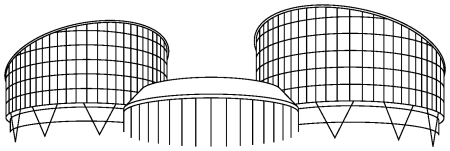

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF YEVGENIY PETRENKO v. UKRAINE

(Application no. 55749/08)

JUDGMENT

STRASBOURG

29 January 2015

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 Yevgeniy Petrenko v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 16 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 55749/08) 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 Yevgeniy Vitaliyovych Petrenko ("the applicant"), on 3 November 2008.

2. The applicant, who had been granted legal aid, was represented by Ms Y. Zayikina, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent at that time, Mr N. Kulchytskyy.

3. Relying on Article 3 of the Convention, the applicant alleged, in particular, that he had been ill-treated by police officers with the purpose of making him confess to a murder and that there had been no effective investigation in that regard. He further complained under Article 6 §§ 1 and 3 (c) of the Convention that that he had not been provided with access to a lawyer in the initial period of the criminal proceedings, that his right not to incriminate himself had been breached and that that had led to his unfair conviction.

4. On 13 November 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1988 and is currently serving a prison sentence.

6. On 28 February 2004 R., an adolescent who was born in 1987, disappeared. On 18 March 2004 he was found dead in a garden area of Cherkasy city. The body had numerous stab wounds, including in the neck and the chest.

A. Events between 18 and 20 March 2004

7. On 18 March 2004 the Sosnivskyy District Prosecutor's Office of Cherkasy ("the District Prosecutor's Office") opened a criminal investigation into the murder.

8. In the evening of the same day the police searched the applicant's home and seized seven knives, clothes and other items. Allegedly, on the same night the police took the applicant to the police station.

9. Between 11 a.m. and 1.40 p.m. on 19 March 2004 the applicant was questioned as a witness in the murder case. During the questioning, which was not attended by a lawyer, the applicant told that earlier in February 2004 he and R. had committed fraud in order to steal a mobile phone from one of the applicant's acquaintances. The applicant stated that he did not know who had killed R.

10. That day the Sosnivskyy District Police Department of Cherkasy instituted another set of criminal proceedings concerning the fraudulent theft of the mobile phone and questioned the applicant as a witness in that case. The applicant told the police how he and R. had stolen the mobile phone. The questioning was carried out without a lawyer but in the presence of the applicant's father.

11. At 6.20 p.m. the police investigator ordered the applicant's arrest on suspicion of the fraudulent theft of the mobile phone. Further to the applicant's request, the investigator allowed lawyer G. to act as the applicant's defence counsel in that set of criminal proceedings. The lawyer signed the arrest report. Then, in the presence of the lawyer, the applicant refused to give any further statements, claiming that he was tired; he asked the police to postpone the questioning until the following day.

12. Between 6.40 and 7.50 p.m. the applicant, in the absence of his lawyer, was questioned as a witness in the murder case. During the questioning the applicant gave further details concerning the theft of the mobile phone; he also said that on 28 February 2004 he had seen R. only at school.

13. Between 9 and 11 p.m. the police searched the home of D., another acquaintance of the applicant. They seized knives, clothes and other items.

14. At 11.15 p.m. the police investigator ordered D.'s arrest on suspicion of murder, noting in the report that there had been brown spots on D.'s jacket.

15. Later that night D. confessed that he had been present at the crime scene. He explained that on 28 February 2004 the applicant had asked him to attend a meeting with R. that day and to bring a knife with him; during the meeting the applicant and R. had started to fight; D. had assisted the applicant in knocking down R., who at a certain moment had attempted to run away; the applicant had then stabbed R. with the knife and cut his throat; D. had helped the applicant to hide the body.

16. The same night the applicant confessed to the murder. He was not assisted by a lawyer at that time. The applicant stated that on 28 February 2004 he had had a meeting with R. concerning the stolen mobile phone, which R. had allegedly sold; the applicant had asked D. to be present at that meeting and to bring a knife; as R. had started to fight, the applicant had taken the knife, cut R.'s throat and caused other injuries to him.

17. According to the applicant, that confession resulted from the psychological pressure and physical ill-treatment that had been applied to him since his arrival at the police station.

18. Between 10 and 10.40 a.m. on 20 March 2004 the applicant was questioned in the presence of his lawyer, G., concerning the theft of the mobile phone. The applicant repeated his earlier statements concerning that episode.

