011 on the basis of the applicant's medical file, without the applicant's participation (see paragraph 44 below).

43. In the meantime, on 7 October 2011, the prosecutor again refused to institute criminal proceedings against the police officers on similar grounds to those in his decision of 5 April 2011.

44. On 19 October 2011 an additional forensic medical report (5194-ая/11) was delivered by the expert D., which to a major extent reiterated the conclusions of the report of 6 July 2010 (see paragraph 38 above).

45. On 19 December 2011 the supervising prosecutor quashed the prosecutor's decision of 7 October 2011 as premature and unlawful. He ordered that the expert's conclusion regarding the nature and degree of severity of the applicant's injuries be obtained and joined to the case file. On the same day the prosecutor put an additional question to the forensic medical expert, specifically whether the applicant could have sustained his injuries as a result of his falling down the concrete stairs while being drunk as he had stated to the investigator on 1 April 2010 (see paragraph 15 above). The additional forensic examination was conducted from 30 December 2011 to 30 January 2012 (see paragraph 47 below).

46. In the meantime, on 29 December 2011, the prosecutor again refused to institute criminal proceedings against the police officers on the same grounds as before.

47. On 30 January 2012 the forensic expert D. issued an additional report (no. 6688-ая/11) in which he reiterated his previous conclusion that the applicant had suffered a fracture on the left-side ninth rib and that this injury could have been caused by a blunt firm object at the time indicated in the prosecutor's request for additional examination. The expert submitted that the location of the ninth-rib fracture could not exclude the possibility that the injury could have resulted from a fall on the stairs.

48. On 2 March 2012 the prosecutor's refusal of 29 December 2011 to institute criminal proceedings against the police officers was quashed by the supervising prosecutor. He found the investigation that had been conducted incomprehensive and its conclusions premature. Additional questioning of possible witnesses was ordered.

49. On 12 March 2012 having noted that it appeared impossible to question witnesses because of their failure to appear, the prosecutor

delivered another refusal to institute criminal proceedings against the police officers. This decision was quashed on 28 May 2012 as premature and ill-founded.

50. On 7 June 2012, having additionally questioned several police officers and having noted that it appeared impossible to question other witnesses, the prosecutor refused to institute the criminal proceedings against the police officers. This decision was not appealed against by the applicant.

II. RELEVANT DOMESTIC LAW

A. Constitution of 28 June 1996

51. 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)

52. Relevant provisions of this Code provided:

Article 106. Arrest of a suspect by a 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 ... a person suspected of having committed a crime in accordance with the procedure provided for in [Article] 106 ... of the Code. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT

53. The applicant complained that he had been tortured by the police on 31 March 2010 and that there had been no effective domestic investigation into that matter. 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

54. The Government submitted that the applicant's allegation of ill-treatment was unfounded and not supported by evidence. They denied any link between the applicant's treatment in police custody and his fractured ribs, having explained that injury by his having accidentally fallen on the stairs. In doing so, they relied on the applicant's written statement, made the day after his alleged ill-treatment, to the effect that he had not been ill-treated by the police and that he had sustained his injuries by falling on the stairs (see paragraph 16 above). They also relied on the results of the forensic medical reports, which did not exclude the possibility that the fractured rib could have resulted from a fall on the stairs (see paragraphs 38 and 47 above), as well as on the results of the prosecutor's investigation which, according to the Government, had complied with the requirement of effectiveness under Article 3 of the Convention. In the Government's view, the fact that the investigating authorities had repeatedly refused to initiate criminal proceedings against the police officers, and that those decisions had subsequently been quashed, showed that the State authorities had attempted to establish the truth and had examined the applicant's allegations in a proper way. They also criticised the applicant for having lodged his complaint for the first time almost two weeks after the alleged ill-treatment.

