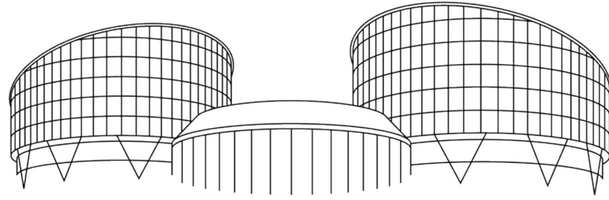

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KAVERZIN v. UKRAINE

(Application no. 23893/03)

JUDGMENT

STRASBOURG

15 May 2012

FINAL

15/08/2012

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

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of Kaverzin v. Ukraine**,**

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

Dean Spielmann, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger,
André Potocki, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 23893/03) 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 Aleksandr Valeryevich Kaverzin ("the applicant"), on 1 July 2003.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mrs V. Lutkovska, of the Ministry of Justice.

3. On 12 January 2010 the Court declared the application partly inadmissible and decided to communicate to the Government the applicant's complaints under Article 3 of the Convention of his torture by the police, a lack of effective investigation into his allegation of torture by the police, the inadequacy of the medical assistance provided to him and the conditions of his detention in Dnipropetrovsk Colony.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1973. He is currently serving a prison sentence in Vinnytsya.

A. The applicant's arrest and detention

5. On 12 January 2001 the applicant was arrested on suspicion of several counts of aggravated murder and robbery. In the course of his arrest force was used against the applicant.

6. Subsequently, the applicant was taken to a police station, where he was allegedly tortured by unspecified police officers with the aim of extracting a confession of his having committed the crimes of which he was suspected. According to the applicant, during such ill-treatment, which continued for several days thereafter, he received an eye injury which eventually resulted in him suffering a complete loss of eyesight.

7. Later on the same day he was taken to a temporary detention centre (*ізолятор тимчасового тримання* – "the ITT") in Kharkiv.

8. The next day the applicant was taken to the Kharkiv Emergency Hospital, where he was examined by a trauma specialist, a surgeon and a neurosurgeon. The applicant's skull was x-rayed and samples of his blood and urine were taken. He was diagnosed with bruising to the chest, lumbar area, kidneys, and soft tissues on the face and the back of his head. The doctors prescribed a further examination of the applicant by an urologist and outpatient supervision by a neurologist.

9. On 15 January 2001 a prosecutor from the Kharkiv Regional Prosecutor's Office questioned the applicant, in the presence of a lawyer appointed to assist him by the authorities, with a view to taking a decision concerning the applicant's continued detention. The prosecutor noted a haematoma on the applicant's face next to his right eye. According to the prosecutor's report to his superior of the same date, the applicant explained that he had received the injury during his arrest, that he had not been ill-treated by the police after his arrest and that he had voluntarily given his confession.

10. On 16 January 2001 the prosecutor was instructed by his superior to carry out an inquiry in order to take a decision in accordance with Article 97 of the Code of Criminal Procedure (see paragraph 45 below).

11. On the same date several police officers gave written explanations concerning the applicant's arrest, in which they stated that the applicant had resisted arrest by "applying unarmed combat techniques and trying to escape". According to them, "measures of physical restraint and special means [of restraint], namely handcuffs" had been used against the applicant and he had been taken to the police station.

12. On 19 January 2001 the applicant was taken by the police to see a medical expert. The expert examined the applicant and noted that he displayed bleeding into the eyeball, haematomas and abrasions on the left side of his chest, arms and legs, some of which were three to four days old and others were nine to eleven days old. The expert noted that many of the injuries, including the bleeding into the applicant's eyeball, had been caused

by blunt solid objects. According to the expert's notes, during the examination the applicant stated that some of his injuries had been caused by him falling down the stairs, that his vision had been deteriorating since he was young, and that he had no complaints about the authorities' actions. The expert concluded that the injuries were of a minor character and that they had not lead to a deterioration of the applicant's health.

13. The applicant remained in police custody until 23 January 2001. On that date he was placed in an investigative detention unit (*слідчий ізолятор* – "SIZO") in Kharkiv. Upon his arrival at Kharkiv SIZO, the applicant was examined by a paramedic, who noted several bruises on the left shoulder, chest, arm and knee. The applicant did not receive any treatment for his injuries in Kharkiv SIZO.

14. According to the applicant, on 26 January 2001 he complained to the same prosecutor from the Kharkiv Regional Prosecutor's Office that had previously questioned him that he had been tortured by the police after his arrest.

15. On the same date the prosecutor issued a decision rejecting the applicant's complaints and informed the applicant of it. The relevant parts of the decision read as follows:

> "...On 15 January 2001 A. V. Kaverzin was questioned at the regional prosecutor's office in the course of consideration of the question of ... his placement in Kharkiv [SIZO] No. 27. During his questioning with the participation of [his] defence lawyer, A. V. Kaverzin explained that he had sustained the injuries in the course of his arrest, that he did not have any complaints against the police, [and] that he had made his first statements freely, without psychological or physical pressure on the part of the police officers.
>
> The [police] officers ... who had taken part in the arrest of A. V. Kaverzin [were questioned and] explained that they had been aware that A. V. Kaverzin had used firearms during his attempted arrest by the police in the Khmelnytsk Region, as a result of which two police officers had died. Because of that [fact] they had been particularly cautious and when A. V. Kaverzin had attempted to resist [arrest] ... there had been measures of physical restraint and special means [of restraint], namely handcuffs, applied to him.
>
> According to the records of the forensic examination ... dated 19 January 2001, [the following injuries on the body and face of A. V. Kaverzin] had been discovered: bleeding into the eyeball; a haematoma on the left side of the chest; numerous abrasions on the lower limbs that had been caused by blunt solid objects; abrasions and scratches on the wrists that had been caused by blunt solid objects, which could have been the handcuffs; numerous indurations of various parts of the skin with small wounds caused by insects ... the injuries could have been caused to A. V. Kaverzin in the circumstances described by [both] the police officers and A. V. Kaverzin himself. Therefore, there are no elements of a crime in the actions of the police officers.
>
> On the basis of the foregoing, pursuant to paragraph 2 of Article 6 of [the Code of Criminal Procedure] of Ukraine [the prosecutor].

Decided:

1. To refuse the opening of a criminal case against [the police] officers who took part in the arrest of ... A. V. Kaverzin on the ground there were no elements of a crime in their actions...”

16. According to the applicant, he was not given a copy of that decision and its details were not explained to him.

17. The decision was not challenged before the courts under the procedure envisaged by Article 236-1 of the Code of Criminal Procedure.

18. On 25 February 2001 the applicant was transferred to Khmelnytsk SIZO. On that date he was examined by a doctor, who noted that the applicant suffered from loss of eyesight as a result of a head injury in January 2001 and had several bruises on his body.

19. On 24 April 2001 the applicant was examined by a medical expert, who noted that the applicant had suffered a head injury and was completely blind.

20. During his detention in Khmelnytsk SIZO the applicant was examined by doctors and received specialist ophthalmological treatment in September and October 2001 and in August, September and November 2002. On several occasions he was taken to public hospitals for medical examination. The doctors concluded that the applicant did not require eye surgery and could receive the necessary medical treatment in the SIZO.

21. On 23 September 2002, on the order of the trial court, a medical panel established that the applicant had become completely blind and, accordingly, suffered from the highest officially recognised degree of disability. The applicant was diagnosed with corneal cicatrix and leucoma, a cataract of the right eye resulting from a penetrating wound, and uveitis in the left eye. The doctors concluded that the applicant was in need of outside assistance to manage aspects of daily life.

22. On 12 August 2003 the applicant was placed in Dnipropetrovsk Colony to serve his sentence.

23. During his detention in Dnipropetrovsk Colony the applicant was examined by doctors, including an ophthalmologist, at least once every year. In 2004 he was prescribed eye surgery at a specialised hospital. According to the Government, the applicant did not avail himself of the possibility to undergo the surgery pursuant to paragraph 5 Article 116 of the Code on the Execution of Sentences (see paragraph 48 below).

24. Subsequently, the applicant was prescribed anti-relapse treatment in view of his blindness, which mainly included administering medication. On several occasions the applicant refused to be examined by doctors and in January and February 2006 he refused to be transferred to a hospital within Vinnytsya Colony to receive specialised ophthalmological treatment.

25. In February 2004 the administration of Dnipropetrovsk Colony did not allow the applicant’s mother to supply him with unspecified medication

which he allegedly needed. The authorities explained that the applicant would be given the necessary medication if his doctors so decided. In March 2004 the authorities informed the applicant's mother that her request for the applicant's transfer to a specialised prison for persons suffering from the highest degree of disability could not be met as no such a prison existed. The applicant did not provide further details in that respect.

26. The applicant alleged that in spite of his blindness he had been handcuffed when leaving his cell, including during daily walks and family visits, and had been followed by several wardens with a dog.

27. He also stated that in Dnipropetrovsk Colony he had been unlawfully refused two-hour daily walks to which he had allegedly been entitled in view of his disability; that his cell had lacked ventilation; and that he had not been allowed to make phone calls. He provided no further details in this respect.

28. According to the applicant, in April 2004 the prison authorities delayed, for about a month, the dispatch of one of his letters.

