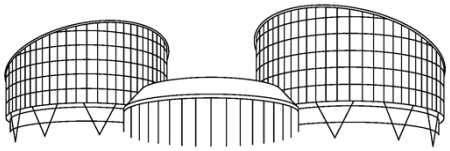

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KADURA AND SMALIY v. UKRAINE

(Applications nos. 42753/14 and 43860/14)

JUDGMENT

Art 3 (procedural and substantive) • Art 5 § 3 • Ill treatment and unjustified detention of the Automaidan movement participant and lawyer defending members of the movement, as part of the authorities' deliberate strategy to put an end to Maidan protests Art 8 • Respect for private life • Personal search and seizure of telephone and documents of lawyer not in accordance with the law, in absence of safeguards for information subject to legal professional privilege

STRASBOURG

21 January 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kadura and Smaliy v. Ukraine,

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

Síofra O'Leary, *President,*
Yonko Grozev,
Ganna Yudkivska,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lado Chanturia,
Angelika Nußberger, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 42753/14 and 43860/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Volodymyr Oleksandrovych Kadura ("the first applicant) and Mr Viktor Mykolayovych Smaliy ("the second applicant"), on 3 and 13 June 2014 respectively;

the decision to give notice to the Ukrainian Government ("the Government") of the applications;

the decision to give priority to the applications (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated in private on 7 May 2019 and 9 December 2020,

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

INTRODUCTION

1. The two applications concern mainly the applicants' alleged ill-treatment and unjustified detention and an allegedly arbitrary search in relation to the second applicant, in connection with the first applicant's participation in the Automaidan movement, which formed part of the series of mass protests commonly referred to as "Euromaidan" and/or "Maidan", and allegedly in connection with the second applicant's legal work in defence of members of that movement. The applicants rely, *inter alia*, on Articles 3, 5 § 3 and 8 of the Convention. These applications are part of thirty-three applications against Ukraine lodged with the Court under Article 34 of the Convention by thirty-nine individuals in relation to the Maidan protests. For the reasons stated in *Shmorgunov and Others v. Ukraine* (nos. 15367/14 and 13 others, § 5, 21 January 2021, not final) those applications could not all be joined and examined jointly in a single judgment. The judgments in response to those applications should, however, be read as one whole.

THE FACTS

2. The applicants were born in 1982 and 1976 respectively and live in Kyiv. The first applicant was represented by Mr M. Tarakhkalo, Ms A. Martynovska, Ms A. Saliuk, Ms V. Lebid, Ms O. Protsenko and Ms Ie. Kapalkina, lawyers practising in Kyiv, and also by Mr A. Bushchenko, at the material time a lawyer practicing in Kyiv. The second applicant was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg.

3. The Government were represented by their Agent, most recently Mr I. Lishchyna, of the Ministry of Justice.

A. Events which concern the first applicant, Mr V. Kadura (application no. 42753/14)

4. At the material time, the applicant was an active member of the Automaidan (*Автомайдан*) movement, which organised car rallies to support the Maidan protesters in various parts of Ukraine, including by protesting in front of the homes of high-ranking officials and bringing supplies to protesters.

1. Mr V. Kadura's alleged ill-treatment by the police

5. According to the applicant, at about 5.30 p.m. on 5 December 2013, while driving his car on a highway towards Kyiv, he was ordered to stop by the road traffic police. Two persons in plain clothes, one of whom was wearing a mask, approached his car, opened the door on the driver's side and pulled him out. One of those persons, while shouting and swearing, punched him in the face twice. They handcuffed the applicant with his hands behind his back, forced him to bend, and put him into a van while punching his body several times.

6. The applicant spent several hours in the van, where he had the impression he was driven to different areas in Kyiv. While in the van, the applicant was allegedly forced to sit in a position with his head between his knees, and when he raised his head his body was punched.

7. At about 8 p.m. the van arrived at the rear courtyard of the Investigative Department of the Kyiv prosecutor's office. The courtyard was surrounded by about thirty police officers with machine guns. The applicant remained in the van for about forty minutes. When he asked those escorting him if he could call his lawyer or his relatives, one of them allegedly punched him in the waist and put pressure on his jawbone, causing him considerable pain. His mobile phone was taken from him and he was ordered not to speak or ask for anything.

8. The applicant also alleged that police officers pointed a gun at him while trying to make him sign some documents the content of which he did not understand. He refused to do so.

9. Subsequently, the applicant was taken to a hospital and examined by a doctor who noted in his report of 5 December 2013 – a copy of which was submitted to the Court – that the applicant had contusions to the chest and abdomen and a bruise on his face.

10. Eventually, the applicant was taken to the Kyiv police detention unit (*ізолятор тимчасового тримання* – "the ITT").

11. According to the documents submitted by the Government, on 5 December 2013 a police investigator ordered a medical examination of the applicant by a forensic expert in order to detect any injuries on his body and establish the cause of such injuries.

12. In the expert's report issued in January 2014, it was noted that the applicant had refused to undergo such an examination on 10 December 2013, and that on 6 January 2014 the investigator had informed the expert that after his arrest on 5 December 2013 the applicant had not complained of ill-treatment. The expert concluded that it was not possible to carry out the examination ordered by the investigator. The report does not contain the applicant's signature or handwriting.

13. The applicant stated that he had not been informed of the examination ordered by the investigator, and denied having refused to undergo it.

14. On 6 December 2013 the applicant was taken to the Shevchenkivskyy District Court to take part in the hearing concerning his detention (see paragraph 29 below). At some point between the applicant's arrest and the detention hearing three lawyers, apparently lawyers of the applicant's choice, started representing him.

15. According to the applicant, during the detention hearing one of his lawyers complained orally to the court of his ill-treatment on 5 December 2013, but the judge ignored that complaint.

16. The same complaint was raised in writing and in detail in the lawyer's appeal against the decision of the District Court of 6 December 2013 (see paragraphs 30-31 below). The applicant submitted a copy of that appeal to the Court. It bears a stamp indicating that it was received by the Kyiv Court of Appeal on 10 December 2013. The lawyer also complained that the investigating judge had failed to examine his complaint in that regard, which had been contrary to the provision of the Code of Criminal Procedure requiring a judge before whom allegations of ill-treatment were raised to ensure a medical assessment of the complainant and the investigation of such allegations. In its decision of 17 December 2013 dismissing the lawyer's appeal (see paragraph 32 below), the Kyiv Court of Appeal did not address those submissions.

17. The Government stated that the authorities had received no complaint of the applicant's ill-treatment prior to 20 June 2014.