19. Between 11.28 and 11.53 a.m. on that day the applicant was questioned in the presence of the same lawyer concerning the murder. At the beginning of that questioning session, the investigator announced that the applicant had written a confession and asked him to give more details concerning the circumstances described by the applicant in his confession. The applicant then described the murder in more detail.

20. In the afternoon on 20 March 2004 the applicant participated in a reconstruction of the crime, in which he showed how he had murdered R. On his return from the crime scene, the applicant was questioned again and he repeated his self-incriminating statements. The lawyer, G., participated in those measures.

21. At 6.20 p.m. on the same day the applicant was moved to the Temporary Detention Centre of Prydniprovskyy District Police Department of Cherkasy ("the ITT").

B. Further events

22. On 21 March 2004 a forensic medical expert examined the applicant and issued a report stating that he had no bodily injuries. The expert

specified that the medical examination had been held in the Cherkasy Pre-Trial Detention Centre ("the SIZO").

23. On 22 March 2004 the investigator consolidated the criminal cases concerning the fraudulent phone theft and the murder in a single set of criminal proceedings. On that day the court ordered the applicant's pre-trial detention.

24. On the same day the applicant dismissed lawyer G. and appointed lawyers K. and Dr. When questioned in the presence of those lawyers, he repeated his earlier self-incriminating statements.

25. On 26 March 2004 the applicant was transferred from the ITT to the SIZO.

26. In May 2004, during another round of questioning, the applicant specified that he had needed the knife for self-defence when meeting with R.

27. On 8 June 2004 a forensic medial expert issued a report stating that the applicant had sustained no bodily injuries during the preliminary detention. The expert based the report on the results of the applicant's medical examination of 21 March 2004.

28. On 9 June 2004 another lawyer, P., was admitted to the case, in addition to lawyers K. and Dr.

29. On 16 June 2004 the applicant was questioned in the presence of his three lawyers. He changed his earlier statements and asserted that it was D. who had repeatedly stabbed and killed R.

30. On the same day a confrontation between the applicant and D. was held. It was revealed that T., an acquaintance of the applicant and D., had also been present at the scene of the murder.

31. On 17 June 2004 the applicant dismissed lawyers K. and Dr., leaving his representation to lawyer P.

32. On 19 June 2004 the investigator questioned T., who stated that it was the applicant who had stabbed R. On the same day T. participated in a reconstruction of the events, in the course of which he confirmed his statements.

33. On 21 June 2004 confrontations between T. and the applicant, as well as T. and D., were held, during which T. repeated his earlier statements.

34. On 17 July 2004, during another questioning session, the applicant maintained that it was D. who had killed R.

35. On 22 July 2004 the investigation was completed. The applicant was charged with aggravated murder and fraudulent theft of a mobile phone; D. was charged as the applicant's accomplice in the murder. The applicant and his lawyer were provided with the criminal case file for examination.

36. On 27 July 2004 the applicant's lawyer, having examined the file, requested that D. be charged as the perpetrator, arguing that the evidence in the file pointed at him. He asserted that the applicant's confession was the

result of pressure by police officers and a clandestine agreement he had made with D. The investigator refused the request as unsubstantiated.

37. On 10 August 2004 the case was referred to the Cherkasy Regional Court of Appeal ("the Court of Appeal") for the applicant and D. to be tried.

38. On 21 September 2004 the Court of Appeal remitted the case for additional investigation noting, among other things, that the actions of the defendants and the role of each defendant had not been properly classified under the criminal law.

39. On 14 December 2004 the Supreme Court quashed the decision of 21 September 2004 as unfounded and remitted the case to the Court of Appeal for trial.

40. On 26 August 2005 the applicant was medically examined by a nephrologist, who issued a medical certificate specifying, among other things, that three of the applicant's ribs on his right side showed signs of healed fractures, and it was recommended that he be examined by a traumatologist.

41. On 7 November 2005 the Court of Appeal found the applicant guilty of murder and fraudulent theft of a mobile phone and sentenced him to fourteen years' imprisonment. The court also found D. guilty of concealment of murder and imposed a conditional sentence.

42. The prosecutor and the victim's relatives appealed against the judgment, claiming, *inter alia*, that the sentences were unduly mild. The applicant also appealed, claiming that his confession had been obtained by way of ill-treatment and in the absence of a lawyer. He argued that on the night of 19 March 2004, when he had been in the police station, police officers had beaten him to the extent that he had lost consciousness and that when he had come to, they had continued to beat him. As he had earlier been threatened by D., the applicant had eventually given up and agreed to incriminate himself.

