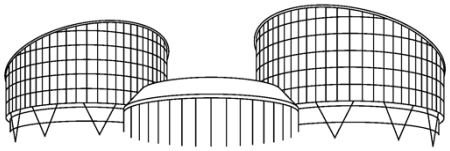

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SHMORGUNOV AND OTHERS v. UKRAINE

(Applications nos. 15367/14 and 13 others – see appended list)

JUDGMENT

Art 3 (procedural and substantive) • Art 5 § 1 • Art 11 • Deliberate strategy to stop initially peaceful Maidan protest through excessive force resulting in escalation of violence and multiple abuses by non-State agents hired by police • Ill-treatment, arbitrary detentions and unjustified dispersal of Maidan protestors and lack of effective and independent investigation

STRASBOURG

21 January 2021

FINAL

21/04/2021

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

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APPENDIX 160

In the case of Shmorgunov and Others v. Ukraine,

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

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

and Victor Soloveytchik, *Section Registrar,*

Having regard to:

fourteen applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by sixteen individuals - fifteen Ukrainian nationals and Mr B. Yegiazaryan, an Armenian national - ("the applicants", whose personal information and other details are set out in the appended table);

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

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

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the Armenian Government's decision not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention), in so far as application no. 16280/14 concerned an Armenian national (Mr B. Yegiazaryan);

the comments submitted by the Redress Trust (REDRESS), an international human rights non-governmental organisation based in London, who were granted leave to intervene by the President of the Section, in so far as application no. 9078/14 (Mr I. Sirenko) is concerned;

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

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

INTRODUCTION

1. The applications concern allegations of police ill-treatment, including instances of police brutality, arbitrary detentions, unjustified dispersal of demonstrators and the lack of an effective investigation in connection with the series of mass protests which took place in Ukraine between 21 November 2013 and 21 February 2014; protests commonly referred to as "Euromaidan" and/or "Maidan". The applicants relied mainly on Articles 3, 5 §§ 1, 3 and 5, and 11 of the Convention.

THE FACTS

2. The applicants were represented by various lawyers, whose details are set out in the appendix.

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

I. PRELIMINARY REMARKS CONCERNING THE PRESENT CASE AND OTHER APPLICATIONS RELATING TO THE MAIDAN EVENTS

4. The fourteen applications in this case are amongst thirty-three applications against Ukraine lodged with the Court under Article 34 of the Convention by thirty-eight Ukrainian nationals and one Armenian national in relation to the Maidan protests.

5. While all thirty-three applications share a common general factual background, the applications which compose the present case have been grouped in order to provide a comprehensive overview of the relevant background to the Maidan protests and the ensuing investigations. The remaining applications are dealt with in four separate judgments, and have been organised, where possible, into groups. In those judgments, also adopted on the same day, there is extensive cross-referencing to the background material, facts, domestic and international law and materials and general case-law principles set out in the present judgment. The Court stresses that an underlying complaint common to all thirty-three applications is that the actions in which the authorities of the respondent State are said to have engaged in order to suppress the Maidan protests were organised, concerted and arbitrary. Therefore, all five judgments handed down on the same day, to the extent that they all relate to the Maidan protests and concern complaints underpinned by this common allegation, should be read as a whole (see, in addition to this judgment, *Lutsenko and Verbytskyy v. Ukraine*, nos. 12482/14 and 39800/14, 21 January 2021, not final; *Kadura and Smaliy v. Ukraine*, nos. 42753/14 and 43860/14, 21 January 2021, not final; *Dubovtsev and Others v. Ukraine*, nos. 21429/14 and 9 others, 21 January 2021, not final; and *Vorontsov and Others v. Ukraine*, nos. 58925/14 and 4 others, 21 January 2021, not final).

6. The fourteen applications under examination concern events relating to the dispersal of protests in central Kyiv on 30 November and 1 and 11 December 2013, 23 January and 18 February 2014. The remaining nineteen applications concern other alleged abuses in connection with the Maidan protests in Kyiv and related protests in other Ukrainian cities on different dates during the same period.

7. The relevant facts are described mainly in chronological order. The description is based on the parties' submissions, various documents from

relevant domestic decisions and case files, and the information contained in the domestic and international reports reproduced or summarised in this judgment. Where there is no discernible disagreement between the parties as to the relevant facts, no reference to the source of the information is made. Where there is actually or potentially such a disagreement, this has been indicated in the text to the extent possible.

8. While the parties' most recent submissions concerning the events described below date back to the first quarter of 2017, the Court has also used, where it has been necessary to verify further developments in and/or the outcome of the relevant domestic proceedings, more updated information from publicly available sources, notably the Ukrainian official electronic database of court decisions (http://reyestr.court.gov.ua), the official website of the Prosecutor General's Office ("PGO") specifically dedicated to the proceedings concerning the Maidan protests (https://rrg.gp.gov.ua/, "the PGO's dedicated website")[1], and a number of domestic and international reports reproduced or summarised in this judgment.