18. On 7 December 2013 the applicant was taken to the Kyiv Pre-Trial Detention Centre (*слідчий ізолятор* – "the SIZO"). Upon his arrival he was examined by a paramedic, who noted in a report of the same date that the applicant had a bruise on his face and also chest and abdominal contusions, and that the applicant had stated that he had received those injuries in the course of his arrest. On 24 January 2014 the applicant was released from detention (see paragraph 33 below).

19. In April 2014 the applicant submitted an application to the Kyiv prosecutor, complaining that his arrest and further detention had been unlawful, that the police had used physical force against him and had psychologically pressured him during his arrest and transfer to the Kyiv ITT, that he had not been provided with adequate medical assistance after his arrest, and that on 6 December 2013 he had been detained in inhuman and degrading conditions. In reply, he was informed that his complaints would not be investigated, as the criminal case against him had been closed.

20. On 20 June and 14 July 2014 the applicant lodged two complaints with the Kyiv prosecutor's office, alleging that he had been ill-treated by the police on 5 December 2013. According to the Government, on 8 July and 20 August 2014 the prosecutor's office refused to start a criminal investigation in respect of those complaints. According to the applicant, he was not informed of those decisions. The parties submitted no copies of the relevant documents.

21. In December 2016, having learned about the decisions of 8 July and 20 August 2014 from the Government's observations of 18 July 2016, the applicant lodged a new complaint with the Prosecutor-General's Office (PGO) in which he raised his complaints of ill-treatment as set out above (see paragraphs 5-8 above). He was given no information concerning any decision taken in that regard. The Government did not comment on these developments.

2. *Decisions relating to Mr V. Kadura's detention and the criminal proceedings against him*

22. On 1 December 2013 the police started a criminal investigation into suspected abuses against the police committed by protesters in the course of the protests in the area adjacent to the Presidential Administration building on that date.[1]

23. On 4 December 2013 a police investigator submitted to the Shevchenkivskyy District Court an application for authorisation of the applicant's arrest as he was suspected of vehicle hijacking, mass disorder and assault against law-enforcement officials.

[1] Domestic case file no. 12013110040001231.

24. In particular, the applicant was suspected of hijacking a loader and using it in an attempt to murder the police officers who had been involved in the public-order operation near the Presidential Administration building on 1 December 2013.

25. The suspicion was allegedly based on a criminal complaint of a Mr K., the loader's operator, who had stated that on 1 December 2013 he had been driving the loader near the Presidential Administration building, when several unknown individuals had forced him to leave the vehicle and had stolen the keys to it.

26. According to the investigator, in the course of the criminal proceedings, K. and two of his colleagues had been questioned by the police and had identified a man on a photograph shown to them as one of the individuals who had hijacked the vehicle. Also, several video-recordings of the events at issue, which had been examined by the police, had contained an image of those individuals. The police had identified one of those individuals as the applicant.

27. The investigator finally stated that the applicant might evade and hinder the criminal proceedings against him, as he had failed to appear when summoned. The investigator gave no further details in that regard.

28. On 5 December 2013 Judge B. of the Shevchenkivskyy District Court authorised the applicant's arrest with reference to the evidence summarised above. The applicant was arrested on the basis of that court decision.

29. On 6 December 2013, at the hearing in relation to his continued detention, the applicant denied having committed the crimes of which he was suspected and stated that he lived at the address where he was registered but had never been summoned to appear before the investigator.

30. On the same day Judge T. of the Shevchenkivskyy District Court ordered the applicant's continued detention as he was suspected of having committed a serious crime and the suspicion had an evidential basis. In that regard, reference was made to the evidence on which the investigator had relied in his application for the applicant's arrest (see paragraph 26 above). It was further stated that the applicant might abscond, obstruct justice, influence witnesses "[by] using the funds of certain political forces", or continue committing crimes, without specific details in that regard being given. The court took into account the applicant's age, state of health and "lack of close social links", without further details in that regard being given.

31. On 10 December 2013 the applicant's lawyer appealed, arguing insufficient grounds for the applicant's continued detention and, in particular, that there had been no evidence of guilt.

32. On 17 December 2013 the Kyiv Court of Appeal upheld the decision of 6 December 2013, finding no procedural irregularities.

33. On 24 January 2014, relying on the Amnesty Law of 19 December 2013, as amended on 16 January 2014, the Shevchenkivskyy District Court discontinued the criminal proceedings in so far as they concerned the applicant, and released him from detention. No copy of that decision was provided to the Court.

34. On 11 April 2014 the Shevchenkivskyy District Court, on application from the prosecutor's office, set aside the decision of 24 January 2014 in light of "newly discovered circumstances"; pointing out that the relevant proceedings had been discontinued on 28 February 2014 by the prosecutor's office on the grounds that no sufficient evidence of guilt had been found and the means of collecting evidence had been exhausted. No appeal was lodged and the decision became final.

3. Search and seizure

35. On 5 December 2013 the police searched the applicant's car and seized a number of his personal belongings. The next day the police searched his house and, in the course of that search, they also seized a number of objects as well as cash. The searches were conducted on the basis of warrants issued on the same day by the Shevchenkivskyy District Court.

36. In its decision of 24 January 2014 terminating the criminal proceedings (see paragraph 33 above), the District Court also ordered that all objects seized be returned. According to the documents submitted by the Government, from 18 December 2013 to 20 March 2014 various objects, including the applicant's car and money, were returned. According to the applicant, certain of the seized objects, namely a car antenna, a camera, two memory chips, a set of handheld transceivers, three flashlights, a set of household maintenance tools, two knives, a mask, a hat and gloves for skiing, and two bottles of perfume were never returned.

4. Disciplinary proceedings against the judge who dealt with the applicant's case

37. In December 2014 the applicant complained to the Temporary Special Commission (TSC) established under the Restoration of Trust in the Judiciary Act of 8 April 2014 (see *Shmorgunov and Others*, cited above, §§ 220-29), alleging that Judge T. of the Shevchenkivskyy District Court (see paragraph 30 above) had acted arbitrarily and unlawfully when examining the investigator's application for his detention.

38. The TSC recommended to the High Council of Justice (HCJ, see *Shmorgunov and Others*, cited above, §§ 226 and 227) that the judge be dismissed for irregularities in the course of examination of the applicant's case, which the TSC considered amounted to a breach of the judicial oath.

39. On 3 December 2015 the HCJ agreed with the TSC's findings that certain irregularities had occurred but did not agree that they had amounted

to a breach of oath meriting dismissal. It remitted the case to the Qualification Commission of Judges for a decision as to whether any other disciplinary sanction had to be imposed. No information on any further proceedings was provided to the Court.