43. On 8 November 2005, in reply to the applicant's complaint of ill-treatment and violation of his procedural rights during the investigation, the Regional Prosecutor's Office informed him that those issues had been examined during the pre-trial investigation and the trial, and had been rejected as unfounded. On 25 November 2005 the Regional Prosecutor's Office additionally informed the applicant that his complaints would be examined by the Supreme Court in the course of the review of the criminal case.

44. On 17 November 2005 the applicant appointed lawyer B. to act as his defence counsel.

45. By a letter of 21 November 2005 the governor of the ITT provided the applicant's lawyer with a list of the procedural measures undertaken in respect of the applicant during his detention in the ITT between 20 and 26 March 2004. According to that list, on 21 March 2004 (see paragraph 22

above) the applicant was not escorted anywhere from the ITT and he did not take part in any procedural measures on that day.

46. On 14 February 2006 the Chrekasy Regional Prosecutor's Office ordered the District Prosecutor's Office to carry out pre-investigation enquiries in respect of the applicant's allegations of ill-treatment.

47. On 5 March 2006 the assistant prosecutor of the District Prosecutor's Office refused to open an investigation in connection with the applicant's allegations of ill-treatment, noting that there was no indication that the police officers had committed an offence. The decision referred to the statements of the police officers and the medical report of 21 March 2004. The applicant challenged the decision before the Prydniprovskyy District Court of Cherkasy ("the District Court").

48. On 16 May 2006 the Supreme Court quashed the judgment of 7 November 2005 as regards the applicant's conviction for murder and D.'s conviction for concealment of murder, and remitted the case to the Court of Appeal for fresh consideration in that part. It noted that the case had not been properly examined by the Court of Appeal as regards D.'s role in the incident. It further ordered careful scrutiny of the applicant's allegations that his rights had been violated. The Supreme Court then upheld the applicant's conviction for the fraudulent theft of the mobile phone.

49. On 2 August 2006 the District Court quashed the assistant prosecutor's decision of 5 March 2006 and ordered further pre-investigation enquiries. It noted that the medical report of 21 March 2004 was not reliable since the other evidence suggested that the applicant had not been escorted to the SIZO for a medical examination on that day. Moreover, the prosecutor's office had not properly examined whether the applicant had really sustained rib fractures as noted by the nephrologist in his certificate of 26 August 2005.

50. On 13 August and 25 December 2006, and 28 February and 25 June 2007 the assistant prosecutors refused to open an investigation in connection with the applicant's allegations of ill-treatment for the reason that the additional enquiries had not disclosed any element of crime on the part of the police officers. All those decisions were quashed by the supervising authorities as unfounded and further enquiries were ordered.

51. During the trial the applicant requested a medical examination in order to determine his state of health and whether he was suffering from any illnesses. On 18 October 2006 panel of forensic medical experts found that the applicant was suffering from chronic pyelonephritis, chronic duodenal ulcer, chronic cholecystitis and benign hyperbilirubinemia.

52. On 10 August 2007 the assistant prosecutor of the District Prosecutor's Office again refused to open an investigation in connection with the applicant's allegations of ill-treatment, considering that there had been no elements of crime in the actions of the police officers.

53. On 19 November 2007 the District Court quashed the assistant prosecutor's decision of 10 August 2007 as unfounded and ordered further pre-investigation enquiries. The court noted that the District Prosecutor's Office had not removed the contradictions between the medical report of 21 March 2004 and the medical certificate of 26 August 2005, even though the supervising authorities, in quashing the earlier similar decisions, had highlighted that issue. The District Prosecutor's Office appealed against that decision.

54. On 28 November 2007 the Court of Appeal found the applicant guilty of murder and sentenced him to fourteen years' imprisonment. The court further found that D. had been an accomplice to the murder and sentenced him to six years' imprisonment. The court noted that while the applicant had accused D. of the murder, the evidence in the file was sufficient to establish that it was the applicant who had killed R. The court relied on the statements of T. and other oral, documentary and material evidence. It also cited the applicant's self-incriminating statements made during the pre-trial investigation in the presence of lawyers.

55. The Court of Appeal dismissed the applicant's allegations of ill-treatment, noting that during the trial the police officers had denied the alleged facts; moreover, the medical reports of 21 March and 8 June 2004 refuted those allegations.

56. The applicant appealed against the judgment claiming, *inter alia*, that his defence rights had not been respected at the initial stage of the investigation, he had not been given access to a lawyer immediately after the arrest and his self-incriminating statements had been obtained as a result of ill-treatment.