55. The applicant insisted that his complaint was admissible.

56. The Court notes that the complaint of ill-treatment raises serious issues requiring an examination of the merits. Therefore, contrary to the Government's submissions, the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention (see *Serikov v. Ukraine*, no. 42164/09, § 53, 23 July 2015). It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

57. The applicant insisted that he had been subjected to torture while in police custody with a view to forcing him to self-incriminate. He had also been forced to write a note to the effect that no physical force had been used against him and that he had sustained his injuries by falling on the stairs while drunk. According to him, the fact that the police had wished to obtain such a note from him was indirect evidence that he had been tortured in police custody.

58. Referring to the medical evidence, the applicant stated that it was an established fact that he had sustained serious injuries while in the hands of the police in respect of which he had twice been operated on urgently. He noted in this connection that he had been taken into police custody in good health. Although the authorities had denied the use of force on him, they had failed to advance any plausible explanation regarding the origin of his injuries. The applicant further questioned the quality of the forensic medical examinations by the forensic expert D. and the conclusions reached. He provided an alternative forensic medical report which excluded the possibility that his injuries had been sustained by a fall on the stairs.

59. The applicant also submitted that he had not been in a position to lodge his complaint earlier as he had been undergoing post-operative treatment at the hospital under permanent supervision of the police and had not been represented by counsel until 9 April 2011. Once he had been granted access to a lawyer, the relevant complaint had been lodged.

60. Lastly, the applicant submitted that, despite the existence of objective evidence that he had sustained physical injuries while in police custody, the prosecution authorities had refused many times to institute criminal proceedings against the police officers concerned, mainly on the basis of the statements of the police officers. He further submitted that the length of the investigation, including the delays in appointing and carrying out the relevant examinations, had been excessive and had been an indication of the authorities' lack of will to establish the truth in the case and to hold the police officers who had ill-treated him criminally liable.

61. The Government did not comment on the merits of the applicant's allegations of ill-treatment, referring instead to their position that this part of the application was inadmissible (see paragraph 54 above).

2. The Court's assessment

62. The Court, being sensitive to the subsidiary nature of its role, considers it appropriate to start with the examination of whether the applicant's complaints were adequately investigated by the domestic authorities and then to turn to the question of whether the alleged

ill-treatment took place, bearing in mind the relevant domestic findings (see, for example, *mutatis mutandis*, *Baklanov v. Ukraine*, no. 44425/08, §§ 70 and 71, 24 October 2013, and *Sadkov v. Ukraine*, no. 21987/05, § 90, 6 July 2017).

(a) Effectiveness of the investigation

63. The relevant case-law principles are summarised, in particular, in the Court's judgments in the cases of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 114 to 123, 28 September 2015) and *Savitskyy v. Ukraine* (no. 38773/05, §§ 99-101, 26 July 2012).

64. Turning to the present case, the Court notes that the applicant's injuries recorded at the hospital were serious enough 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.

65. The prosecution authorities were informed of the applicant's alleged ill-treatment some two weeks after the impugned events, after the applicant – who was undergoing inpatient treatment at the hospital under the permanent surveillance of the police – was granted access to his lawyer. The Court does not consider that in the circumstances of the case the applicant can be reproached for not having lodged the complaint earlier.

66. The applicant's allegations were subjected to examination by the prosecutor's office by way of a pre-investigation inquiry without a full-scale investigation being opened. The Court has previously held in various contexts that this investigative procedure did not comply with the principles of an effective remedy, in particular because the officer conducting the pre-investigation inquiry could take only a limited number of steps within that procedure and the victim had no formal status, meaning his or her effective participation in the procedure was excluded (see, for example, *Savitskyy v. Ukraine*, cited above, § 105).

67. The pre-investigation inquiry was limited essentially to 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 himself, and the applicant's version of events, for example, by way of a confrontation between those concerned and a reconstruction of the events. In any event, such a measure would have been impossible without instituting criminal proceedings.