29. By a letter of 16 December 2004 addressed to the applicant's mother, the Head of the Dnipropetrovsk Penitentiary Service informed her that:

> "...
>
> During [daily] walks [the applicant] has been handcuffed with his hands behind his back, as are all other life-sentenced prisoners, in accordance with paragraph 25 of the Internal Regulations of the Penitentiary Institutions.
>
> ...
>
> Once the area for [daily] walks is adapted to the requirements of the Internal Regulations ... as amended on 9 November 2004, life-sentenced prisoners will be allowed to stay there without handcuffs.
>
> In accordance with Article 151 of the Code on Execution of Sentences and section 23 of the Internal Regulations of the Penitentiary Institutions, prisoners sentenced for life are entitled to one-hour daily walks.
>
> Prisoners suffering from tuberculosis ... are entitled to two-hour daily walks.
>
> [Mr Kaverzin] does not suffer from tuberculosis, he is being detained under the ordinary regulations, and he is being [taken for] one-hour daily walks.
>
> All [of Mr Kaverzin's] correspondence is dispatched in accordance with Article 113 of the Code on the Execution of Sentences; it has not been hindered."

30. By a letter of 2 March 2005, the Governor of Dnipropetrovsk Colony informed the applicant's mother that in 2005 one of the dogs accompanying the prison guards had bit the applicant because of his own recklessness. It was also stated that handcuffs were not being applied during daily walks.

31. The two above-mentioned letters contained a statement that the actions of the penitentiary authorities could be challenged before a prosecutor.

32. On 3 December 2008 the applicant was moved to Vinnytsya Colony, where he is currently serving his sentence. The applicant has not provided information concerning the medical assistance provided to him in that colony.

B. Further complaints of the applicant's torture by the police

33. In May 2001 the applicant's mother was informed that the applicant's complaint of torture had been rejected as unsubstantiated, though no details of the decision were given to her. In November 2003 she requested a copy of the decision, which was sent to her in February 2004.

34. Subsequently, the applicant's mother complained to a Member of Parliament of the applicant's torture by the police and the authorities' failure to investigate the matter. Upon a request by the Member of Parliament, in 2005 the materials of the previous inquiry were checked by the prosecutor's superior, who eventually confirmed the accuracy of the decision issued on 26 January 2001. In particular, the supervising prosecutor studied the materials of the 2001 inquiry.

35. In March 2005 the applicant lodged a compensation claim with the Shevchenkivskyi District Court of Kyiv against the State Department for the Execution of Sentences and the Ministry of Interior, alleging that his disability had been caused by the unlawful actions of the police and the failure of the penitentiary authorities to provide him with adequate medical assistance. The courts at two levels of jurisdiction refused to examine the applicant's claim for failure to meet the relevant procedural requirements. The applicant challenged the refusal in cassation, the outcome of which is unknown.

C. The criminal investigation against the applicant and his trial

36. The criminal investigation in the applicant's case was completed in November 2001. Subsequently, the criminal case was referred to the Khmelnytsk Court of Appeal for trial.

37. In the course of the investigation and trial, the applicant was assisted by a lawyer appointed for him by the authorities. That lawyer took part in the first stages of the proceedings before the first-instance court and was later replaced by another lawyer for unknown reasons. The new lawyer continued defending the applicant until those proceedings were completed.

38. In the course of the trial the applicant contested the charges against him and alleged that his confession to some of the crimes of which he had

been accused had been obtained under physical and psychological pressure from the police.

39. On 13 November 2002 the court found the applicant guilty of thirteen counts of aggravated murder, infliction of grievous bodily injuries, illegal possession of firearms, banditry, and robbery. In particular, the applicant was held to be responsible for the murder of seven people, including three police officers who had attempted to stop him from committing crimes. He was found to be exceptionally dangerous to society and was sentenced to life imprisonment, together with the confiscation of all his property.

40. The court mainly based its judgment on the statements of about thirty witnesses and victims of the crimes, the testimony given by the applicant at the trial, and on the conclusions of several forensic, ballistic and other expert examinations. The findings of the court concerning one of the counts of murder were partly based on the confessions obtained from the applicant during his time in police custody.

41. In the same judgment the court, relying on the decision of the prosecutor of 26 January 2001, dismissed the applicant's complaints of torture by the police and found that there was no evidence that his confession had been obtained under duress.

42. On 17 December 2002 the applicant lodged an appeal in cassation, contesting the first-instance court's factual findings and legal conclusions. He further argued that, in determining his sentence, the court had not taken into account his poor state of health. The applicant also maintained his allegation of torture by the police.

43. On 13 May 2003 the Supreme Court partly varied the judgment of 13 November 2002, while confirming the first-instance court's findings concerning the applicant's guilt and upholding his sentence. The Supreme Court also rejected the applicant's allegation of torture on the same grounds as the first-instance court.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine 1996

44. The relevant provisions of the Constitution read as follows:

Article 28

"Everyone has the right to respect for his or her dignity.

No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity..."

Article 121

"The Prosecution Service of Ukraine constitutes a unified system that is entrusted with:

(1) prosecuting [crimes] in court on behalf of the State;

(2) representing the interests of a citizen or of the State in court in cases determined by law;

(3) supervising compliance with the law by the bodies that conduct detection and search activities, inquiries and pre-trial investigations;

(4) supervising observance of the law in the execution of judicial decisions in criminal cases, and also in the application of other coercive measures aimed at the restraint of citizens' personal liberty."

B. Code of Criminal Procedure 1960

45. The relevant provisions of the Code of Criminal Procedure, as in force at the material time, provided:

Article 4

The obligation to institute criminal proceedings and to investigate a crime

"A court, prosecutor, investigator or body of inquiry must, to the extent that it is within their power to do so, institute criminal proceedings in every case where signs of a crime have been discovered, take all necessary measures provided by law to establish the circumstances surrounding the crime, identify those guilty of the crime and punish them."

Article 94

Grounds for instituting criminal proceedings

"Criminal proceedings shall be instituted on the basis of:

(1) applications or communications from enterprises, institutions, organisations, officials, representatives of official bodies, the public and individuals;

(2) communications from representatives of the authorities, the public or individual citizens who have apprehended a suspect in the place where the crime was committed or caught him red-handed;

(3) [the suspect's] appearance with an acknowledgement of guilt;

(4) information published in the media;

(5) direct detection of signs of a crime by a body of inquiry, investigator, prosecutor or court.

[Criminal] proceedings may be instituted only where there is sufficient information that a crime has been committed.”

Article 95

Applications and communications about a crime

“Applications or communications ... about a crime may be made in writing or orally...”

Article 97

The obligation to accept applications or communications about crimes and the procedure for their examination

“A prosecutor, investigator, body of inquiry or judge shall accept applications or communications about crimes [which have been] committed or [are] being prepared, including in cases that are outside their jurisdiction.

Upon an application or communication about a crime, the prosecutor, investigator, body of inquiry or judge shall adopt, within three days, one of the following decisions:

(1) to institute criminal proceedings;

(2) to refuse to institute criminal proceedings;

(3) to remit the application or communication for examination in accordance with [the rules of] jurisdiction.

Simultaneously, all possible measures shall be applied to prevent the further commission of the crime or to put an end to it...

Before instituting criminal proceedings, the prosecutor, investigator or body of inquiry shall conduct an inquiry, if it is necessary to verify [information contained in] an application or communication about a crime. [Such inquiry] shall be completed within ten days by means of collecting explanations from individual citizens or officials or by means of obtaining necessary documents.

[Information contained in] an application or communication about a crime may be verified before instituting criminal proceedings through detection and search activities...”

Article 99-1

Appeal against a decision refusing to institute criminal proceedings

"A decision by an investigator or body of inquiry refusing to institute criminal proceedings may be appealed against to the relevant prosecutor. If that decision was taken by a prosecutor, it may be appealed to a higher prosecutor. An appeal shall be lodged by a person whose interests are concerned or by his/her representative within seven days from the date of receipt of a copy of the decision.

If the prosecutor refuses to annul the decision ... a person whose interests are concerned or his/her representative may lodge an appeal against it with a court under the procedure prescribed by Article 236-1 of this Code.

..."

Article 236-1

Appeal to a court against a decision refusing to institute criminal proceedings

"An appeal against a decision by a body of inquiry, investigator or prosecutor ... refusing to institute criminal proceedings shall be lodged with [the relevant] court by a person whose interests are concerned or his/her representative within seven days of notification of the decision by the prosecutor..."

Article 236-2

The court's consideration of an appeal against a decision refusing to institute criminal proceedings

"An appeal against a decision by a body of inquiry, investigator or prosecutor ... refusing to institute criminal proceedings shall be examined [by the relevant court] in a single-judge bench within ten days of its receipt.

The judge shall obtain the materials on the basis of which the decision ... was taken, examine them, and inform the prosecutor and the appellant of the date on which the hearing on the appeal is scheduled. If necessary, the judge may hear the appellant in person.

Having examined the appeal, the judge ... shall take one of the following decisions, depending on whether the requirements of Article 99 of this Code were observed:

(1) to set aside the decision not to institute criminal proceedings and remit the materials for additional inquiry or open a criminal case;

(2) to reject the appeal.

The judge's order may not be appealed against..."

C. Code on the Execution of Sentences 2003

46. Article 18 of the Code provides that male detainees sentenced to life imprisonment are to serve their sentences in correctional colonies of the highest level of security. They are placed in cells for two people. Under Article 140, they are allowed to have a one-hour daily walk.

47. Article 106 prohibits the use of special instruments of restraint, including handcuffs, to prisoners with (amongst other things) "apparent signs of disability", provided they do not commit gang violence or violent assault endangering the life or health of others and do not offer armed resistance.