57. On 18 December 2007 the Court of Appeal partly allowed the prosecutor's appeal against the District Court's decision of 19 November 2007. It noted that the applicant's allegations of ill-treatment concerned the admissibility and veracity of evidence in his criminal case. Therefore those issues had to be examined by the Court of Appeal in the course of the applicant's trial and not by way of separate proceedings. The court further found that the judgment adopted in the applicant's criminal case had addressed the relevant issues. Accordingly, the proceedings on that matter had to be terminated. The applicant lodged an appeal on points of law.

58. On 6 May 2008 the Supreme Court upheld the judgment of 28 November 2007, noting that the applicant's guilt had been well established by various pieces of evidence in the case file, including the self-incriminating statements that he had made during the pre-trial investigation. It dismissed as groundless the applicant's allegations of ill-treatment and of violations of his procedural rights.

59. On 10 June 2008 the Supreme Court upheld the Court of Appeal's decision of 18 December 2007, noting that the relevant issues could not be examined concurrently with the trial in the applicant's criminal case.

II. RELEVANT DOMESTIC LAW

60. The relevant provisions of the Code of Criminal Procedure of 28 December 1960 (in force at the relevant time) are quoted in *Kaverzin v. Ukraine* (no. 23893/03, § 45, 15 May 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

61. The applicant complained that police officers had ill-treated him in order to make him confess to the murder. He further complained that the domestic authorities had failed to carry out an effective investigation of his allegations. The applicant 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. Procedural obligation under Article 3 of the Convention

1. Admissibility

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

2. Merits

63. The Government contended that the domestic authorities had taken all reasonable steps in order to discharge their procedural obligation under Article 3 of the Convention. They specified that the examination of the applicant's complaint had been carried out with the requisite expediency and thoroughness. At the same time the effectiveness of the domestic investigation was significantly undermined by the fact that the applicant complained of ill-treatment belatedly.

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

65. The Court reiterates that where an individual makes an arguable claim that he has been ill-treated by the State authorities in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation. For the investigation to be regarded as

"effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports of Judgments and Decisions* 1998-VIII).

66. As to the present case, the Court notes that the applicant and his lawyers started to complain of ill-treatment belatedly, which might have undermined the chances of getting conclusive results as to the alleged ill-treatment. However, the present complaint concerns the procedural aspect of Article 3 which, as noted in the preceding paragraph, provides for an obligation of means, not one of result. The Court considers that the applicant made out an arguable claim of ill-treatment before the domestic authorities and, accordingly, they were obliged to take all the necessary steps to carry out an effective investigation pursuant to Article 3 of the Convention.

67. The Court notes that the District Prosecutor's Office examined the applicant's allegation by means of repeated pre-investigation enquiries without a full-scale investigation being opened. However, the Court has previously held in various contexts that this investigative procedure does not comply with the principles of an effective remedy for the following reasons: the enquiring officer can take only a limited number of procedural steps within that procedure; the victims have no formal status, with the result that their effective participation in the procedure is excluded; and any other remedy available to the victims, including a claim for damages, has limited chances of success and could be considered as theoretical and illusory (see *Davydov and Others*, cited above, §§ 310-12; *Golovan v. Ukraine*, no. 41716/06, § 75, 5 July 2012; and *Savitskyy v. Ukraine*, no. 38773/05, § 105, 26 July 2012).

68. The numerous orders issued by the supervising authorities required the investigative body to remove the contradictions in the medical evidence, namely the medical expert report of 21 March 2004 claiming that the applicant had sustained no injuries (see paragraph 22 above) and the certificate issued by the nephrologist on 26 August 2005 suggesting that the applicant had healed rib fractures (see paragraph 40 above). In that regard the supervising authorities doubted whether the medical examination had taken place, given the evidence that for the whole day of 21 March 2004 the applicant had remained in the ITT and no procedural measures had been

carried out with him (see paragraphs 45, 49, 50 and 53 above). However, the domestic authorities did not take measures to remove that ambiguity. They failed to establish with sufficient clarity whether the applicant had sustained rib fractures and, if so, the time and other circumstances of those injuries. The judicial reviews of those deficient pre-investigation enquiries were eventually terminated as the courts considered that those issues had been examined in the course of the trial in the applicant's criminal case.

69. It has to be noted that the trial court indeed took some measures to examine the allegation of ill-treatment in the course of the legal argument concerning the admissibility of the relevant evidence (the applicant's self-incriminating statements). However, those measures were of limited scope and did not ensure the effectiveness of the domestic procedure. It is notable that the trial court relied on the results of the medical examination of 21 March 2004, even though the circumstances of the applicant's examination on that day, namely whether it had taken place at all, remained disputable.