II. GENERAL INFORMATION ABOUT THE MAIDAN EVENTS AND ENSUING DOMESTIC PROCEEDINGS

A. Overview of the protests in Ukraine between 21 November 2013 and 21 February 2014

9. Between 21 November 2013 and 21 February 2014 a series of protests took place in Ukraine, reportedly in response to the decision of the Cabinet of Ministers to suspend preparations for the signing of the Ukraine-European Union Association Agreement. As noted above, these protests are commonly referred to as "Euromaidan" and/or "Maidan". The protests ultimately led to the 2014 Ukrainian revolution (also known as the Revolution of Dignity) and culminated in the ousting of Ukraine's fourth President, Mr V. Yanukovych, in late February 2014. This was followed by a series of changes in Ukraine's political system, including the formation of a new interim government, the restoration of the previous Constitution and impromptu presidential elections.

10. While there were clashes between the police and protesters as early as 24 November 2013, when the first major pro-European and anti-government demonstration took place, with the number of participants being estimated by various sources to be between 50,000 and 100,000 persons, the situation deteriorated significantly and became more violent after the forceful dispersal of protesters by the "Berkut" special police force

[1] In April 2015 the PGO launched an official Internet site – https://rrg.gp.gov.ua/ – with a view to regularly publishing updated information about all the proceedings relating to the Maidan protests. The most recent information on the website was published in July 2020.

in central Kyiv on 30 November 2013 (see paragraphs 24-41 below). In particular, the number of people involved in the protests rose, with between 400,000 and 800,000 protesters demonstrating in Kyiv on 1 and 8 December 2013 and many more protesters joining subsequently. The protests involved a number of violent clashes between the police and protesters and, as time passed, the involvement of so-called "titushky" (*тітушки*), private individuals who, with the authorisation, support or acquiescence of State officials, were reported to have apprehended and ill-treated protesters (see paragraph 15 below with further references).

11. On different dates similar protests took place in almost all other large cities across Ukraine, including Donetsk, Dnipropetrovsk, Ivano-Frankivsk, Kharkiv, Luhansk, Lviv, Vinnytsia, Uzhhorod and Zaporizhzhya. The majority of those protests were dispersed by the police, with many protesters being arrested and/or prosecuted on charges of mass disorder.

12. The Maidan protests are reported to have been initially organised in a leaderless, non-hierarchical fashion, even though between November and December 2013 several political parties and politicians submitted written notices to the Kyiv City Council and/or the Kyiv State Administration informing them of their intention to organise rallies in central Kyiv, including the round-the-clock vigil on Maidan Nezalezhnosti on 30 November 2013 and the gatherings on later dates in December 2013. Eventually, informal leaders emerged and various political figures joined the protests. On 22 December 2013 a political alliance called the Maidan People's Union (*Народне об'єднання "Майдан"*) was created by several political parties, non-partisan public organisations and individuals taking part in the Maidan protests with the aim of coordinating the protest movement, among other things. At that time, about fifty individuals were the members of the council of the alliance, including Mr I. Lutsenko, whose application is the subject of one of the five judgments handed down on the same day as the present judgment (see *Lutsenko and Verbytskyy*, cited above).

13. During the Maidan protests in central Kyiv, the protesters erected barricades and set up tents and platforms for public performances and presentations. At different times they occupied several administrative buildings, including the Kyiv Council and State Administration building and the Trade Unions building. These buildings were used, *inter alia*, as places where the protesters could get warm, receive food and medical assistance, sleep and rest. Those premises also contained the headquarters of the leaders of the Maidan protests and their press centre. While the area or buildings they occupied varied at different times and violent events took place in different parts of Kyiv, for most of the time the protesters essentially controlled the central square – Maidan Nezalezhnosti (*Майдан Незалежності*) – and parts of several adjacent streets.

14. In response to the protests, the authorities deployed about 11,000 police officers to Kyiv during the Maidan protests, including: the Berkut special police force, a special police unit for the protection of public order and for fighting organised crime, subordinate to the Department for the Protection of Public Order, itself a part of the Ministry of the Interior ("the MoI"); the "Sokil" special unit of the Department for Fighting Organised Crime of the MoI; internal troops under the command of the Minister of the Interior, as well as their special subdivisions ("Bars", "Gepard", "Jaguar", "Leopard" and "Tygr") and a special anti-terrorist unit called "Omega". In addition to those, the authorities deployed a special anti-terrorist unit of the Security Service of Ukraine called "Alpha" and units of the Department of the State Guard.