48. Pursuant to paragraph 5 of Article 116, prisoners may seek, at their own or at their relatives' expense, medical assistance, including treatment, from civilian medical institutions. In such cases, medical assistance is to be provided at the medical unit of the colony in which the prisoner is serving his/her sentence, under the supervision of the colony's medical staff.

D. Prosecution Service Act 1991

49. According to Section 6 of the Prosecution Service Act, the prosecution service constitutes an integrated centralised system headed by the General Prosecutor of Ukraine and based on the principle of hierarchical subordination.

E. Detection and Search Act 1992

50. The Detection and Search Act provides a legal basis for various measures which may be used by the police, secret service and several other law-enforcement bodies in order to collect and record information about unlawful activities. These measures include questioning individuals upon their consent, secretly collecting data concerning crimes, using undercover agents, personal surveillance and so forth. Law-enforcement authorities entrusted with detection and search functions are required to follow prosecutors' instructions.

F. Internal Regulations of the Penitentiary Institutions, approved by the State Department for the Execution of Sentences on 25 December 2003 (Order No. 275)

51. The rules governing the detention of prisoners sentenced to life imprisonment subject them to special restrictions as regards the material conditions of their detention, activities and opportunities for human contact, which include permanent separation from the rest of the prison population, limited visiting entitlements, a prohibition on communication with other

prisoners, and being escorted by three wardens with a guard dog and handcuffed with their arms behind their back whenever they are taken out of their cell (regulations 23-25). On 9 November 2004 regulation 8 has been amended to include the requirement that doors to walking areas in the sectors for prisoners sentenced to life imprisonment should be equipped with special windows allowing putting on and off handcuffs on prisoners.

52. Pursuant to regulation 94, prisoners sentenced to life imprisonment receive medical aid, as a rule, in their cells in the presence of at least three guards. Such prisoners are to be transferred to a medical institution run by the State Department for the Execution of Sentences, or to a regular medical centre, if they need urgent medical aid.

53. Annex 9 to the Regulations states that people detained in penitentiary institutions are not allowed to keep in their possession any medicines or medical items.

G. Instruction on the Supervision of Prisoners Serving Sentences in Penitentiary Institutions, approved by the State Department for the Execution of Sentences on 22 October 2004 (Order No. 205)

54. The instruction is a classified (non-public) document. An extract from it (paragraph 30.9) submitted by the Government provides as follows:

> "When prisoners sentenced to life imprisonment are taken out of their cells, the junior warden shall open the first door from the corridor side of the [door] and order the prisoners to come up to the door and turn round, facing toward the opposite wall and holding their hands behind their backs, and then, through the opening, handcuff the prisoners. Having handcuffed all the prisoners and having made sure that they have stepped back [against] the opposite wall, the warden shall [then] open the internal door. After the prisoners have been taken out from their cells, they shall undergo a partial search with the use, if necessary, of technical means of detection and control. The aforementioned category of prisoners are [to be] taken from their cells one after another, escorted by two officers from the administration and a junior warden with a guard dog.
>
> When escorting a prisoner sentenced to life imprisonment, one junior warden shall walk ahead of him, surveying the route. The prisoner shall follow two to three metres behind. The rest of the escorting junior wardens shall follow the prisoner one metre behind. The movement of life-term prisoners is organised under the personal control of the on-duty assistant to the prison governor, or his deputy, who, in all instances, shall follow in the rear."

III. RELEVANT DOMESTIC PRACTICE

A. Reports of the Parliamentary Commissioner for Human Rights (Ombudsman) concerning the human rights situation in Ukraine

55. In the 2000-2001 report the Ombudsman described the problem of ill-treatment in the course of pre-trial investigations as a systemic one. In particular, she noted that:

> "...[P]eople [arrested by the police] are being beaten, humiliated, [and] tortured during the first hours following arrest in order to extract confessions or statements incriminating others. Torture and cruel and degrading treatment of citizens in the premises of the police at pre-trial stages of criminal proceedings are widespread and systemic. [This] gives evidence of brutal violations of human rights and abuse of power."

56. According to the Ombudsman, the fact that police officers were required to increase the percentage of solved crimes, while investigators were required to increase the number of cases referred to the courts for trial, contributed to the use of torture. As she put it in the report, "the lack of investigators' qualification in the situation when courts often accept a suspect's confession as sufficient proof [of his guilt] [gave motivation] for law-enforcement officers to rapidly [extract confessions]..."

57. The Ombudsman also noted the lack of adequate action on the part of prosecutors as regards allegations of torture by the police, the prosecutors' inquiries often being perfunctory and seriously protracted. She further observed that, when such cases reached the courts, the latter were in general hesitant to apply adequate sanctions against police officers responsible for torture and other forms of ill-treatment. According to the Ombudsman, in 2000 out of 55 police officers found guilty of such crimes only 22 were sentenced to imprisonment.

58. In her subsequent yearly reports concerning the human-rights situation in Ukraine, the Ombudsman made similar observations regarding the problem of ill-treatment by the police. For instance, in the 2010 report she noted that (extracts from paragraph 2.3 of the report):

> "...[L]aw-enforcement authorities beat individuals in order to extract confessions, to improve solved crimes' rates, to extort bribes, or to steal [individuals' property].
>
> The majority of such incidents take place in the premises [of law-enforcement authorities]. Unfortunately, torture takes place in all regions of Ukraine, which is evidenced by the results of [the Ombudsman's] work, information from prosecutors, human rights defenders, the Ministry of Interior, and court verdicts. [Such incidents] happen in different places, with different individuals, and in different circumstances. However, it is perhaps commonplace [...] that an individual in [Ukraine] may not feel free [and] protected from the criminal acts of State agents.
>
> ...

> Unfortunately, ill-treatment by law-enforcement authorities has taken on very brutal forms and has increasingly resulted in detainees' deaths. In 2008 police officers tortured four people to death, in 2009 three, and in 2010 eight!"

59. In the 2011 report the Ombudsman named the problem of ill-treatment as one of the top priorities in her work, noting that a third of about 5,000 complaints, which were being lodged with her office against police officers every year, concerned that problem. The Ombudsman considered that, in order to eradicate torture in police custody, it was necessary "to liquidate corruption in that body, to change the evaluation of police officers' work [currently] based on the number of solved crimes, to put an end to [the practice of] abusing arrests and administrative detention, to provide arrested people with the possibility of obtaining assistance of a lawyer, to keep record and statistics of incidents of application of physical violence, to create an appropriate mechanism of investigation of complaints of torture, and [to establish] the national mechanism of prevention of torture" (section 3.4 of the report).

B. 2011 report of the Association of Ukrainian Monitors on Human Rights Conduct in Law Enforcement

60. The report is based upon a detailed analysis of information concerning the human rights' observance by the Ukrainian police in 2011, which includes official statistics, normative acts, observations by non-governmental organisations, individual complaints and mass media publications. According to the report, in 2011 alone about 980,200 persons were ill-treated by the police, of which 35 persons died. There were about 1,300 official complaints of ill-treatment by the police lodged with the authorities during that year and only about 5% of them were found substantiated. Prosecutors opened 5 criminal cases against police officers on charges of torture and 15 cases on charges of infliction of bodily injuries and murder by agents of the police.

The report also contains the following extract from an unpublished letter of the Ministry of Interior dated 24 January 2011:

> "...Numerous complaints against police officers provide evidence that the aims, methods and practice of law enforcement authorities have not changed. Repression, disrespect of citizens' rights, freedoms and interests prevail in particular through [resort to] torture, inhuman or degrading treatment, physical and psychological pressure on suspects. Besides, because of the low level of professionalism of a large number of police officers and [their] lack of skills [to employ detention and search techniques] as envisaged by law, they use prohibited methods of [police] inquiry..."

C. Domestic decisions submitted by the Government

61. The Government submitted copies of decisions concerning complaints of police ill-treatment made by two private individuals, V. P. and I. P., who had been arrested by the police on 2 April 2009 and released on the same day. The police had allegedly tried to coerce the complainants to confess to certain criminal acts. As established by medical examinations upon their release from police custody, the complainants had been injured either on that date or several days before.

62. The copies included two prosecutors' decisions rejecting the complaints, which were subsequently quashed by higher prosecutors and a court. The court found that the prosecutors' inquiry had not been full and objective and that they should have questioned several more people, including one of the complainants, and should have examined certain medical documents. The third decision issued by the prosecutors contained reference to the medical documents indicated by the court and to statements obtained from one of the people mentioned in the court's decision. It was concluded that the allegations were unfounded and that the complainants had been injured before their arrest. It is unknown if the latter finding was challenged before the courts.

IV. RELEVANT COUNCIL OF EUROPE MATERIAL

A. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

63. On 1 December 2004 the CPT published a report on its visit to Ukraine from 24 November to 6 December 2002. The relevant parts of the 2004 report read as follows:

> "...
>
> 2. Torture and other forms of ill-treatment
>
> 17. The treatment of persons deprived of their liberty by members of the operational services of [the police] remains a source of grave concern for the CPT, four years after its first visit to Ukraine. Once again, widespread allegations of physical ill-treatment have been received, at the time of apprehension and in particular during questioning.
>
> ...
>
> 18. There is no need here to set out the alleged forms of physical ill-treatment, as they are similar to those described in paragraph 18 of the report on the 2000 visit. As

in the past, in many cases, the severity of the ill-treatment alleged was such that it could be considered as amounting to torture.

...

20. In the light of the information at its disposal, the CPT can only reach the same conclusion as it had in 1998 and 2000, namely that persons deprived of their liberty by [the police] run a significant risk of being physically ill-treated at the time of their apprehension and/or while in the custody of [the police] (particularly when being questioned), and that on occasion resort may be had to severe ill-treatment/torture.