68. The police officers' statements were premised on a reference to the medical reports, which did not exclude the proposition that the ninth-rib fracture – the only injury confirmed by the expert – could have been inflicted by the applicant himself by falling on the stairs. 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 the injury having been inflicted. In fact, the

case file does not suggest that, after the report of 28 May 2010 – in which the expert was unable to answer the question as to origin of the injuries –, the authorities had ever tried to establish whether the applicant's injuries could have resulted from his ill-treatment by the police. At the same time, the question of whether the injuries could have been caused by "falling on the stairs" was put before the expert (see paragraph 45 above). In the Court's opinion, this suggests that the investigating authorities were avoiding clarifying the matter in the medical expert opinion. There are furthermore concerns relating to the quality of the forensic examinations. However, the Court does not find it necessary, in the circumstances of the present case, to elaborate on this matter.

69. There is nothing in the documents available before the Court to suggest that any attempt whatsoever was made by the investigating authorities to establish the circumstances of the alleged incident on the stairs to which they referred to explain the origin of the applicant's fractured ribs and to provide details of that incident. This, however, was not seen as an obstacle to dismissing the applicant's allegation of ill-treatment as unsubstantiated.

70. The investigation into the applicant's allegation of torture lasted for two years, during which time the prosecutors refused to institute criminal proceedings against the police officers six times, with five of those decisions later being annulled by supervising prosecution authorities or a court as premature, unlawful, and based on a perfunctory investigation. Having regard to the reasons for those annulments and consequent re-openings of the investigation, the Court considers that those decisions disclose serious deficiencies in the investigation resulting from structural problems in Ukraine (see *Aleksandr Smirnov v. Ukraine*, no. 38683/06, § 61, 15 July 2010).

71. The Court considers that the foregoing considerations are sufficient to enable it to conclude that the domestic authorities failed to respond to the applicant's complaint of ill-treatment with the level of diligence required by Article 3 of the Convention. That being so, the Court does not consider it necessary to further elaborate on other shortcomings of the investigation.

72. There has accordingly been a violation of Article 3 of the Convention under its procedural limb in relation to the investigation of the events of 31 March 2010.

(b) Alleged torture of the applicant by the police

73. The relevant case-law principles are summarised, in particular, in the Court's judgment in the case of *Bouyid v. Belgium* ([GC], cited above, §§ 81 to 83, 85 and 88 to 90, with further references).

74. There is no dispute between the parties about the fact that twice on 31 March 2010 the applicant was taken to the police station to give evidence about him having sold drugs to the police earlier that same day. It has not

been alleged by the Government, nor is it suggested by the evidence before the Court, that the applicant had any injuries on arrival at the police station. However, some six hours after his official arrest numerous injuries were documented following the applicant's medical examinations at the hospital (see paragraph 14 above). After the applicant was taken into police custody for the second time on 31 March 2010 he remained under the permanent 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 (see *Strogan v. Ukraine*, no. 30198/11, § 73, 6 October 2016).

75. The Government denied the applicant's allegations of ill-treatment by the police officers and suggested that he had 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, on the applicant's relevant statements made to the police the next day after his alleged ill-treatment (see paragraphs 15 and 16 above) and on the forensic expert's conclusions (see paragraphs 38 and 47 above).

76. As regards the applicant's statements referred to by the Government, which are very vague and general, the Court observes that both during his medical examination by the ambulance team and at the hospital and in the course of the investigation of his ill-treatment complaint – that is to say before and after the statements were made – the applicant submitted that he had sustained his injuries as a result of his ill-treatment by the police (see paragraphs 14 and 34 above), and his account of the events remained consistent throughout the investigation (see *Mihhailov v. Estonia*, no. 64418/10, § 123, 30 August 2016; *Belozorov v. Russia and Ukraine*, no. 43611/02, § 107, 15 October 2015; and *Nalbandyan v. Armenia*, no. 9935/06, § 107, 31 March 2015). In these circumstances, the Court is not ready to accept the applicant's statements referred to by the Government as evidence establishing the self-inflicted nature of the applicant's injuries.