15. According to relevant investigation files and different national and international reports (see, notably, paragraphs 20, 21, 235, 242, 246, 248, 250, 251, 252, 254 and 260 below), in order to suppress the protests, the authorities engaged hundreds of titushky, who are alleged to have carried out numerous assaults, kidnappings and murders of protesters (see, in particular, paragraph 11 of the CPT's report of 13 January 2015, reproduced at paragraph 250 below).

16. Reportedly, during the Maidan protests there were over 100 protest-related deaths, including over seventy protesters shot dead, often referred to in Ukraine as the "Heaven's Hundred", and about 1,000 protesters injured. Additionally, at least thirteen police officers were killed and about 1,000 were injured during those events (see, *inter alia*, the 2015 report of the International Advisory Panel ("the IAP"), an international body constituted by the Secretary General of the Council of Europe in April 2014, which is partly summarised and partly reproduced in this judgment at paragraphs 237-249 below).

17. The protests were given extensive media coverage in Ukraine and abroad, and almost all the relevant events were recorded and documented by the authorities, the national and international media, the protesters and/or numerous witnesses.

B. Overview of the official investigations into these events

18. During and after the Maidan protests the authorities launched various investigations into the events at issue, including those relating to the applicants' complaints of ill-treatment and other abuses on account of their actual or perceived involvement in the Maidan protests. Currently, numerous criminal proceedings are pending relating to the treatment of Maidan protesters, including proceedings against the former highest government officials – President Yanukovych, Prime Minister Azarov, the Prosecutor General Mr V. Pshonka, the Minister of the Interior Mr V. Zakharchenko, and the Secretary of the National Security and

Defence Council Mr A. Klyuev, who are suspected of having designed and orchestrated a deliberate strategy to put an end to and further hinder the Maidan protests, using disproportionate force against the protesters, as well as subjecting them to arbitrary arrests and abusive prosecution. Related proceedings have been brought against numerous police officers, investigators, prosecutors and judges who were involved in the proceedings against the protesters.

19. According to information published by the PGO on its dedicated website, many of those suspects fled Ukraine for Russia and were out of the Ukrainian authorities' reach. For that reason, special *in absentia* proceedings were being pursued against those suspects at the time of the adoption of this judgment.

20. On 21 November 2018 the Head of the Special Investigations Department of the PGO ("the SID"), which was created on 8 December 2014 and oversaw some of the Maidan-related investigations prior to 20 November 2019, provided certain details about those proceedings in his press briefing, which was summarised by the Ukraine Crisis Media Centre ("the UCMC")[2] as follows (emphasis added by the UCMC):

> **"Key figures: thousands crimes, hundreds charged and nine found guilty**
>
> **4700 crimes, 442 suspects**. The overall number of offences during Maidan reaches 4700. The majority of them are already being investigated ... 442 persons have been charged. Indictments concerning 279 persons have been sent to courts.
>
> 'We have identified the circumstances in which these crimes were committed. At best we have identified executors, organizers, masterminds and accomplices including the so-called mid part of the chain through which the orders were passed,' the official said.
>
> ... over 15 thousand persons are being currently checked upon for their involvement into the crimes in question, this number includes law enforcement staff.
>
> ... 52 persons have been found guilty... Nine persons have been sentenced to prison... Thirteen persons are under arrest... Nine acquittals have been issued ...
>
> **Murder cases**. ... 56 persons have been charged in murder cases of 73 protesters, 'starting from the former head of the state and ending up with junior-level law enforcement staff charged with the use of weapons or beating of the protesters that caused their death.'
>
> **Berkut officers in the new police.** Five years after the crimes were committed about 30 per cent of the then Berkut (riot) policemen are still serving ... among them are 20 indictees, nine of whom are on high-level positions... 33 persons – suspects in the Maidan cases continue their service with law enforcement agencies. The Ministry of Interior however does not see grounds for their dismissal until conviction.

[2] http://uacrisis.org/69790-victims-maidan-key-things
UCMC press centre is a platform that allows civic activists, experts, politicians, authorities, diplomats and members of international community to conduct briefings regarding events and processes taking place in Ukraine.

Why is it going so slowly?...

Lack of personnel at the special directorate within the Office of the Prosecutor General. [out of 4700 investigations] over 4100 are within the responsibility of [46 investigators and 33 prosecutors] of the Prosecutor General's Office ...

Slow examination. Institutes for forensic examination in Kyiv and Kharkiv are employing just one ballistic expert each. It causes serious delays with ballistic tests ...

Resistance of the law enforcement system. ... the cases against law enforcement staff ... [are] being protracted due to [such] resistance ... the majority of those who were sentenced to jail in Maidan crimes are 'titushky' thugs.

'It so happens that the investigation against "titushky" concerned a particular episode, it makes it possible to finalize (the investigation – edit.) and get to the sentence quicker,' the official explained.

... the majority of the crimes during the Revolution of Dignity were committed by law enforcement [staff]. ..."