40. The HCJ found it established that the case file contained no evidence that the investigator had sent summonses to the applicant's address and that the case file showed, on the contrary, that the authorities had tried to contact the applicant at a wrong address, where he did not in fact live. The HCJ pointed out that the Court, in its case-law, criticised the use of formulaic reasoning in pre-trial detention decisions. However, in the applicant's case the detention order had been based on general statements about the risks the applicant represented and the judge had failed to explain why a non-custodial preventive measure would have been insufficient.

B. Events which concern the second applicant, Mr V. Smaliy (application no. 43860/14)

1. The applicant's arrest, detention and alleged ill-treatment by the police

41. In December 2013 the applicant, Mr V. Smaliy, a lawyer practising in Kyiv, represented Mr A. Dzyndzya, one of the organisers of the Automaidan movement, in a criminal case relating to the Automaidan rallies.

42. On 6 December 2013 the police started criminal proceedings against the applicant, suspecting him of having verbally abused and attempting to hit a judge of the Shevchenkivskyy District Court during a hearing concerning his client's detention. At the time, the applicant was not informed of those proceedings.

43. On 9 December 2013 the applicant went to the Kyiv Central Police Department for the Fight against Organised Crime as a representative of another client who was there. At about 3 p.m. on that date the police arrested the applicant and allegedly beat him. He allegedly received numerous blows to the head, face and body and the police also stepped on his fingers several times.

44. The police searched the applicant and seized the documents in his possession and a mobile telephone (see paragraph 67 below).

45. According to the applicant, he was then handcuffed and thrown onto the floor of a police van, where he was forced to remain lying with his face down while he was taken to the Kyiv ITT. Because of this, he started to experience shortness of breath.

46. At about 6.40 p.m. the applicant arrived at the Kyiv ITT, where he was medically examined and found to have numerous haematomas on the trunk of his body, head, limbs and fingers.

47. An ambulance was called for the applicant, and at about 8 p.m. he was taken to Kyiv Emergency Hospital, where doctors found that he had dystonia and numerous haematomas on the trunk of his body, head and limbs.

48. On his return to the ITT, at about 11.55 p.m. a lawyer was allowed to meet with the applicant.

49. On 10 December 2013 the lawyer lodged a *habeas corpus* application with the Dniprovskyy District Court in Kyiv, seeking the applicant's release and complaining that he had been arrested and detained unlawfully, that he had been ill-treated by the police in the course of his arrest, and pointing out that the Code of Criminal Procedure required, in case of such complaints of ill-treatment, that the court order a forensic medical examination and investigation in that regard.

50. On the same day the Dniprovskyy District Court, after a hearing in the applicant's presence, rejected the application for release, stating that the investigator and the prosecutor had disproven his arguments about the unlawfulness of his arrest and detention. No further reasons were given for that finding. The judge also ordered the senior investigator from the Dniprovskyy District police department to ensure that the applicant had a forensic medical examination, and instructed the Kyiv prosecutor to examine his complaint of ill-treatment by the police.

51. On 11 December 2013 the District Court ordered the applicant's continued detention on remand on grounds that he was suspected of a serious crime, that the suspicion had an evidential basis and that there was a danger of him absconding, influencing witnesses or obstructing the investigation. That decision was upheld on appeal and on 6 February 2014 the District Court extended the applicant's detention on similar grounds.

52. On the same day the applicant underwent a forensic medical examination, apparently at the Kyiv SIZO (see paragraph 72 below). The medical expert noted that the applicant had various haematomas on the trunk of his body, head, limbs and fingers which had been caused by "blunt objects" around one to three days before his examination. Those injuries were classified as minor.

2. Termination of the criminal proceedings against the applicant

53. On 23 February 2014 the Dniprovskyy District Court, following an application from the prosecutor's office, released the applicant on the grounds that the acts of which he was suspected had been decriminalised by the Amnesty Law of 21 February 2014.

54. On 24 February 2014 the Ukrainian Parliament adopted a resolution which, *inter alia*, deplored the repressive policy of persecution, including arrests of peaceful protesters and ordered the closure of criminal cases against several specifically named persons – including Mr V. Smaliy – while declaring them "political prisoners". On 27 February 2014 the

resolution was replaced by law no. 792-VII which, invoking similar considerations in its preamble, also identified Mr V. Smaliy as a political prisoner and applied "full individual amnesty" to him.

55. On 26 February 2014 the criminal proceedings against the applicant were discontinued for absence of the elements of a crime in his actions, with reference to the Resolution of 24 February 2014.

56. On 26 November 2016 the applicant submitted applications to the Dniprovskyy District Court and the Dniprovskyy police department in Kyiv for compensation for pecuniary and non-pecuniary damage resulting from his allegedly unlawful prosecution and detention. He provided no information about the outcome of those applications to the Court.

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

57. On 27 December 2013 the Kyiv prosecutor's office initiated criminal proceedings into the applicant's alleged ill-treatment on 9 December 2013.[2]

58. According to the information note issued by the Kyiv prosecutor's office on 25 April 2014, the investigators obtained all the necessary medical documents concerning the applicant's injuries and questioned him and five police officers as witnesses on unspecified dates.

59. On 8 August 2014 the case was transferred to the Kyiv Oblast prosecutor's office for further investigation.

60. In February 2015 the investigators identified several police officers from the "Sokil" special unit and the Kyiv Central Police Department for the Fight against Organised Crime who had arrested the applicant on 9 December 2013. Some of them were questioned and denied having ill-treated him.

61. On 17 February 2015 a notification of suspicion was issued in respect of three police officers from the Sokil unit, mainly in relation to charges of abuse of power and knowingly falsely reporting a crime as regards the applicant (Article 365 § 2, Article 383 § 2 and Article 384 § 2 of CC). No copy of that document was submitted to the Court.

62. By decisions of 18 February and 2 and 19 March 2015 the Pecherskyy District Court of Kyiv and the Kyiv Court of Appeal refused applications for the arrest of those suspects. No copy of those decisions was provided to the Court.

63. According to a letter from the PGO of 9 February 2016 sent to the office of the Government's Agent, the investigation was suspended on several occasions, as the suspects could not be found from April 2015 onwards.

64. In October 2016 the applicant lodged complaints with the Pecherskyy District Court and the PGO, challenging the inactivity of the Kyiv Oblast prosecutor's office. No reply was given to his complaints.

[2] Domestic case file no. 42013110000001132.

65. The parties have not informed the Court of any further developments in that regard.

66. According to the information published on the PGO's dedicated website, on 1 April 2017 the proceedings against three unidentified suspects in the applicant's case were terminated for lack of evidence of their guilt. The investigations concerning the applicant's alleged ill-treatment were being pursued further.