77. The forensic medical reports, referred to by the Government, are not conclusive (see paragraph 68 above). In addition, the Government provided no information as to when and where (on which stairs) the applicant had sustained those injuries as this issue had never been the subject to the prosecutor's investigation (see paragraph 69 above).

78. The Court therefore finds it unconvincing that several injuries on different parts of the applicant's body (see paragraph 14 above) could have resulted in the manner advanced by the Government. It notes that the available evidence, the nature of the applicant's injuries, as well as the lack of a 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).

79. As to the seriousness of the ill-treatment in question, the Court notes that the injuries sustained by the applicant, and in particular the rib fractures and the pneumothorax, attest to the severity of the ill-treatment the applicant suffered. According to the description provided by the applicant, this treatment was administered behind closed doors in the police station, where the applicant had no means of resisting. There is no indications that the recourse to physical force had been in any way made necessary by the applicant's own conduct (see *Bouyid,* cited above, § 85). Furthermore, despite the seriousness of the injuries caused to the applicant, he was not provided with immediate medical assistance. In these circumstances his physical pain associated with the above injury must have been exacerbated by feelings of helplessness, acute stress and anxiety. Moreover, the applicant's ill-treatment was intentional and was aimed at extracting evidence from him in relation to the crime of which he was suspected (see, similarly, *Belousov v. Ukraine*, no. 4494/07 § 67, 7 November 2013).

80. In these circumstances, the Court finds that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue amounted to torture within the meaning of Article 3 of the Convention.

81. Accordingly, there has been a violation of Article 3 under its substantive limb.

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

82. The applicant complained that there had been a violation of Article 5 § 1 of the Convention because the record of his detention as a suspect was drawn up by the investigator some ten hours after the applicant's actual arrest. The relevant parts of Article 5 § 1 read:

> "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;"

83. The Government submitted that on 31 March 2010 the applicant was taken into custody by the police as a suspect in a drug offence. However, after the initial checks had been performed, the applicant absconded. Once apprehended anew, his arrest report was drawn up in accordance with the law. Any delay in formalising his arrest had thus been caused by the applicant's own behaviour.

84. Having not disputed that there had been legal grounds for his arrest, the applicant maintained that the arrest report by the investigator – which had been the only possible way in terms of domestic law to keep him in detention in his situation – had been prepared more than ten hours after his actual deprivation of liberty.

A. Admissibility

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

B. Merits

86. It is not disputed that the applicant was first deprived of his liberty at 2.30 p.m. on 31 March 2010 and then at 4.30 p.m., when apprehended after his escape, while his arrest report was drawn up only at about 12.25 a.m. on 1 April 2010 (see paragraphs 6, 8 and 12 above).

87. The Court has found violations of Article 5 § 1 in a number of cases where there was a delay in the drawing up of such reports (see, among many other authorities, *Grinenko v. Ukraine*, no. 33627/06, §§ 75 to 78, 15 November 2012, and *Belousov v. Ukraine*, cited above, §§ 85 to 88).

88. Contrary to those cases, in the present case the Government acknowledged that the arrest report had been made with a delay and suggested that the delay had been exceptional and caused by the applicant's own behaviour, specifically his escape from police custody when his personal search was being conducted and samples were being taken from him (see paragraph 83 above).

89. The Court also held that the subsequent acknowledgement of a delay in the recording of an arrest was, on its own, insufficient to remove the problem under Article 5 § 1 in the absence of contemporaneous records (see *Smolik v. Ukraine*, no. 11778/05, § 46, 19 January 2012).

90. By contrast, in the present case, the fact of the applicant's detention by the police during the sting operation had been reflected in the report by the police officer to the head of the police station and the applicant's initial arrival at the police station had been registered in the police station logbook (see paragraph 6 above). The procedural measures which had been taken at the police station with the applicant's participation had also been duly recorded alongside his arrival at the police station at 7.30 p.m. (see paragraphs 7 and 8 above).