70. The Court notes that in the case of *Kaverzin v. Ukraine* (no. 23893/03, §§ 173-180, 15 May 2012) it found that reluctance on the part of the authorities to ensure that a prompt and thorough investigation of the ill-treatment complaints by the criminal suspects was carried out constituted a systemic problem within the meaning of Article 46 of the Convention. The Court concludes that, in the light of the circumstances of the case and in line with its earlier case-law, in the present case, too, the domestic authorities failed in their procedural obligation to effectively investigate the allegations of ill-treatment.

71. There has therefore been a procedural violation of Article 3 of the Convention.

B. Substantive aspect of Article 3 of the Convention

1. Admissibility

72. The Government submitted that the complaint concerning the ill-treatment of the applicant by police officers was manifestly ill-founded. They noted that according to the medical reports of 21 March and 8 June 2004, prepared after the alleged ill-treatment, the applicant had no injuries. As to the certificate of 26 August 2005, the nephrologist had only noted that the applicant's ribs showed signs of healed fractures, which was insufficient evidence to support the applicant's allegations.

73. The applicant disagreed.

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

2. Merits

75. The Government maintained their position that the complaint was manifestly ill-founded.

76. The applicant argued that the medical evidence was sufficient to find that he had been ill-treated by the police officers.

77. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force that has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Labita v. Italy* [GC], no. 26772/95, §§ 119-20, ECHR 2000-IV).

78. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as lying with the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

79. As to the present case, the initial medical assessment of 21 March 2004 suggested that the applicant had no injuries after the alleged ill-treatment. This conclusion was further cited in the medical report of 8 June 2004. However, the reliability of the report of 21 March 2004 was questioned at the domestic level given the evidence that the applicant had not been escorted to the place where that medical assessment had allegedly taken place.

80. Subsequently, on 26 August 2005 a nephrologist issued a medical certificate indicating that three ribs on the applicant's right side had revealed signs of healed fractures (see paragraph 40 above). It was recommended that the applicant be further examined by a traumatologist, but that additional specialised examination does not appear to have taken place. However, nothing suggests that the applicant's access to doctors during his detention was restricted; nor does it appear that he ever complained to the medical staff about his ribs.

81. Assessing the available medical evidence, the Court finds it controversial and insufficient to support the applicant's allegation of ill-treatment. It notes that the medical certificate of 26 August 2005, the only item in support of the applicant's allegation, was issued more than one year and five months after the alleged ill-treatment. The certificate was produced by a nephrologist whose principal area of expertise did not cover bone fractures. That doctor did not make any conclusive findings as to the fractured ribs but recommended a further examination by a traumatologist. Nor did he give any opinion as to the time when the possible injuries could have been caused or how they could have been sustained. To the extent that those questions remained unanswered because of the domestic authorities' failure to act, this matter has been examined under the procedural aspect of Article 3 and the Court has found a procedural violation of that provision of the Convention. As regards the substantive aspect of Article 3, the Court considers that the available material does not allow it to establish conclusively that the applicant sustained the fractured ribs or any other injuries when he was under the control of the authorities.

82. In these circumstances, the Court finds no substantive violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

83. The applicant complained that he had not been provided with access to a lawyer in the initial period of the criminal proceedings. The applicant relied on Article 6 §§ 1 and 3 (c) of the Convention, which provides in so far as relevant as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

A. Admissibility

84. The Government submitted that the applicant had been provided with a lawyer, G., as from 19 March 2004 and had had appropriate access to legal assistance throughout the criminal proceedings. The domestic courts convicted the applicant without referring to his initial confession or his statements during his questioning when he had the status of witness. On the contrary, they relied on the applicant's self-incriminating statements, which

he had made in the presence of lawyers, as well as other evidence, including the statements of D. and T., which had directly identified the applicant as the perpetrator of the murder. For those reasons, the Government contended that the complaint was manifestly ill-founded.

85. The applicant disagreed and insisted that the complaint was admissible.

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

B. Merits

1. The parties' submissions

87. The applicant maintained that he had not had the requisite access to lawyer in the initial stage of the proceedings. Furthermore, his right not to incriminate himself had not been respected.

88. The Government maintained that the complaint was manifestly ill-founded.

2. The Court's assessment

89. The Court reiterates that Article 6 § 1 requires that, as a rule, access to a lawyer should be provided from the first time a suspect is questioned by the police, unless it is demonstrated, in the light of the particular circumstances of each case, that there are compelling reasons to restrict that right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such a restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during questioning by police without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008).