4. Search and seizure of the applicant's belongings

67. In the course of the applicant's arrest on 9 December 2013 the police searched him and seized his mobile telephone which, according to the applicant, contained confidential information relating to his clients' cases. The police also seized his car keys and professional documents: notes, a contract for legal services, advocate's licence and certain others. The seized items were listed in the arrest report signed by the arresting officer and two attesting witnesses.

68. On 14 December 2013 the investigator returned the seized items other than the telephone to the applicant's lawyer.

69. On 16 and 23 December 2013 the applicant lodged applications with the investigator and the Dniprovskyy District Court, seeking the return of the mobile telephone and stating that it contained confidential information relating to his clients' cases. The investigator refused to return the telephone, stating that it had to be examined in the course of the criminal proceedings against the applicant, and on 6 February 2014 the Dniprovskyy District Court refused to examine the application for the reason that the investigation had been terminated on 3 February 2014 and the case had been referred to the trial court which would be competent to examine such complaints at the preparatory hearing at the beginning of the trial.

70. According to the applicant, the telephone was not returned to him.

71. According to the Government, the investigation into the applicant's ill-treatment by the police (see paragraph 57 above) also concerned the applicant's complaints of the unlawful search, seizure and retention of his belongings.

5. Conditions of the applicant's detention

72. On 11 December 2013 the applicant was taken to the Kyiv SIZO, where he was examined by a paramedic who noted that he had dystonia, contusion to the abdomen, and numerous haematomas on the trunk of his body, head and limbs.

73. From 12 December 2013 to 19 February 2014 the applicant was examined by doctors on four occasions. On two of those occasions he was found not to be suffering from any acute pathology. On two others it was noted that he had acute chronic obstructive pulmonary disease, chronic

pancreatitis, biliary dyskinesia and intercostal neuralgia. The applicant was given medication. According to the relevant medical records, subsequently the applicant's state of health improved and was considered satisfactory.

74. During his detention in the Kyiv SIZO the applicant was placed consecutively in three cells, measuring between 8.6 and 9 square metres. He did not provide information as to how many prisoners were held with him and during which periods. The applicant submitted that the conditions in the cell were unhygienic and that it was subject to video surveillance. He complained in that respect to the prison authorities but they rejected his allegations.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

75. Summaries of and extracts from the domestic legal framework and international reports of relevance for the examination of all applications lodged in relation to the Maidan protests and their aftermath, including the present two applications, are to be found in *Shmorgunov and Others* (cited above, §§ 195-269). The elements of the relevant framework most pertinent specifically to the present case are set out below. Three additional references of relevance to the present case are added below.

76. Article 208 of the Code of Criminal Procedure of 2012 authorises arrest without a court order in certain circumstances and provides, in § 3, that the arresting officer may search the arrested person observing the requirements of Article 223 § 7 (which requires the presence of two attesting witnesses) and of Article 236 (which notably requires, in its § 5, that a personal search be conducted by the person of the same gender). Article 208 § 5 also provides that the arrest report must list, in particular, the results of the personal search.

77. Section 23(2) of the Bar Act of 2012 requires the presence of a representative of the regional Bar Council during searches of licenced advocates' homes and premises used by advocates for their professional activities.

78. The relevant extracts from the International Advisory Panel's report read as follows (emphasis added by the panel, references omitted):

> "*5. Investigations by the Kyiv City Prosecutors Office (EuroMaidan investigations)*
>
> **...**
>
> **(b) The AutoMaidan proceedings**
>
> 321. The PGO informed the Panel that approximately 500 complaints of, inter alia, false prosecutions, illegal detention and ill-treatment had been registered and were being investigated. The suspects were law enforcement officers and judges.
>
> 322. On 22 October 2014 members of AutoMaidan protested in front of the PGO's office about the lack of progress in this investigation. The only substantial information

from the PGO in relation to this investigation was received by the Panel in December 2014.

323. While one [Ministry of the Interior] official had been notified of suspicion in September 2014, approximately 30 traffic police and a Berkut officer were notified of suspicion of AutoMaidan-related crimes in October and November 2014. One of the notices of suspicion served on a traffic police officer was dated 7 March 2014.

324. The PGO announced on 29 January 2015 that a number of indictments had been sent to court. At a press conference of 2 February 2014, Mr Yarema confirmed that two judges of the Pecherskyi District Court had been notified of suspicion as regards their annulment of the driving licences of certain AutoMaidan activists.

..."

THE LAW

I. JOINDER OF THE APPLICATIONS

79. Having regard to the common factual and legal background of the two applications under examination, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

80. The applicants complained that they had been ill-treated by the police at the time of their arrest and that no effective investigation had been conducted in that respect, contrary to 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. Mr V. Kadura's complaints (application no. 42753/14)

1. Admissibility

(a) The parties' submissions

81. The Government contended that the applicant had failed to appeal against the decisions of the Kyiv prosecutor's office of 8 and 20 July 2014 refusing to institute a criminal investigation into his complaints of ill-treatment by the police during his arrest of 5 December 2013. Relying on the Court's decision in *Nagorskiy v. Ukraine* ((dec.), no. 37794/14, §§ 45-46, 12 January 2016), the Government stated that that procedural avenue was an effective domestic remedy for the purposes of Article 35 § 1 of the Convention.

82. In the Government's view, the applicant had also failed to provide any details of his alleged ill-treatment in his submissions before the

domestic authorities and the Court, and the medical reports on which he had relied in that regard did not contain sufficient information to prove his allegations. Also, he had repeatedly refused to undergo a forensic medical examination ordered by the authorities in order to determine the nature and the seriousness of his injuries. According to the Government, the applicant had raised his complaint of ill-treatment by the police for the first time after a lengthy delay of seven months following the alleged events, which had prevented the authorities from carrying out an effective investigation.

83. The applicant contended that his lawyer had raised his complaint of ill-treatment – which had been supported by medical evidence – the day after the incident (see paragraph 15 above), and that therefore the circumstances of his case were fundamentally different from those in *Nagorskiy*, cited above. He stated that he had been unaware of the forensic medical examination ordered by the investigator, and consequently he could not undergo or refuse to undergo it (see paragraphs 11-13 above).

84. The applicant had lodged his application with the Court on 3 June 2014 in order not to miss the six-month time-limit, in accordance with Article 35 § 1 of the Convention, as at the time he had believed that his alleged ill-treatment was the subject of one of the ongoing investigations into the abuses against the Maidan protesters but that the investigation in question would not be effective.