The 2002 visit showed that progress in implementing the recommendations made by the CPT in its previous report, aimed at introducing a strategy to prevent ill-treatment, has been slow...

22. It is axiomatic that one of the most effective means of preventing ill-treatment of persons deprived of their liberty lies in the diligent examination by the relevant authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity.

23. In this respect, it must unfortunately be pointed out that, once again, the CPT's delegation heard allegations to the effect that prosecutors and judges paid little attention to complaints of ill-treatment - even when the person concerned displayed visible injuries.

In this context, the figures transmitted by the Ukrainian Prosecutor General's Office speak volumes. It seems that over the first 10 months of 2002, the Ukrainian prosecutors did not initiate any criminal proceedings against law enforcement officials under Articles 126 (assault and battery) and 127 (torture) of the Criminal Code."

64. The CPT made similar findings regarding allegations of ill-treatment by the police and lack of effective investigation in the reports on its visits to Ukraine from 9 to 21 October 2005 (paragraphs 15-38 of the 2005 report) and from 9 to 21 September 2009 (paragraphs 12-25 of the 2009 report). In the preliminary observations concerning its visit to Ukraine from 29 November to 6 December 2011, published on 12 March 2012, the CPT noted that "the phenomenon of police ill-treatment [remained] widespread and that persons [ran] a significant risk of being subjected to ill-treatment while in the hands of the police (in particular, when they [did] not rapidly confess to the criminal offence(s) of which they [were] suspected)".

65. During the 2005 visit the CPT delegation also inspected Temnivka Colony No. 100 for men, including the unit for men sentenced to life imprisonment, and the temporary unit for women sentenced to life imprisonment at Kharkiv Colony No. 54. The CPT made the following findings concerning certain aspects of the conditions of detention of prisoners sentenced to life imprisonment (paragraph 113 of the 2005 report):

> "...[W]hereas the unacceptable practice of systematic handcuffing whenever a prisoner was taken out of a cell has at last been abolished for women, the Ukrainian authorities have still not ceased this practice for men.
>
> More generally, the attitude towards this category of prisoners at Colony No. 100 was extremely security-oriented, with staff constantly stressing their 'dangerousness'. In addition, the delegation noticed a wire cage in the staff office, in which the prisoners said they were systematically locked when interviewed by members of staff..."

66. The CPT called upon the Ukrainian authorities to abolish "the practice of systematically handcuffing men whenever they are taken out of their cell ... with immediate effect".

B. Reports by the Commissioner for Human Rights, Mr Thomas Hammarberg on his visits to Ukraine

67. On 26 September 2007 the Commissioner for Human Rights published a report on his visit to Ukraine from 10 to 17 December 2006, in which he *inter alia* noted that "practically all [his] interlocutors, including heads of parliamentary political groups, representatives of law enforcement and civil society confirmed that torture was widespread in Ukraine" (paragraph 44 of the report of 26 September 2007). During his visit to Ukraine in November 2011, the Commissioner for Human Rights made the following observations in that context (paragraph 93 of the report published on 23 February 2012):

> "Ill-treatment by police in custody is a persistent problem in Ukraine, which has been raised in a number of reports of the Council of Europe Committee for the Prevention of Torture. Reports by international non-governmental organisations suggest that the phenomenon is fed by a culture of police impunity. Complainants who make well-founded allegations of serious abuses often receive the standard response that "there is no evidence of a crime". The vast majority of cases, however, both grave and minor, are not reported to the authorities at all because the victims fear retaliation by the police, or have no faith that any action will be taken."

C. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006 (Appendix)

68. The relevant extracts from the Appendix to the Recommendation, adopted at the 952nd meeting of the Committee of Ministers, read as follows:

> "...
>
> *Instruments of restraint*
>
> 68.1 The use of chains and irons shall be prohibited.

68.2 Handcuffs, restraint jackets and other body restraints shall not be used except:

a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or

b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.

68.3 Instruments of restraint shall not be applied for any longer time than is strictly necessary.

68.4 The manner of use of instruments of restraint shall be specified in national law...”

D. Observations and decisions of the Committee of Ministers concerning the execution of judgments relating to the issues of ill-treatment by the police and lack of effective investigation

69. At a number of its meetings the Committee of Ministers has considered, pursuant to Article 46 § 2 of the Convention, the measures adopted by the Government of Ukraine with a view to complying with the Court’s judgments concerning the issues of inhuman and degrading treatment of applicants and/or the absence of an effective remedy whereby complaint might be made and a lack of procedural safeguards in police custody.

70. For instance, during the 1100th meeting on 1-2 December 2010 eight such judgments were put on the Committee’s agenda, namely *Afanasyev v. Ukraine* (no. 38722/02, 5 April 2005), *Kozinets v. Ukraine* (no. 75520/01, 6 December 2007), *Kobets v. Ukraine* (no. 16437/04, 14 February 2008), *Ismailov v. Ukraine* (no. 17323/04, 27 November 2008), *Spinov v. Ukraine* (no. 34331/03, 27 November 2008), *Suptel v. Ukraine* (no. 39188/04, 19 February 2009), *Vergelskyy v. Ukraine* (no. 19312/06, 12 March 2009) and *Drozd v. Ukraine* (no. 12174/03, 30 July 2009).

71. According to the material of the meeting (see document CM/Del/OJ/DH(2010)1100), the Ministers’ Deputies noted that since the events described in the judgments the Ukrainian authorities had adopted a number of measures to prevent new, similar violations. However, in spite of those measures, “the infliction of deliberate physical ill-treatment of detainees by police officers on duty, remains widespread in Ukraine”. The Deputies further noted that a comprehensive “action plan/action report” was awaited from Ukraine, which should contain details of the measures envisaged or taken to combat abuse in police custody and the evaluation of how these measures addressed the violations found by the Court.

72. Therefore, the consideration of the matter was postponed pending the submission of the “action plan/action report” by the Ukrainian Government.

E. Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations

73. At its 1110th meeting on 30 March 2011 the Committee of Ministers adopted the guidelines setting out concrete measures which the member states should adopt to ensure that those responsible for acts amounting to serious human rights violations (including violations of Articles 2, 3, 4 and 5 of the Convention) were held to account for their actions and that victims of human rights violations had the right to an effective remedy.

V. OTHER RELEVANT INTERNATIONAL MATERIAL

A. Concluding observations of the United Nations Human Rights Committee and conclusions and recommendations of the United Nations Committee against Torture

74. Concern about the “persistence of widespread use of torture” was expressed by the UN Human Rights Committee in its concluding observations concerning Ukraine published in November 2001.

75. At its thirty-eighth session (30 April – 18 May 2007) the UN Committee against Torture considered the fifth periodic report concerning Ukraine. The relevant extracts from its conclusions provide as follows:

> “...
>
> 9. The Committee is deeply concerned at allegations of torture and ill-treatment of suspects during detention, as well as reported abuses during the period between apprehension and the formal presentation of a detainee to a judge, thus providing insufficient legal safeguards to detainees...
>
> 10. The Committee is concerned by the failure to initiate and conduct prompt, impartial and effective investigations into complaints of torture and ill-treatment, in particular due to the problems posed by the dual nature and responsibilities of the General Prosecutor’s office, (a) for prosecution and (b) for oversight of the proper conduct of investigations. The Committee notes the conflict of interest between these two responsibilities, resulting in a lack of independent oversight of cases where the General Prosecutor’s office fails to initiate an investigation. Furthermore, there is an absence of data on the work of the General Prosecutor’s office, such as statistics on crime investigations, prosecutions and convictions, and the apparent absence of a mechanism for data collection...

> 11. The Committee is concerned at the current investigation system in which confessions are used as a principal form of evidence for prosecution, thus creating conditions that may encourage the use of torture and ill-treatment of suspects. The Committee regrets that the State party did not sufficiently clarify the legal provisions ensuring that any statements which have been made under torture shall not be invoked as evidence in any proceedings, as stipulated in the Convention...”

B. Extracts from the reports of the International Helsinki Federation for Human Rights and Amnesty International concerning Ukraine

76. In its 2002 report on human rights violations, the International Helsinki Federation for Human Rights made the following observations in respect of Ukraine:

> “...[T]he pattern of torture and ill-treatment by law enforcement officials continued to persist from previous years, with the perpetrators rarely being brought to justice. Police officers reportedly punched, hit and kicked detainees and used various torture techniques on them, including suffocation.
>
> Once initiated, investigations into cases of alleged abuse by police officers were slow and inconclusive. According to the Government, about 185 cases of abuse by law enforcement officials were reported, while about 200 police members were charged with such crimes in 2000. During 2001 the Parliamentary Committee on Human Rights reportedly received more than 300 complaints concerning human rights abuses by law enforcement officials, and 50 of them dealt with physical and psychological violence.
>
> ...”

77. Amnesty International’s 2001 report referred to “widespread and persistent allegations of torture and ill-treatment of detainees by law enforcement”. Subsequent reports contained similar observations.

78. In a recent publication concerning the issue, *Blunt Force: Torture and Police Impunity in Ukraine* (12 October 2011), Amnesty International noted that:

> “...
>
> According to some estimates, hundreds of thousands of people in Ukraine may be victims of police abuses each year. Violations range from minor infringements of the criminal procedural code, to racial abuse, extortion, torture and other ill-treatment, and deaths in custody.
>
> These abuses are encouraged by a culture of impunity for the police in Ukraine. Complainants who make well-founded allegations of serious human rights abuses all too often receive the standard response “there is no evidence of a crime”. The vast majority of cases, however, both grave and minor, are not reported to the authorities at all because victims fear retaliation by the police, or have no faith that any action will be taken.