(a) Whether the applicant's right of access to a lawyer was restricted

90. The Court notes that on 19 March 2004 the law-enforcement authorities treated the applicant in various capacities: as a witness in the murder case; as a witness in the case of fraudulent theft of a mobile phone; and as a suspect in the latter case. However, the previous day police officers had searched the applicant's home and seized there, among other things, seven knives and clothes. This fact suggests that as of 18 March 2004 the authorities had already been working on the assumption that the applicant had been involved in the murder. Accordingly, looking beyond the appearances and formal domestic classifications of the applicant's

procedural statuses, the Court considers that at least since 18 March 2004 the applicant had been *de facto* treated as a suspect in the murder case (see *Sergey Afanasyev v. Ukraine*, no. 48057/06, § 58, 15 November 2012, and, by contrast, *Smolik v. Ukraine*, no. 11778/05, § 54, 19 January 2012).

91. The Court next observes that in the morning, afternoon and late evening of 19 March 2004 the applicant was making statements to the authorities concerning the murder (see paragraphs 9, 12 and 16 above). More specifically, in the late evening of 19 March 2004 the applicant confessed to the murder (see paragraph 16 above).

92. Accordingly, by virtue of the above-mentioned principles of the Court's case-law, the applicant was entitled to have access to a lawyer as from the first interview on 19 March 2004 concerning the murder. It is relevant to note that under the domestic law a minor suspect was entitled to mandatory legal representation (see *Smolik*, cited above, §§ 32 and 56). It appears that at a certain point on 19 March 2004 lawyer G. contacted the applicant in the case of fraudulent theft of the mobile phone. Nothing suggests, however, that on that day she was formally admitted to the murder case or that she provided any assistance to the applicant in connection with that case. There is no indication that any other lawyer was made available to him on that day. The facts suggest in particular that the applicant, a minor at that time, made his confession on 19 March 2004 in the absence of any lawyer.

(b) Justification of the restriction

93. The question, therefore, is whether the absence of a lawyer was justified. On the facts, the Court does not discern any compelling reason for restricting the applicant's right to a lawyer during that time.

94. Furthermore, the Court considers that that restriction prejudiced the applicant's defence rights. In substantiating the applicant's guilt in the murder, the domestic courts indeed – as contended by the Government – made no express reference to the applicant's confession of 19 March 2004, let alone the other statements given on that day, which had no relevance in that context. However, the domestic courts neither expressly excluded the confession of 19 March 2004 from the case file, nor made any ruling as to its role in the applicant's conviction (see *Khayrov v. Ukraine*, no. 19157/06, § 78, 15 November 2012). On the contrary, they referred to the applicant's self-incriminating statements which he made on 20 March 2004 in the presence of lawyer. In that regard it is notable that the applicant's questioning in the morning of 20 March 2004 started with the investigator's request to give details which the applicant had not explained in his confession of 19 March 2004. It appears therefore that that interview was in fact a direct development of his confession of 19 March 2004. In these circumstances the absence of any reference to the confession of 19 March 2004 does not rule out its effect on the applicant's conviction.

95. In the light of the above considerations the Court finds that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

96. The applicant further complained under Article 6 § 1 of the Convention that his right to a fair trial had been violated because the courts had convicted him on the basis of self-incriminating statements which had been obtained through ill-treatment.

97. The Court has dismissed the applicant's allegations of ill-treatment under Article 3 of the Convention. Accordingly, no issue under Article 6 of the Convention arises in connection with his contention that he was convicted on the basis of evidence obtained through ill-treatment (see *Yerokhina v. Ukraine*, no. 12167/04, § 77, 15 November 2012 and *Nikolayenko v. Ukraine*, no. 39994/06, § 71, 15 November 2012).

98. This complaint is therefore manifestly ill-founded and should be dismissed as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. The applicant complained of other violations of his rights under the Convention.

100. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

103. The Government contested that claim and submitted that it was unfounded.

104. The Court considers that the applicant must have suffered anguish and distress on account of the facts giving rise to the finding of violations in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

106. 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 ill-treatment and effectiveness of its investigation (Article 3 of the Convention) and the complaint concerning access to a lawyer (Article 6 §§ 1 and 3 (c) of the Convention) admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a procedural violation of Article 3 of the Convention;

3. *Holds* that there has been no substantive violation of Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

5. *Holds*,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 29 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President