85. The applicant had not been informed of the decisions of the Kyiv prosecutor's office of 8 and 20 July 2014 dismissing his complaints of ill-treatment by the police, and consequently he had not been able to appeal against them. Once he had learned of those decisions from the Government's observations of 18 July 2016, he had lodged a new complaint with the PGO in which he had raised his complaints of ill-treatment by the police (see paragraphs 20 and 21 above).

(b) The Court's assessment

86. As regards the Government's objection that the applicant had failed to raise and pursue his complaint at domestic level, the Court notes that the applicant provided a copy of his lawyer's appeal of 10 December 2013, which contained such a complaint, worded in a sufficiently clear and specific manner and supported by relevant medical evidence (see paragraphs 9 and 16 above). The Government did not contest the authenticity of that document or the fact that it had been submitted to the Court of Appeal. Therefore the authorities were required to conduct an effective official investigation into that matter (see for a comparable situation, see *Hajnal v. Serbia*, no. 36937/06, § 99, 19 June 2012). It is thus unnecessary to decide whether the applicant's lawyer raised the complaint of ill-treatment already at the hearing on 6 December 2013, as claimed by him.

87. As to the applicant's alleged refusal to undergo a forensic examination ordered by the investigator, the Court notes that the Government's objection in that regard has not been supported by any document attesting that the applicant, who was in police custody at that time, had indeed been brought for such an examination or that his alleged refusal had been witnessed by medical staff of other persons outside the police. In any event, the authorities had at their disposal the medical certificate of 5 December 2013 recording the applicant's injuries and it has not been alleged that this document was unreliable or insufficient for purposes of the investigation.

88. The Court further notes that the Government did not contest the applicant's statements in which he said that he had reiterated his allegations of ill-treatment by the police in his complaints of 20 June and 14 July 2014 to the Kyiv prosecutor's office (see paragraph 20 above).

89. Finally, the Government provided no evidence demonstrating that the applicant had been duly informed of the decisions of the Kyiv prosecutor's office of 8 and 20 July 2014 dismissing his complaints of ill-treatment by the police; if he had been notified of those decisions, he would have been able to lodge an appeal against them in due time (see paragraph 20 above). Nor did the Government provide copies of those decisions. Even though the applicant eventually learned of the existence of those decisions from the Government's observations of 18 July 2016, the Court considers that in raising his arguable complaints of ill-treatment by the police before the authorities on several occasions in December 2013 and in April, June and July 2014, he complied with the first aspect of the duty of diligence in cases concerning an investigation into ill-treatment – that is, the obligation to apply promptly to the domestic authorities (see, *inter alia*, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 263-65, ECHR 2014 (extracts)).

90. Having regard to the fact that no investigation was conducted into the applicant's allegations of ill-treatment between 2013 and 2016, it would be unjustified to require the applicant to lodge an appeal against the decisions of 8 and 20 July 2014 more than two years after their adoption. In this context, the Court also notes that subsequently the applicant lodged a new complaint with the PGO in which he raised his original complaints of ill-treatment by the police, but he was given no information concerning any decision taken as regards that complaint (see paragraph 21 above).

91. In the light of the foregoing, the Court considers that the applicant duly raised and pursued his complaints of ill-treatment at the domestic level and cannot be reproached for not taking any additional action.

92. Accordingly, the Court rejects the Government's objections as to the admissibility of these complaints. Regard being had to all the information before it, the Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and

are not inadmissible on any other grounds. They should therefore be declared admissible.

2. Merits

93. The relevant general principles relating to the procedural and substantive limbs of Article 3 of the Convention are set out in *Shmorgunov and Others* (cited above, §§ 327-36 and 359-63).

94. Noting that the applicant's complaint of ill-treatment by the police on 5 December 2013 is supported by medical evidence and his detailed account of the relevant events (see paragraphs 5 to 9 above), the Court considers that his complaint was arguable and triggered the authorities' duty under Article 3 to investigate.

95. The Court observes that although he and his lawyer raised his complaint of ill-treatment before different authorities, no meaningful official investigation into that incident was conducted. Notably, the appellate court completely disregarded the applicant's lawyer's submissions and his complaint that the investigating judge had failed to comply with his duty to ensure an investigation of allegations of ill-treatment (see paragraphs 15 and 16 above). Also, there is no information demonstrating that the applicant's subsequent complaints of ill-treatment, which he raised in June and July 2014 and December 2016 (see paragraphs 20 and 21 above), were adequately examined by the prosecutors.

96. The Court finds that, thus far, the authorities have failed to carry out an effective official investigation into the applicant's complaint of ill-treatment.

97. The Government provided no plausible explanation for the injuries recorded after the applicant's arrest. Having regard to all the evidence before it, the parties' submissions and the principles governing the distribution of the burden of proof in respect of injuries sustained by persons in custody (see the case-law cited in *Shmorgunov and Others*, cited above, §§ 360-62), the Court accepts the applicant's version of the relevant events and finds that he was subjected to ill-treatment by the police, in breach of Article 3 of the Convention.

98. Accordingly, there has been a violation of Article 3 of the Convention in its procedural and substantive aspects in respect of Mr V. Kadura (application no. 42753/14).

B. Mr V. Smaliy's complaints (application no. 43860/14)

1. Admissibility

(a) The parties' submissions

99. Relying on *McCaughey and Others v. the United Kingdom* (no. 43098/09, §§ 121 and 128, ECHR 2013), the Government argued that

the applicant's complaint of ill-treatment by the police was premature, given that an investigation in that regard was still ongoing.

100. The applicant stated that the investigation had failed to establish thoroughly all the relevant circumstances and was ineffective. In particular, the principal investigative actions – notably, his forensic medical examination, the official launch of the investigation, the transfer of the investigation to the Kyiv prosecutor's office and the issuing of the indictment – had been carried out after serious delays, which had resulted in the suspects being able to avoid prosecution.

101. The applicant also stated that he had not been promptly informed of the principal investigative actions and had found out about them from the Government's observations of 17 June 2016.

(b) The Court's assessment

102. The Court notes that it has already dismissed objections by the Government about similar complaints allegedly being premature in *Shmorgunov and Others* (cited above, §§ 301 and 302). The Court considers that those findings are equally relevant for Mr V. Smaliy's complaints, having regard to the fact that the investigations into his alleged ill-treatment by the police have been ongoing for more than six years and have so far not led to the establishment of the relevant circumstances (see paragraphs 57-66 above).

103. The Court further considers that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They should therefore be declared admissible.