...”

79. It was concluded that “three key problems must be addressed [by the Ukrainian Government] as a priority – the lack of regular detention monitoring, the lack of independent investigations, and a reluctance to prosecute police officers”.

THE LAW

I. SCOPE OF THE CASE

80. The Court notes that, after the communication of the case to the respondent Government, the applicant complained that he could not obtain the assistance he needed for his everyday activities as he had no money to hire an assistant. He referred to the National Pension Fund’s refusal to pay him disability allowance on the grounds that he was a prisoner.

81. In the Court’s view, the applicant’s later allegations are not an elaboration of his original complaints to the Court, which were lodged approximately six years earlier and on which the parties have commented. The Court considers, therefore, that it is not appropriate to take these matters in the context of the present case (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

82. The applicant complained that he had been tortured by the police during his time in police custody and that his allegation of torture had not been duly examined. In particular, he argued that the prosecutors had arbitrarily limited their inquiry to the question of the lawfulness of the police’s use of force against the applicant during his arrest.

He further complained that the authorities had not provided him with adequate medical treatment, as a result of which he had become disabled.

According to the applicant, the conditions of his detention in Dnipropetrovsk Colony had been degrading, seeing in particular that he had been handcuffed at all times when he had been allowed to leave his cell.

He relied on Article 3 of the Convention, which reads as follows:

> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

83. The Court notes that the applicant’s complaints under Article 3 of the Convention essentially concern several distinct groups of issues, namely: (i) the alleged police torture of the applicant and ineffective

investigation of his complaints in that regard; (ii) the alleged inadequacy of the medical assistance provided to the applicant; and (iii) the allegedly unacceptable conditions of the applicant's detention in Dnipropetrovsk Colony. The Court will deal with these matters in turn.

A. The alleged police torture and ineffective investigation

1. Admissibility

84. The Government argued that the applicant's complaint of police torture must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention, as he had not challenged the decision of 26 January 2001 either before the higher prosecutorial authorities or the courts. Relying on the Court's judgments in *Naumenko v. Ukraine* (no. 42023/98, 10 February 2004) and *Yakovenko v. Ukraine* (no. 15825/06, 25 October 2007), the Government stated that an appeal to prosecutors and the courts had to be regarded as an effective remedy in the applicant's situation. In reply to the Court's question concerning the practice of the domestic authorities dealing with similar complaints of ill-treatment, the Government submitted copies of several decisions concerning two individual complainants issued by the prosecutors and the courts (see paragraphs 61-62 above).

85. According to the Government, the applicant's complaint to the trial court had not dispensed him from the obligation to exhaust the remedy envisaged by Article 236-1 of the Code of Criminal Procedure. The applicant had failed to substantiate his argument that the trial court had not been competent to review the merits of the decision of 26 January 2001. As he had not pursued the procedure under Article 236-1 of the Code of Criminal Procedure, the applicant could not claim its ineffectiveness.

86. The Government expressed the view that the Court's possible consideration of the applicant's complaint under Article 3 of the Convention would be in conflict with the principle of subsidiary of the Convention system.

87. The applicant disagreed.

88. The Court reiterates that the requirement that an applicant must first make use of domestic remedies before applying to the Court is an important aspect of the machinery of protection established by the Convention, which is subsidiary to the national systems safeguarding human rights (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV, and, for recent authority, *A, B and C v. Ireland* [GC], no. 25579/05, § 142, 16 December 2010). To this end, Article 35 § 1 of the Convention affords the national authorities, primarily the courts, the opportunity to prevent or put right alleged violations of the Convention before those allegations are submitted to the Court. However, the only

remedies to be exhausted are those which are effective and available in theory and in practice at the relevant time. In particular, the remedies must be capable of providing redress in respect of applicants' complaints and of offering reasonable prospects of success (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 71, 17 September 2009).

89. Even where a remedy is normally available in the domestic system, there may be special circumstances dispensing an applicant from the obligation to avail him or herself of it (see, for instance, *Sejdovic v. Italy* [GC], no. 56581/00, § 55, ECHR 2006-II). Furthermore, the rule is inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (*Aksoy v. Turkey*, 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI).

90. Turning to the circumstances of the present case, the Court notes that the applicant raised his complaint of police torture before a prosecutor within a relatively short period of time after the alleged events. The prosecutor found that the applicant's injuries had resulted from the legitimate and proportionate use of force by police officers in the course of the applicant's arrest and refused to initiate criminal proceedings against the police officers. About ten months later the applicant raised the complaint of police torture before the trial court. The court, relying exclusively on the prosecutor's findings, rejected the applicant's complaint as unsubstantiated.

91. The Government suggested that the applicant had been required to challenge the prosecutor's decision before higher prosecutors or through the relevant court procedure envisaged by Ukrainian legislation, instead of waiting to raise his complaint before the trial court.

92. The Court will examine the effectiveness of those avenues in detail.

93. The Court observes that in a previous case against Ukraine it considered that an appeal to hierarchically superior prosecutors concerning irregularities in an inquiry into complaints of police torture was in principle an effective remedy (see *Naumenko*, cited above, § 138). In several other cases the Court has also found that prosecutors' refusals to start criminal investigations into similar complaints could be further appealed to the courts under the procedure envisaged by Article 236-1 of the Code of Criminal Procedure, which in principle fulfilled the requirements of a remedy that it is necessary to exhaust under Article 35 § 1 of the Convention (see *Yakovenko*, cited above, §§ 70-71; *Koktysh v. Ukraine*, no. 43707/07, § 81, 10 December 2009; and *Naydyon v. Ukraine*, no. 16474/03, § 46, 14 October 2010). The Court's findings were mainly based on the argument that under the latter procedure the domestic courts had the power to examine all relevant evidence, to overturn a prosecutor's decision and to initiate investigations. Therefore, the applicants' complaints of ill-treatment and ineffective investigation were rejected for

non-exhaustion of domestic remedies, as they had failed to raise them before the courts (see *Yakovenko*, cited above, § 73; *Koktysh*, cited above, § 82; and *Naydyon*, cited above).

94. However, in a number of other cases against Ukraine in which the applicants had appealed to higher prosecutors and/or to the courts against refusals to investigate their allegations of police ill-treatment, the Court noted that such appeals had not rendered the official inquiry effective. In particular, having regard to the Court's findings in *Kozinets* (cited above, §§ 61-65), *Kobets* (cited above, §§ 53-57), *Ismailov* (cited above, §§ 44-47), *Spinov* (cited above, §§ 56-58), *Vergelskyy* (cited above, §§ 98-103), *Drozd* (cited above, § 67), *Bilyy v. Ukraine* (no. 14475/03, §§ 70-71, 21 October 2010), *Samardak v. Ukraine* (no. 43109/05, §§ 44-48, 4 November 2010), *Kovalchuk v. Ukraine* (no. 21958/05, §§ 66-70, 4 November 2010), *Sylenok and Tekhnoservis-Plus v. Ukraine* (no. 20988/02, §§ 75-77, 9 December 2010), *Dushka v. Ukraine* (no. 29175/04, §§ 56-61, 3 February 2011), *Bocharov v. Ukraine* (no. 21037/05, §§ 57-60, 17 March 2011), *Nechiporuk and Yonkalo v. Ukraine* (no. 42310/04, §§ 162-164, 21 April 2011), *Korobov v. Ukraine* (no. 39598/03, §§ 79-83, 21 July 2011), *Oshurko v. Ukraine* (no. 33108/05, §§ 89-91, 8 September 2011), and *Teslenko v. Ukraine* (no. 55528/08, §§ 107-119, 20 December 2011), it appears that, although the prosecutors and the courts dealing with complaints of inadequate official inquiry indicated, often repeatedly, the necessary actions to be taken during a fresh (or the pending) inquiry, such instructions were not followed diligently or completely disregarded. This often resulted in the lengthy and repeated re-examinations of such complaints by the prosecutors and the courts, though without any meaningful effect (see, for instance, *Vergelskyy*, cited above, §§ 98-99).

95. The domestic decisions submitted by the Government in support of their non-exhaustion argument do not dispel these doubts. In the cases to which they relate, the domestic court's specific instruction to question several individuals during a fresh inquiry was only partly followed. In particular, the investigators did not question all the people mentioned in the court's decision.

96. The Court further notes that, in general, domestic courts are not competent to pursue an independent investigation or to make any findings of fact under the procedure established by Article 236-1 of the Code of Criminal Procedure (see paragraph 45 above, and *Yakovenko*, cited above, § 70).

97. In the light of the foregoing and in particular given the recent extensive case-law on the matter (see paragraph 94 above), the Court concludes that the procedures of appeal to hierarchically superior prosecutors and to the courts have not been proved to be capable of providing adequate redress in respect of complaints of ill-treatment by the police and ineffective investigation.

98. Accordingly, the Court finds that in the present case the applicant was not required to avail himself of the appeal procedures and that the Government's objection in this respect must be rejected.

99. The Court notes that the applicant took sufficient steps at the domestic level to bring his complaints of police torture to the attention of the national authorities. He therefore complied with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention (see *Sylenok and Tekhnoservis-Plus*, cited above, § 76). The Court also notes that the fact that the complaints were rejected by the prosecutor on 26 January 2001 did not prevent the domestic courts from examining them on the merits in the course of the applicant's trial (see paragraphs 41 and 43). In these circumstances, the applicant reasonably waited for the completion of the trial to raise the complaints before the Court and accordingly complied with the six-month rule provided for in Article 35 § 1 of the Convention.