91. Turning to the Government's arguments, the Court is ready to accept that the authorities acted in exigent circumstances, where a need to perform the urgent measures aimed at securing evidence (see paragraph 7 above) and

the applicant's subsequent escape justified a certain delay in formalising the applicant's detention in accordance with procedure provided for by the law. However, it does not perceive any legal basis for delaying such formalisation – in the present circumstances in the chosen form of detention on the basis of an investigator's decision – after the applicant had been deprived of his liberty for the second time on 31 March 2010. No arguments have been advanced or evidence provided by the Government in this connection. It is also worth noting that between 7.30 p.m. on 31 March 2010 and 12.25 a.m. on 1 April 2010 the applicant was interviewed by the police about his alleged involvement in drug trafficking and was subjected to torture in order to force him to confess to that offence (see paragraph 79 above).

92. There has, accordingly, been a violation of Article 5 § 1 of the Convention on account of the delay in the drawing up of the arrest report.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

93. The applicant also complained, under Article 3 of the Convention, that (a) on 1 April 2010 he had been involuntarily questioned just several hours after surgery while in very poor state of health; and (b) during his stay in hospital from 1 to 13 April 2010 he had been handcuffed to his bed and permanently guarded by three police officers. Under Article 5 § 3 of the Convention, the applicant complained of the domestic court's failure to hear evidence from him in person before taking the decisions of 2 and 9 April 2010 authorising his continued detention in police custody.

94. Having regard to the facts of the case, the submissions of the parties and the above findings under Articles 3 and 5 § 1 of the Convention, the Court considers that the main legal questions in the present application have been determined. It holds, therefore, that there is no need to give a separate ruling on the admissibility and merits of the complaints mentioned in the paragraph above (see, for a similar approach, *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 210-11, ECHR 2009; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references; and *Mocanu and Others v. the Republic of Moldova*, no. 8141/07, § 37, 26 June 2018).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage caused by his torture by the police.

97. The Government contested this claim.

98. The Court, making its assessment on an equitable basis, awards the applicant EUR 16,000 in respect of non-pecuniary damage.

B. Costs and expenses

99. The applicant also claimed EUR 8,308 in respect of his legal representation in the domestic proceedings and before the Court incurred in 2010, 2011 and 2017. He also claimed EUR 581.56 in compensation for administrative expenses. This amount was calculated as being equal to 7% of the legal fees mentioned above.

100. To substantiate that claim, the applicant submitted a legal-assistance contract with Mr Tokarev of 30 September 2010, which set the lawyer's hourly rate at EUR 60 for representation at the domestic level and EUR 100 for the proceedings before the Court. He also submitted three time-sheets and expense reports completed by Mr Tokarev in respect of the work done in 2011 and 2017.

101. The Government contested the above claims as excessive and unsubstantiated.

102. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Regard being had to the documents in its possession, the Court considers it reasonable to award the applicant the sum of EUR 3,500 for his representation in the domestic proceedings and before the Court. This amount is to be paid into the bank account of the applicant's lawyer, Mr Tokarev, as indicated by the applicant (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288 and point 12 (a) of the operative part, ECHR 2016 (extracts)). The Court rejects the remainder of the claim for costs and expenses.

C. Default interest

103. 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 complaints concerning the alleged torture in police custody on 31 March 2010 and the lack of an effective investigation in this respect as well as regarding the lawfulness of the applicant's detention by the police on the referred date admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's torture by State agents;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure to conduct an effective investigation into the applicant's allegations of ill-treatment;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

5. *Holds* that there is no need to examine the admissibility and merits of the remainder of the applicant's complaints under Articles 3 and 5 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage sustained by the applicant, to be paid to the applicant;
      (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representative, Mr G. Tokarev;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Yonko Grozev
Deputy Registrar	President