2. Merits

(a) The parties' submissions

104. The Government stated that the applicant's injuries had been duly recorded and assessed, he and witnesses to the incident had been questioned, those allegedly responsible had been identified, a notification of suspicion had been issued, and the suspects were on the wanted list. The Government also argued that the applicant had raised no complaints at domestic level regarding the ineffectiveness of the investigation. The Government did not comment on the merits of the complaint under the substantive limb of Article 3.

105. The applicant disagreed, relying on his submissions as to admissibility (see paragraphs 100 and 101 above).

(b) The Court's assessment

106. The relevant general principles relating to the procedural and substantive limbs of Article 3 of the Convention are set out in *Shmorgunov and Others* (cited above, §§ 327-36 and 359-63).

107. The Court notes that the applicant duly raised his complaint of ill-treatment by the police at domestic level the day after the incident (see paragraph 49 above) and that that complaint was arguable. In particular, it was supported by his detailed account of the facts and by relevant medical information (see paragraphs 43-47 above).

108. It is true that a number of important investigative actions – including the applicant's forensic medical examination, his questioning, and the questioning of several witnesses – were conducted within a relatively short period of time after the incident. Eventually, the investigators identified several police officers whom they suspected of having ill-treated the applicant.

109. However, subsequently, the investigations were blocked because the authorities could not secure those suspects' availability for the relevant proceedings. In this connection, the Court notes that in February and March 2015 the investigators asked the Pecherskyy District Court to authorise the suspects' arrest, but their applications were refused. The reasons for the refusal are unclear (see paragraph 62 above). Nor was any information submitted to the Court demonstrating that the authorities had taken any other measures in order to compel those suspects to cooperate with the investigators.

110. On the whole, because of the scarce and insufficiently detailed material regarding the investigations in question with which the Court was provided, it cannot comprehensively assess whether from March 2015 onwards the authorities took any meaningful action in order to find the suspects and generally ensure that all the circumstances pertaining to the applicant's alleged ill-treatment were duly established.

111. Furthermore, the applicant received no reply to his complaints regarding the investigations and the only publicly available information about the proceedings in question which he could obtain seems to have been the indication that the proceedings were ongoing, posted on the PGO's dedicated website (see paragraphs 64-66 above).

112. In these circumstances, the Government have not convincingly shown that the authorities' failure to establish all the circumstances pertaining to the applicant's alleged ill-treatment, more than six years after the events, was due to objective difficulties that the authorities attempted but realistically could not overcome. Thus, it finds that, thus far, the authorities have failed to carry out an effective official investigation into that matter.

113. As to the complaint under the substantive limb of Article 3 of the Convention, it has not been contested that the applicant sustained significant

injuries when he was arrested on 9 December 2013. Nor has it been suggested by the Government that those injuries were inflicted by anyone other than the law-enforcement officials who arrested him, or that the applicant's actions justified the use of considerable force against him. The Court relies in this regard on the relevant medical evidence and the documents in the investigation file (see paragraphs 52 and, as regards the investigation in question, 57-61 above). Considering the lack of explanation for the applicant's injuries and their extent, the Court finds that the applicant was subjected to ill-treatment.

114. In the light of the foregoing, the Court finds that there has been a violation of Article 3 of the Convention in its procedural and substantive aspects in respect of Mr V. Smaliy (application no. 43860/14).

III. ALLEGED VIOLATIONS OF ARTICLES 5 AND 18 OF THE CONVENTION

115. The applicants complained that they had been detained in violation of Article 5 §§ 1 and 3 to counteract the Automaidan protests arbitrarily, despite the absence of a reasonable suspicion and reasons justifying detention. Mr V. Smaliy also alleged that the authorities had used arrest and detention to hinder his professional activity, particularly as regards his providing legal assistance to those in political opposition to the authorities at the material time. He also invoked Article 18 of the Convention in that respect.

116. Mr V. Kadura further complained under Article 5 § 5 that he had had no effective and enforceable right to compensation for the violations of his right to liberty.

117. The relevant parts of Article 5 of the Convention and Article 18 read as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within

a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

...

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."

Article 18

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. Admissibility

1. The parties' submissions

118. The Government stated that Mr V. Kadura should have challenged the court decision of 11 April 2014 (see paragraph 34 above), had he wished to have a decision terminating the criminal proceedings against him on "exonerating" grounds and to qualify for compensation under the Compensation Act of 1994 or the Civil Code of 2003 (see *Shmorgunov and Others*, cited above, § 445, and *Dubovtsev and Others v. Ukraine*, no. 21429/14 and 9 other applications, §§ 23-25 and 48, 21 January 2021, not final). As to Mr V. Smaliy, since he had been recognised as a political prisoner and the criminal proceedings against him had been discontinued on those grounds (see paragraph 55 above), it was open to him to seek compensation under the Compensation Act.

119. The applicants replied that there had been no sufficient acknowledgement of the alleged unlawfulness of their detention at the domestic level and the proceedings under the Compensation Act would not have entailed an examination of the lawfulness of that detention.

2. The Court's assessment

(a) Mr V. Kadura

120. Concerning Mr V. Kadura's case, the Court observes that the procedure invoked by the Government would have been merely a preliminary step in using the remedy, a claim for damages under the Compensation Act or the Civil Code, which the Government also invoked in *Dubovtsev and Others* (cited above, § 53). For the reasons set out in the latter judgment, the Court found that some of the applicants in that case could not be reproached for not having had recourse to those remedies (ibid., § 71). The Court therefore considers that, in the particular circumstances of Mr V. Kadura's case, his complaints, cannot either be rejected for failure to use those remedies.

121. The Court therefore rejects the Government's non-exhaustion objection as far as it concerns Mr V. Kadura.

122. At the same time, the Court observes that Mr Kadura failed to present sufficiently strong arguments or evidence demonstrating that, at the time his detention was ordered, there was insufficient evidence to support a reasonable suspicion against him (see paragraphs 23-28 and 30-32 above). Accordingly, Mr V. Kadura's complaint under Article 5 § 1 of the Convention is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

123. By contrast, Mr V. Kadura's complaints under Article 5 §§ 3 and 5 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They should therefore be declared admissible.

(b) Mr V. Smaliy

124. Mr V. Smaliy had been recognised a political prisoner by the Ukrainian Parliament (see paragraph 54 above) and the criminal proceedings against him were discontinued on those grounds. Those decisions constitute acknowledgement that his detention was not justified under Article 5 but was rather, according to the Parliament, politically motivated. The same issues are at the heart of the applicant's complaints under Articles 5 and 18 of the Convention. There is no indication of any barrier for the applicant successfully seeking monetary redress under the Compensation Act.