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

2. *Merits*

a. The parties' submissions

101. The applicant complained that he had been tortured by the police with the aim of extracting a confession from him and that there had been no effective investigation into this matter.

102. Relying on the prosecutor's findings of 26 January 2001, the Government argued that the applicant's allegation of police torture with the purpose of coercing him to confess was unsubstantiated. They further argued that the State had complied with its obligation under Article 3 of the Convention to carry out an investigation into the allegation.

103. The Government noted that the applicant's injuries, which had been revealed during medical examinations in January 2001, had resulted from the legitimate and proportionate use of force by police officers in the course of the applicant's arrest.

104. According to the Government, the State had complied with its obligation under Article 3 of the Convention to carry out an investigation into an arguable complaint of torture.

b. The Court's assessment

105. The Court observes that the applicant's complaints concern both the substantive and procedural aspects of Article 3 of the Convention. As regards the former aspect, the Court notes that it is common ground between

the parties that the injuries complained of, in particular the applicant's eye injury, were sustained during the applicant's encounter with the police. The injuries, though initially classified as minor, were substantial and serious enough to amount to the treatment prohibited by Article 3 of the Convention (compare and contrast with *Spinov*, cited above, § 50, and also see *Oshurko,* cited above, §§ 71-72).

106. Thus, the applicant's complaint of torture by the police, which he duly raised at the domestic level (see paragraph 99 above), was prima facie arguable and, given the Court's settled case-law on the matter, the authorities were required to conduct an effective official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

107. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Therefore, the Court considers it appropriate to examine first whether the applicant's complaint was adequately investigated by the authorities. Subsequently, it will turn to the question of whether the alleged ill-treatment took place, regard being had to the relevant domestic findings.

i. The alleged failure to investigate the applicant's complaint of torture by the police

108. The Court reiterates that Article 3 of the Convention requires that an investigation into arguable allegations of ill-treatment must be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions in order to close their investigation or as the basis of their decisions (see *Assenov and Others,* cited above, §§ 103 et seq.). They must take all reasonable steps available to them to obtain evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000).

109. The investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102, and *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, § 131, ECHR 2000-IV).

110. As regards the circumstances of the present case, the Court observes that an inquiry was carried out by a prosecutor after he had noted,

during the applicant's questioning on 15 January 2001, that the applicant had been injured (see paragraphs 9-11 above). It was completed within a relatively short period of time. In the course of the inquiry relevant medical information was obtained and written explanations were given by the police officers who had taken part in the applicant's arrest. This evidence, along with the applicant's statements given during his questioning on 15 January 2001, formed the basis for the prosecutor's decision not to institute criminal proceedings against the police officers. The prosecutor found that some of the applicant's injuries had been caused during his arrest and that some had been caused by insects.

111. Although it is in the first place for the national authorities, in this case for the prosecutor, to assess the relevant evidence and to draw conclusions on the basis of such assessment, the Court cannot disregard the fact that the prosecutor's findings lack important details and relevant substantiation.

112. In particular, the prosecutor did not establish the course of events and the way the injuries had been inflicted on the applicant. His findings that "[the applicant] had attempted to resist", that "there had been measures of physical restraint [used against him]", and that "[the applicant's injuries] were caused by blunt solid objects" are very vague and confusing.

113. The Court further notes that the applicant's alleged torture after his arrest was not specifically addressed in the prosecutor's decision. It appears that the prosecutor did not consider it necessary to inquire into that matter and relied on the applicant's initial statement denying any ill-treatment, in spite of the applicant's more recent, at the time, submissions to the contrary (see paragraphs 14-15 above).

114. In any event, even assuming the applicant was injured because the police tried to break his resistance to arrest, the prosecutor made no attempt to look into the questions of the lawfulness and proportionality of the force used against the applicant.

115. Given the shortcomings in the prosecutor's inquiry noted above, the Court finds that it was not thorough and thus fell short of the requirements of Article 3 of the Convention.

116. The applicant's repeated complaints to the courts dealing with his criminal case that his confessions had been obtained through torture did not lead to an examination of the matter, either in the context of an assessment of the admissibility of the applicant's self-incriminating statements or through a separate inquiry. The courts rejected the complaints as unsubstantiated, having fully relied on the prosecutor's decision of 26 January 2001.

117. The inquiry carried out by the prosecutor's superior in 2005 was not a serious attempt to re-examine the matter, as it was confined to studying the materials of the previous inquiry completed about four years before (see paragraph 34 above).

118. In the light of the foregoing, the Court considers that the domestic authorities did not fulfil their obligation to investigate the applicant's complaints of torture. Accordingly, there has been a violation of Article 3 of the Convention.

ii. The alleged ill-treatment by the police

119. Turning to the substantive aspect of the applicant's complaint, the Court notes that in assessing evidence in a claim of a violation of Article 3 of the Convention the standard of proof "beyond reasonable doubt" must be applied (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita*, cited above, § 121). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within 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 resting on 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).

120. The Court observes that in the present case there is no conclusive evidence concerning the circumstances in which the applicant was injured and in particular concerning the exact nature and degree of force used against the applicant. Nonetheless, the Court considers it established, given the relevant medical evidence and the parties' submissions, that the police bear the entire responsibility for the applicant's injuries. This finding alone is sufficient for the Court to find a breach of Article 3 of the Convention, regardless of whether the applicant's injuries were inflicted during his arrest or also during his subsequent questioning at the police station (see *Sylenok and Tekhnoservis-Plus*, cited above, §§ 69-70).

121. However, the Court cannot disregard the information which, at least to some extent, suggests that the applicant's injuries were not inflicted exclusively at the moment of his arrest on 12 January 2001. In this regard, the Court attaches particular importance to the medical expert's observations on 19 January 2001 that some of the applicant's injuries were three to four days' old, i.e. inflicted on 14 or 15 January 2001 (see paragraph 12 above). The bleeding into the applicant's eyeball was not noted during the applicant's first medical examination on 13 January 2001 and was still found to result from a penetrating wound (see paragraphs 8, 12 and 21 above).

122. The Court also notes that the applicant continuously insisted, though without providing all the relevant details, that he had been tortured

by the police after his arrest, while the Government failed to refute these allegations by substantiated arguments.

123. In these circumstances, the Court finds that the applicant's allegations under Article 3 of the Convention of beatings by the police after his arrest, as raised before the Court, are plausible overall, being both corroborated by the documentary evidence and supported by factual inferences (see *Teslenko,* cited above, §§ 91-97). In particular, the Court considers that the nature and particular gravity of the applicant's injuries demonstrates that they were inflicted on the applicant deliberately. The aim of the applicant's ill-treatment was to cause him severe pain and suffering in order to extract from him a confession that he had committed the crimes of which he was suspected.

124. In the light of the high standard being set in the area of the protection of human rights and fundamental liberties and the inevitably greater firmness being required in assessing breaches of the fundamental values of democratic societies (see *Selmouni v. France* [GC], no. 25803/94, § 101, ECHR 1999-V; *Korobov,* cited above, § 73; and *Teslenko,* cited above, §§ 99-102) the Court finds that the ill-treatment to which the applicant was subjected in police custody must be classified as torture, given the gravity of the applicant's injuries and the intentional character of their infliction.

125. Accordingly, the Court holds that that there has been a violation of Article 3 of the Convention in this regard.

B. Alleged inadequacy of the medical assistance provided to the applicant and the applicant's ability to serve his prison sentence

126. The applicant complained that the authorities had not provided him with adequate medical assistance in respect of his eye injury.

1. Admissibility

127. Relying on the Court's decisions in *Kalashnikov v. Russia* (no. 47095/99, ECHR 2002-VI), *Khokhlich v. Ukraine* (no. 41707/98, 29 April 2003), *Melnik v. Ukraine* (no. 72286/01, 28 March 2006), *Vinokurov v. Ukraine and Russia* ((dec.), no. 2937/04, 16 October 2007), and *Aliev v. Ukraine (No. 2)* ((dec.), no. 33617/02, 14 October 2008), the Government argued that by the terms of Article 35 § 1 of the Convention the applicant had been required to raise the complaint of inadequate medical assistance before the national authorities so that they could have had an opportunity to investigate the conditions of the applicant's detention and, if his complaint had been found to be well-substantiated, to suggest ways of improving the situation. In particular, they submitted that the applicant had been obliged to complain to the prosecution service, under the Prosecution Service Act, or to the civil courts by lodging a claim against the relevant

authorities under Articles 440-1, 442 or 455 of the Civil Code 1963, which had been in force at the material time.

128. In this context, the Government noted that the applicant had failed to raise, through one of these procedures, the complaint of lack of medical assistance in the ITT and in Kharkiv SIZO. Thus, he could not be regarded as having exhausted domestic remedies in respect of the relevant part of the complaint.

129. The Government further argued that the complaint of failure to provide the applicant with adequate medical treatment, in so far as it concerned the applicant's detention in the ITT and in Kharkiv SIZO, had been introduced out of time. According to them, the six-month period, provided for in Article 35 § 1 of the Convention, had started to run from 23 January 2001, as regards the applicant's detention in the ITT, and from 23 February 2001, as regards his detention in Kharkiv SIZO.

130. The Court notes that it has rejected the Government's similar objections based on the non-exhaustion argument in a number of other cases against Ukraine where applicants' complaints concerned lack of adequate medical treatment in detention. In those cases the Court found that such complaints pointed to problems of a structural nature in the domestic penal system (see, for instance, *Melnik,* cited above, §§ 69-71; *Koktysh*, cited above, § 86; *Pokhlebin v. Ukraine*, no. 35581/06, §§ 41-42, 20 May 2010; and *Logvinenko v. Ukraine*, no. 13448/07, §§ 57-58, 14 October 2010).

131. In the present case, the Court considers that the matters raised by the applicant under this head are also of a structural nature. It observes that the authorities were well aware of the applicant's medical situation and his needs (see paragraphs 12, 18 and 19 above). Thus, it dismisses the Government's objection as to non-exhaustion of remedies in this respect.

132. The Court further notes that the applicant's allegation of the inadequacy of the medical assistance provided to him in detention concerns a continuing situation. Therefore, the Court rejects the Government's argument that the complaint concerning a part of the period of the applicant's detention had been lodged out of time (see *Logvinenko*, cited above, § 60).

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

2. *Merits*

a. The parties' submissions

134. According to the applicant, his disability had resulted from a lack of adequate and, in particular, timely medical treatment. In his view, his eye injury had not been correctly diagnosed in January 2001, which had

consequently resulted in the failure to adequately treat it. The applicant argued that once the doctors had discovered the injury he should have been taken to a hospital and examined by a doctor specialising in this type of health problem.

135. Without prejudice to their argument concerning the inadmissibility of this part of the application, the Government contended that the applicant had been provided with adequate medical assistance for his health problems. In particular, the Government noted that while in detention the applicant had been examined by various doctors, including some from outside the detention facilities. The treatment prescribed by the doctors had been given to the applicant by prison medical staff.

136. The Government further noted that during his detention in Dnipropetrovsk Colony the applicant had not availed himself of the opportunity to obtain, at his own expense, specialised treatment outside the colony, of which he had been duly informed by the authorities. He had also repeatedly refused examinations by an ophthalmologist (see paragraph 24 above).

137. The Government argued that the applicant's allegation that his health had deteriorated, in that he had become blind, because of inadequate treatment was not supported by his medical records.

b. The Court's assessment

138. The Court reiterates that it is the duty of the State to provide the requisite medical assistance in detention (see, for instance, *Ukhan v. Ukraine*, no. 30628/02, §§ 72-74, 18 December 2008, with further references). In determining whether the authorities have discharged their health-care obligations vis-à-vis a detainee in their charge, the Court's task is to assess the quality of the medical services provided to the detainee in the light of his state of health and "the practical demands of imprisonment" and, if he or she has been deprived of adequate medical assistance, to ascertain whether this amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see *Sarban v. Moldova*, no. 3456/05, § 78, 4 October 2005; *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008; and *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 104, 27 January 2011).

139. In the present case, the Court notes that the applicant suffered an eye injury, for which the authorities were responsible, and eventually lost his eyesight. The injury was noted by doctors on 19 January 2001, about a week after he had allegedly received it. About a month later the doctors established that the applicant had lost his eyesight. In the meantime, he was not given any treatment for the injury. Nor was he examined by an ophthalmologist. Specialised examinations and treatment of the applicant only started in September 2001.

140. In the light of the particular circumstances of the case, the Court considers it justified to separately assess the authorities' compliance with the Article 3 requirements during the applicant's detention between January and September 2001 and during his subsequent detention. As regards the latter period, the Court notes that its assessment may not concern the period after he was moved from Dnipropetrovsk to Vinnytsya Colony on 3 December 2008, given the absence of submissions by the applicant in that regard (see paragraph 32 above).

i. The alleged failure to provide the applicant with adequate medical assistance between January and September 2001

141. At the outset, the Court does not find it feasible, given the limited information in its possession, to establish whether the applicant's loss of sight resulted from the alleged inadequacy of the medical assistance provided to him or whether it was an inevitable consequence of his eye injury.

142. However, the Court attaches particular importance to the fact that the applicant's eye injury was not addressed by the authorities for over half a year from the time it was discovered in January 2001. The Government did not submit any explanation for the delay in providing the applicant with the requisite medical assistance.

143. Without prejudging the question of whether the failure to provide the applicant with any specialised treatment for such a prolonged period of time could have compromised any subsequent efforts to improve the applicant's state of health, the fact that the authorities failed to react promptly to the applicant's eye injury and to the deterioration of his heath is sufficient to enable the Court to conclude that the applicant was not provided with adequate medical treatment in detention prior to September 2001.

144. There has accordingly been a violation of Article 3 of the Convention as regards the lack of adequate medical assistance for the applicant's eye injury between January and September 2001.

ii. The alleged failure to provide the applicant with adequate medical assistance from September 2001 to December 2008

145. As regards the subsequent period of the applicant's detention, concerning which the parties provided relevant information, the Court observes that the applicant was examined by doctors, including an ophthalmologist, on a number of occasions and that he received some medical treatment in respect of his loss of sight. The applicant did not challenge, in a clear and substantiated way, the adequacy of such treatment and did not suggest that he had been denied access to alternative treatment to address his health problem.

146. As regards the latter issue, the Court notes that the applicant did not demonstrate that the fact that his mother was not allowed to supply him with unspecified medications had led to any detrimental effect on his health (see paragraph 25 above and *Vergelskyy*, cited above, §§ 89-91) The argument that the applicant should have been transferred to a specialised prison for disabled prisoners is also vague and lacks detail.

147. On the whole, the Court notes that the authorities cannot be reproached for addressing the applicant's medical needs inadequately during the period in question and that there are no medical records suggesting that the applicant was not fit to continue serving his prison sentence.

148. In light of the foregoing, the Court holds that there has been no violation of Article 3 of the Convention as regards the medical assistance provided to the applicant from September 2001 to December 2008.

C. Conditions of detention in Dnipropetrovsk Colony

149. The applicant complained about the conditions of his detention in Dnipropetrovsk Colony. The complaint principally concerned the use of handcuffs on the applicant. However, in his submissions before the Court the applicant also referred to some other issues relating to the conditions of his detention in that colony (see paragraphs 27-28 above).

The Court will deal with these matters separately.

1. Use of handcuffs

a. Admissibility

150. The Court notes that the complaint of the use of handcuffs 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

151. The applicant complained that in Dnipropetrovsk Colony he had been handcuffed every time he had left his cell. The applicant also submitted that he had been handcuffed during short family visits, despite the fact that this had been contrary to Article 106 of the Code on the Execution of Sentences.

152. The Government contended that the use of handcuffs on the applicant at Dnipropetrovsk Colony had not constituted inhuman or degrading treatment. According to them, the use of handcuffs when escorting the applicant within the colony had been an unavoidable aspect of the suffering and humiliation inherent in his lawful detention resulting from him being sentenced to life imprisonment. The Government further argued

that the applicant's allegation of the use of handcuffs during daily walks was not supported by any evidence. They also noted that handcuffing during daily walks was not envisaged by the relevant regulations.

153. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this level 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 (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III).

154. Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

155. The use of instruments of restraint, including handcuffs, does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary (see *Gorodnitchev v. Russia*, no. 52058/99, § 108, 24 May 2007, and *Kucheruk v. Ukraine*, no. 2570/04, § 139, ECHR 2007-X). In such matters, it is important to consider the danger of the person's absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII; and *Kashavelov v. Bulgaria*, no. 891/05, § 39, 20 January 2011).

156. The Court observes that the applicant was found by the domestic courts to be exceptionally dangerous to society (see paragraph 39 above). He was responsible for the murder of seven people, three of whom were police officers. The officers were killed by the applicant when they tried to stop him committing crimes. The Court considers that the applicant's criminal record arguably called for his placement under conditions of the highest level of security.

157. However, the question which must be addressed is whether specific measures applied to the applicant under such conditions, in particular the applicant's handcuffing, were justified given his personal situation.

158. In this context, the Court notes that the applicant was handcuffed whenever he was taken out of his cell. Although it appears that the applicant's handcuffing during daily walks at Dnipropetrovsk Colony was discontinued at some point in 2005 (see paragraph 30 above), he was still subjected to this measure of restraint during his being escorted and during family visits.

159. Turning to the applicant's personal situation, the Court notes that when he was placed in Dnipropetrovsk Colony he was completely blind and, according to his medical records, required outside assistance to manage aspects of daily life (see paragraph 21 above). There is no information to

suggest that the applicant tried to escape or behaved violently during his pre-trial detention in Kharkiv and Khmelnytsk SIZOs or subsequently in Dnipropetrovsk Colony.

160. Given the applicant's personal situation and also the practical arrangements for his being escorted – the applicant being followed by three wardens with a dog – the Court considers that the use of handcuffs on the applicant during his detention in the colony could not be justified by security reasons (see, *mutatis mutandis*, *Avcı and Others v. Turkey*, no. 70417/01, §§ 39-43, 27 June 2006).

161. The Court further considers that the applicant's handcuffing, both in principle and in particular as regards the manner in which the restraint was used on him in Dnipropetrovsk Colony – with his hands behind his back, in spite of the applicant's limited autonomy due to complete blindness – caused him suffering and humiliation beyond that inevitably connected with a particular form of legitimate punishment (see, *mutatis mutandis*, *Kudła*, cited above, §§ 92-94, and *Okhrimenko v. Ukraine*, no. 53896/07, § 98, 15 October 2009).