125. Accordingly, this part of Mr V. Smaliy's complaints under Articles 5 §§ 1 and 3 and 18 concerning his detention must be declared inadmissible and rejected, pursuant to Article 35 § 4 of the Convention for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention.

B. Merits

1. Article 5 § 3 of the Convention

126. The Court has frequently found violations of Article 5 § 3 of the Convention in cases where courts based their pre-trial detention decisions on stereotyped formulae without addressing specific facts or considering alternative preventive measures (see, for example, *Kharchenko v. Ukraine*, no. 40107/02, §§ 80-81, 10 February 2011).

127. While it is true that in the present case the domestic courts supported their finding that there was a reasonable suspicion against Mr Kadura with reference to specific facts and provided reasons in that regard, the Court considers that, when assessing the risks of absconding and obstruction of justice justifying detention, they limited themselves to

general formulae and failed to demonstrate that they took the specific circumstances of the applicant's case into account (see paragraphs 30 and 32 above).

128. The domestic courts took the investigating authority's allegations as to those risks at face value without engaging in their own effective assessment. In particular, they failed to comment on the important question of whether the applicant, as the investigator alleged (see paragraph 27 above), had failed to appear when summoned.

129. The applicant had alleged that he, in fact, had never been contacted by the authorities at the address where he had actually lived (see paragraphs 29 and 31 above). His allegations in that respect merited comment as they were relevant to the issue at stake and appeared not to have been entirely baseless: a subsequent inquiry found that the authorities had apparently searched for the applicant at a wrong address and no evidence to support the investigator's account of his summons having been left unanswered was discovered in the file (see paragraph 40 above).

130. Such uncritical acceptance of the investigator's allegations concerning the risk of absconding must be seen in the context of the events in issue, discussed in *Shmorgunov and Others* (cited above, §§ 463-77), and in particular the allegations of wide-spread unjustified use of detention against those associated with the Maidan protests, recorded in the International Advisory Panel's (see paragraph 78 above) and other relevant reports (see *Shmorgunov and Others*, cited above, §§ 233, 236, 250 and 257).

131. The courts, therefore, failed to give relevant and sufficient reasons for the applicant's continued detention after the hearing of 6 December 2013 (see paragraph 30 above).

132. It follows that there has been a violation of Article 5 § 3 of the Convention in respect of Mr V. Kadura (application no. 42753/14).

2. Article 5 § 5 of the Convention

133. In the circumstances of the present case, having regard to the above finding of a violation and the Court's conclusion in respect of exhaustion of domestic remedies in paragraph 120 above, the Court finds that it is not necessary to decide whether there has been a violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION (APPLICATION NO. 43860/14 – MR V. SMALIY)

134. The applicant complained about his personal search and the seizure of his telephone and documents containing what he alleged to be confidential information relating to his clients' cases (see paragraph 44 above). He argued that this had constituted an arbitrary interference with his

private life within the meaning of Article 8 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to respect for his private ... life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

135. The Government argued that these complaints should be rejected for non-exhaustion of domestic remedies, relying on the same arguments as those put forward in the objection as to the admissibility of the applicant's complaint of ill-treatment by the police on 9 December 2013 (see paragraph 99 above). In particular, the Government argued that the applicant's complaints about the personal search and the seizure of his belongings were premature, given that the investigation in that regard was still ongoing.

136. The applicant stated that the relevant investigation was ineffective.

137. The Court reiterates its findings that the investigation in question was ineffective in so far as it concerned the applicant's ill-treatment by the police. In particular, the Court has found that after more than six years the relevant investigations have not led to the establishment of all the relevant circumstances (see paragraphs 108 to 112 above).

138. The Government informed the Court that the investigation into the alleged ill-treatment also covered the complaint in relation to Article 8 of the Convention (see paragraph 71 above). They have not, however, submitted any information capable of persuading the Court to reach a different conclusion concerning the effectiveness of that particular investigation in relation to the applicant's present complaints under Article 8 of the Convention (see paragraph 114 above). Accordingly, the Court rejects the Government's objection as to non-exhaustion of domestic remedies.

139. The Court further considers that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. These complaints should therefore be declared admissible.

B. Merits

140. The applicant's argument that the personal search and seizure of his belongings constituted an interference with his right to respect for his private life within the meaning of Article 8 § 1 of the Convention was not

disputed by the Government, and the Court finds no reason to hold otherwise. The question remains as to whether that interference was justified under paragraph 2 of that provision.

141. In that connection, the Court reiterates that, in order to comply with Article 8 § 2, an interference must, among other things, be "in accordance with the law"; that is, it should have some basis in domestic law and be compatible with the rule of law (see, among other authorities, *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 95, ECHR 2008, and *Belousov v. Ukraine*, no. 4494/07, § 104, 7 November 2013).

142. An encroachment on professional secrecy of lawyers may have repercussions for the proper administration of justice and hence for the rights guaranteed by Article 6 of the Convention (see *Golovan v. Ukraine*, no. 41716/06, § 62, 5 July 2012, with further references). The authorities must have a compelling reason for interfering with the secrecy of a lawyer's communications or with his working papers (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 632, 25 July 2013).

143. At the time of his arrest Mr. V. Smaliy was at the police station as a lawyer, representing one of his clients. He had not been invited there in relation to criminal investigation concerning himself, a criminal investigation of which he had not been informed (see paragraphs 42 and 43 above). The authorities, therefore, had to be aware that the material in the applicant's possession could have been subject to legal professional privilege.

144. In performing the search and the seizure of the documents and the telephone incidental to the arrest the authorities gave no consideration to the special status of the seized material as possibly containing privileged information. No reason was cited at any point for the decision to conduct the seizure and there was no indication that there were any safeguards in place to ensure proper handling of the information potentially subject to the lawyer's professional privilege (compare *Laurent v. France*, no. 28798/13, §§ 44 and 47, 24 May 2018).

145. No element of the domestic legal system or practice providing any safeguards in that respect was cited in the domestic proceedings or in the proceedings before the Court. The relevant provision of the 2012 Bar Act (see paragraph 77 above), had no application in the case of the personal search incidental to the arrest as it concerned neither the applicant's home nor his law office.

146. Accordingly, it has not been shown that there were any safeguards in place against the authorities accessing, improperly and arbitrarily, information subject to legal professional privilege. The domestic investigation in that respect is still pending and was, therefore, unable to dispel the difficulties at the heart of the applicant's Article 8 complaint. On the basis of the information available to it the Court must conclude that it

has not been shown that the interference with the applicant's rights was "in accordance with the law".

147. There has, accordingly, been a violation of Article 8 of the Convention in respect of Mr V. Smaliy on account of his search and the seizure of his telephone and documents.