162. In the light of the foregoing, the Court does not find it necessary to determine whether, as the applicant argued, his handcuffing during family visits had been contrary to the relevant domestic regulations. Nonetheless, the Court notes that the regulations required the authorities to use the impugned measure of restraint on all life-sentenced men, without giving consideration to their personal situation and the individual risk they might or might not present. Furthermore, the practice of systematically handcuffing all life-sentenced men whenever they were taken out of their cell is also evidenced by the findings made by the CPT following its visit to a colony in Ukraine in October 2005, when the applicant was serving his sentence under similar conditions in Dnipropetrovsk Colony.

163. Accordingly, the Court finds that the use of handcuffs on the applicant in Dnipropetrovsk Colony constituted inhuman and degrading treatment and that there has been a violation of Article 3 of the Convention in this respect.

2. *Other issues relating to the conditions of the applicant's detention in Dnipropetrovsk Colony*

164. According to the applicant, further restrictions were applied to him in Dnipropetrovsk Colony, which included the allegedly unlawful denial of extended daily walks, a lack of ventilation in the cells, the authorities' refusal to allow him to make phone calls, and delayed dispatch of his letters.

165. The Court notes that, although in cases concerning complaints about detention conditions it has not always required that an applicant support each and every allegation with documentary evidence, recognising that relevant information and the possibility of investigating the facts in such cases lie primarily in the hands of the authorities, in order for the Court

to reverse the burden of proof and examine the merits of the complaints, they must at least have been clearly and consistently formulated (see *Ukhan*, cited above, §§ 64-66).

166. The Court observes that the majority of the applicant's submissions concerning this part of the case were limited to vague and general statements. He did not provide the requisite details or substantiation. The applicant also failed to demonstrate what the nature and extent of his suffering because of the impugned restrictions had been and whether his suffering had reached the threshold of severity bringing the matter within the ambit of Article 3 of the Convention.

167. On the whole, the Court finds that the above matters, as raised by the applicant in this part of the case, do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

168. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

169. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

170. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other people in the applicant's position, notably by solving the problem that has led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000 VIII).

171. In order to facilitate the rapid and effective enforcement of its judgments finding a violation of the Convention and to assist the respondent State to fulfil its obligations under Article 46, the Court must indicate, as precisely as possible, what it considers to be the problem that has led to the Court's finding. If the problem appears to be of a systemic character and has given rise or is likely to give rise to numerous applications, the Court may be required to identify the source of that problem (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, §§ 189-194, ECHR 2004-V; *Hutten-Czapska v. Poland* [GC] no. 35014/97, § 232, ECHR 2006-VIII;

Greens and M.T. v. the United Kingdom, nos. 60041/08 and 60054/08, § 107, ECHR 2010 (extracts); and, with respect to Ukraine, *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 80, 15 October 2009; *Kharchenko v. Ukraine*, no. 40107/02, § 101, 10 February 2011; and *Balitskiy v. Ukraine,* no. 12793/03, § 54, 3 November 2011).

172. The Court notes that a part of the present case concerns recurring problems underlying frequent violations of Article 3 of the Convention by Ukraine. In particular, in about 40 of its judgments the Court has found that the Ukrainian authorities were responsible for ill-treatment of people in police custody and that no effective investigation was conducted into allegations of such ill-treatment (see, for instance, the cases to which reference is made at paragraph 94 above). More than 100 other cases raising those issues are currently pending before the Court.

173. The Court further notes that the above-mentioned violations were neither prompted by isolated incidents, nor were attributable to a particular turn of events, but were the consequence of regulatory shortcomings and the administrative conduct of the authorities with regard to their obligations under Article 3 of the Convention.

174. In particular, given the Court's relevant case-law, criminal suspects appear to be one the most vulnerable group of victims of ill-treatment by the police. Ill-treatment often took place in the first days of victims' detention, during which they did not have access to a lawyer, and their injuries were not properly noted or not recorded at all. Although it could not be established in every such case that the ill-treatment was aimed at extracting a confession, a link between the victims' ill-treatment and the authorities' goal of collecting incriminatory evidence could not be ruled out (see, for instance, *Vergelskyy*, cited above, § 108; *Samardak*, cited above, § 36; *Kovalchuk*, cited above, § 60; *Bocharov,* cited above, § 47; and *Korobov,* cited above, § 73). As it has been noted in some of the reports and observations concerning the issue of ill-treatment in Ukraine, the evaluation of police officer's work based on the number of solved crimes has been one of the factors contributing to the use of torture against criminal suspects (see, for instance, paragraphs 56 and 59 above).

175. Another common factor leading to the violation of Article 3 of the Convention in the present case and in the cases with which the Court has dealt in the past is the prosecutors' reluctance to take all reasonable steps, in a prompt and expeditious manner, to establish the facts and circumstances pertinent to complaints of ill-treatment and to secure relevant evidence. In their inquiries, prosecutors rarely went further than obtaining explanations from police officers. The police officers' version of events prevailed and no effort was made to verify it through other means of inquiry.

176. The Court considers that such reluctance on the part of prosecutors, in particular in situations where criminal suspects were allegedly ill-treated with the aim of extracting a confession, could be explained, at least to a

certain extent, by prosecutors' conflicting tasks in criminal proceedings – prosecution on behalf of the State and supervision of the lawfulness of pre-trial investigations (see, *mutatis mutandis*, *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 116, ECHR 2005-II (extracts); *Salov v. Ukraine*, no. 65518/01, § 58, 6 September 2005; *Merit v. Ukraine*, no. 66561/01, § 63, 30 March 2004; *Melnik*, cited above, § 69; *Koval v. Ukraine*, no. 65550/01, § 95, 19 October 2006; reports by the Ukrainian Ombudsman at paragraphs 55-59 above and the relevant observations of the UN Committee against Torture at paragraph 75 above). Since confessions have often constituted one of the principal pieces of evidence in criminal proceedings, it cannot be ruled out that prosecutors have not been interested to conduct full-scale investigations that would be potentially capable of undermining the reliability of such evidence.

177. Appeals to courts against prosecutors' refusals to investigate, either on the basis of the separate procedure provided for under Article 236-1 of the Code of Criminal Procedure or in the course of legal argument concerning the admissibility of evidence at trial, have not resulted in the required improvement in the prosecutors' inquiry. Trial judges would rarely give an independent assessment of the reliability of evidence allegedly obtained under duress if such allegations were rejected by prosecutors.

178. The present case, along with similar previous cases against Ukraine in which the Court has found a procedural breach of Article 3 of the Convention, also demonstrates that, in spite of the general legal prohibition of torture and inhuman and degrading treatment in Ukraine, in practice agents of the State responsible for such ill-treatment have commonly gone unpunished (see, in particular, *Teslenko,* cited above, § 116). The lack of any meaningful efforts on the part of the authorities in this regard perpetuates a climate of virtually total impunity for such acts.

179. The systemic character of the above issues is further evidenced by reports and observations concerning the human rights situation in Ukraine obtained from domestic authorities and various national and international organisations (see paragraphs 55-60, 63, 64, 74-79 above). Moreover, given the most recent reports and, in particular, the Committee of Ministers' records concerning the execution of the Court's judgments addressing the issues (see paragraphs 71-72 above), they have remained unresolved.

180. Accordingly, the Court finds that the situation in the present case must be characterised as resulting from systemic problems at the national level which, given the fundamental values of democratic society they concern, call for the prompt implementation of comprehensive and complex measures.

181. In the present case, the Court is not in a position to determine the general and individual measures to be implemented by Ukraine in order to comply with the judgment. It falls to the Committee of Ministers, acting under Article 46 of the Convention, to address the issue of what – in

practical terms – may be required of the respondent State by way of compliance (compare and contrast with *Abuyeva and Others v. Russia*, no. 27065/05, §§ 240-243, 2 December 2010).

182. Nevertheless, the Court considers it necessary to stress that Ukraine must urgently put in place specific reforms in its legal system in order to ensure that practices of ill-treatment in custody are eradicated, that effective investigation is conducted in accordance with Article 3 of the Convention in every single case where an arguable complaint of ill-treatment is raised and that any shortcomings in such investigation are effectively remedied at the domestic level. In so doing, the Ukrainian authorities should have due regard to this judgment, the Court's relevant case-law and the Committee of Ministers's relevant recommendations, resolutions and decisions.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

183. 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

184. The applicant claimed 100,000 euros (EUR) in compensation for mental and physical suffering.

185. The Government contested the claim.

186. Taking into account the gravity and the number of violations found in the present case and making its assessment on an equitable basis, the Court awards the applicant EUR 40,000 in respect of non-pecuniary damage.

B. Costs and expenses

187. The applicant did not submit a claim for costs and expenses; the Court therefore makes no award in this respect.

C. Default interest

188. 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 applicant's complaints under Article 3 of the Convention concerning the alleged torture by the police, ineffective investigation, lack of adequate medical assistance, and use of handcuffs in Dnipropetrovsk Colony admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention as regards the applicant's torture by the police;

3. *Holds* that there has been a violation of Article 3 of the Convention as regards the failure of the authorities to conduct an effective investigation into the applicant's complaint of torture;

4. *Holds* that there has been a violation of Article 3 of the Convention as regards the lack of adequate medical assistance for the applicant's eye injury between January and September 2001;

5. *Holds* that there has been no violation of Article 3 of the Convention as regards the alleged lack of adequate medical assistance during the applicant's detention from September 2001 to December 2008;

6. *Holds* that there has been a violation of Article 3 of the Convention as regards the use of handcuffs on the applicant in Dnipropetrovsk Colony;

7. *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 40,000 (forty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias 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;

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

Done in English, and notified in writing on 15 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Dean Spielmann
Registrar	President