V. THE APPLICANTS' OTHER COMPLAINTS

A. Other inadmissible complaints

148. Mr V. Smaliy also complained: (i) under Articles 3 and 13 of the Convention, that he had not been provided with adequate medical assistance while in detention, that the conditions of his detention in the Kyiv SIZO between 11 December 2013 and 23 February 2014 had been inhuman and degrading, and that there had been no effective remedy in that regard; (ii) under Articles 8 and 34, that during his detention the Kyiv SIZO administration had blocked his correspondence with his lawyer, the domestic authorities and the Court; and (iii) under Article 13 that he had no effective remedy in respect of his complaints under Article 5 §§ 1 and 3 of the Convention.

149. Having regard to all the material in its possession, and in so far as these complaints are within its competence, the Court finds that they do not disclose any appearance of a violation of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 (a) as manifestly ill-founded, and must be rejected pursuant to Article 35 § 4 of the Convention.

B. Complaints not requiring a separate examination

150. Mr V. Kadura also complained under Article 1 of Protocol No. 1 that his belongings had been arbitrarily seized and retained by the police and some items had not been returned to him.

151. Mr V. Smaliy further complained: (i) under Article 8 of the Convention alleging that, while he had been detained in the Kyiv SIZO, the sanitary facilities had not been sufficiently separated from the rest of the SIZO cells, and there had been video surveillance in the cells; and (ii) under Article 13 on account of the alleged lack of an effective and accessible remedy under domestic law for his complaints of police ill-treatment under Article 3.

152. Having regard to the facts of the case, the submissions of the parties, and its findings under various Articles of the Convention above, the Court considers that it has examined the main legal questions raised in the present case, and that there is no need to give a separate ruling on the admissibility and merits of the other complaints mentioned in the preceding

paragraphs (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

VI. CONCLUDING REMARKS

153. The Court observes, in conclusion, that in this case it has found violations of Articles 3, 5 and 8 of the Convention on account of the applicants' ill-treatment, the first applicant's detention and the search and seizure concerning the second applicant, which occurred as a result of the authorities' response to the AutoMaidan protests. That response has given rise to multiple violations of the Convention as can be seen from the judgments in *Shmorgunov and Others* (cited above, § 527), *Lutsenko and Verbytskyy v. Ukraine* (nos. 12482/14 and 39800/14, § 121, 21 January 2021, not final), *Dubovtsev and Others* (cited above, § 83), and *Vorontsov and Others v. Ukraine* (nos. 58925/14 and 4 others, § 51, 21 January 2021, not final).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

154. 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

155. Mr V. Kadura and Mr V. Smaliy claimed 100,000 euros (EUR) each as regards non-pecuniary damage.

156. The Government contested Mr V. Smaliy's claim, mainly arguing that it was excessive.

157. Judging on an equitable basis, the Court awards the applicants EUR 13,200 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

158. The applicants also claimed various sums for the costs and expenses incurred before the domestic courts and/or for those incurred before the Court, which included postal expenses and legal costs. In support of their claims, they submitted copies of contracts with lawyers and related bills and/or copies of postal receipts.

159. In particular, according to those documents, Mr V. Kadura had to pay EUR 9,600 to his lawyer, Mr M. Tarakhkalo, for the preparation of his submissions to the Court, the sum which was based on an hourly rate of

EUR 150. Mr V. Kadura requested that this sum be paid directly into the lawyer's bank account.

160. Mr V. Smaliy claimed EUR 23,267, the amount of expenses which he had incurred in the domestic proceedings. That sum included EUR 13,967 which he had allegedly paid to the lawyer who had represented him in the domestic criminal proceedings, and EUR 9,300 which he had undertaken to pay to that lawyer in the event that he was acquitted or the criminal proceedings were terminated on exonerating grounds. The applicant concerned also claimed EUR 6,900 which he had undertaken to pay to his lawyer in the proceedings before the Court, Ms O. Preobrazhenskaya, which was a sum based on an hourly rate of EUR 150, and which was to be paid directly into that lawyer's bank account.

161. The Government contested Mr V. Smaliy's claims for costs and expenses, stating that they had not been duly substantiated, and that those which concerned costs and expenses incurred in the domestic proceedings could not be awarded in the proceedings before the Court and were excessive.

162. The Court reiterates that, according to its established 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.

163. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects Mr Smaliy's claims in respect of costs incurred in the domestic proceedings, as he failed to submit relevant documents in support that claim.

The Court considers it reasonable to award EUR 3,500 to each of the applicants for the proceedings before the Court, plus any tax that may be chargeable to the applicants on those sums, to be paid directly into the bank accounts indicated by Mr M. Tarakhkalo and Ms O. Preobrazhenskaya respectively.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the following complaints admissible:

(a) the applicants' complaints under Article 3 of the Convention about their ill-treatment by the police and the lack of an effective investigation in that regard;
(b) Mr V. Kadura's complaints under Article 5 §§ 3 and 5 of the Convention;
(c) Mr V. Smaliy's complaint under Article 8 of the Convention about his personal search and the seizure of his telephone and documents;

3. *Holds* that that there is no need to give a separate ruling on the admissibility and merits of Mr V. Kadura's complaint under Article 1 of Protocol No. 1 and of Mr V. Smaliy's complaints under Articles 8 of the Convention in respect of conditions of detention in the Kyiv SIZO, and under Article 13 of the Convention taken in conjunction with Articles 3, 5 §§ 1 and 3 and 8 of the Convention;

4. *Declares* the remaining complaints inadmissible.

5. *Holds* that there has been a violation of Article 3 of the Convention in its procedural and substantive aspects in respect of Mr V. Kadura;

6. *Holds* that there has been a violation of Article 3 of the Convention in its procedural and substantive aspects in respect of Mr V. Smaliy;

7. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of Mr V. Kadura;

8. *Holds* that there is no need to examine Mr V. Kadura's complaint under Article 5 § 5 of the Convention;

9. *Holds* that there has been a violation of Article 8 of the Convention in respect of Mr V. Smaliy on account of his search and the seizure of his telephone and documents;

10. *Holds*
(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 13,200 (thirteen thousand two hundred euros), plus any tax that may be chargeable, to each of the applicants in respect of non-pecuniary damage,
(ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, to Mr V. Kadura in respect of

costs and expenses incurred in the proceedings before the Court, to be paid directly into the bank account indicated by Mr M. Tarakhkalo;

(iii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, to Mr V. Smaliy in respect of costs and expenses incurred in the proceedings before the Court, to be paid directly into the bank account indicated by Ms O. Preobrazhenskaya;

(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;

11. *Dismisses*, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 21 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President