21. On 19 February 2019 the SID published its analytical paper on "systemic obstacles to the investigation of crimes committed during the Maidan protests"[3]. The relevant extracts from the analytical paper read as follows (emphasis added by the SID):

"...During [the period 2014-2019] investigators from the SID conducted investigations regarding **over 4,100 criminal acts ([while] other law-enforcement bodies [conducted investigations regarding] more than 700 additional criminal acts)** ...

In all, when dealing with this category of cases, the Ukrainian law-enforcement bodies informed 442 individuals – including 48 senior government officials, 226 law-enforcement officials (including 27 investigators), 20 prosecutors and 23 judges [and 58 'titushky'] – that they were suspected of having committed [different] crimes. 186 indictments regarding 288 individuals were referred to courts [for trial]. The court proceedings led to 52 individuals being found guilty of [different] crimes ...

At the same time, in practice, ... **the investigations** [have been] obstructed over the course of those years, obstruction which took different forms and appearances. The lack of reaction [to that issue] over an extended period demonstrates that **the Ukrainian leadership, law-enforcement bodies and judicial branch of power were not interested** in achieving prompt, comprehensive and high-quality **results in the investigations and punishing the individuals** involved in those crimes. Moreover, there are ... indications that there was **intentional systemic obstruction of the investigations**. This situation can be explained only by the unwillingness of the political forces to put an end to the existing system of [personal control and management] (*ручне управління*) of the law-enforcement bodies.

[... if there had been no hindrance ..., the results would have been more significant, particularly as regards the number of convicted individuals.

All existing obstacles to the investigations can**, in principle,** be **grouped into the following categories**, each of which will be examined in this analytical paper:

[3]https://docs.google.com/document/d/1YnxFCgzyMNWn7fzIhbSwOOehZfhwP0kWRz4dp1VCHWY/edit?fbclid=IwAR3g8JKzuUYOsQySQfq0gaDPj9DDqPc7vpeSF62e6EEtx3PSFbTSahFeW20

1. [Obstacles involving] the leadership of the Prosecutor General's Office providing inadequate support for the investigations and creating obstacles [to the investigations].

2. [Obstacles involving] the Ministry of the Interior and the Security Service of Ukraine creating obstacles to the investigations into the crimes committed by law-enforcement officials.

3. Obstacles resulting from the decisions and actions of investigating judges, and from decisions and actions taken in the course of judicial proceedings.

4. [Obstacles involving] recurring legislative 'novelties', which complicate the investigations and call their legitimacy into question.

5. [Obstacles involving] the lack of high-quality and necessary support for forensic expert facilities, and the lack of support from other government bodies involved.

..."

22. From December 2019 the PGO started transferring the relevant investigation files to the State Bureau of Investigations. The latter was created by the State Bureau of Investigations Act of 12 November 2015 and was empowered, *inter alia*, to conduct investigations into the crimes committed by high-ranking governmental officials. It is unknown whether the transfer was completed at the time of the adoption of this judgment.

III. DETAILS OF THE RELEVANT EVENTS IN KYIV

23. On 21 November 2013, reportedly further to calls on social networks (see, *inter alia*, paragraph 4 of the 2015 report of the IAP, which is partly summarised and partly reproduced in this judgment at paragraphs 237-249 below), several thousand protesters gathered on Maidan Nezalezhnosti to protest against the decision of the Cabinet of Ministers to suspend preparations for the signing of the Ukraine European Union Association Agreement, which was adopted earlier on that date. At around 2 p.m. on that date the Kyiv City Circuit Administrative Court issued a decision *inter alia* banning installation of tents and similar objects during demonstrations on Maidan Nezalezhnosti, Khreshchatyk Street and European Square in central Kyiv.[4] Much later, on 23 January 2014 the Kyiv Administrative Court of Appeal quashed that decision mainly for the reasons that no evidence had been provided to show that installation of tents or similar objects during the demonstrations might have created a real danger to the health or rights of others or for the public order, that the authorities had been notified of planned demonstrations in central Kyiv in advance, and that the ban had been unlawfully extended to an unlimited number of persons.

Between 21 and 30 November 2013 similar rallies were organised in central Kyiv with a certain number of protesters maintaining the

[4] By that decision, the Kyiv City Circuit Administrative Court also banned a rally which a religious organisation wished to organise in central Kyiv for a purpose unrelated to the Maidan protests.

round-the-clock vigil on Maidan Nezalezhnosti and, for some time, on European Square. To that end, the protesters installed several tents there. During the protest on 24 November 2013 there were clashes between the protesters and the police.

Particularly violent clashes took place in Kyiv in the early morning of 30 November 2013, on 1 December and on the night of 10-11 December 2013, from 19 to 22 January 2014, and from 18 to 20 February 2014.

24. In the early morning of 30 November 2013, the police used force to disperse several hundred protesters, who were taking part in the round-the-clock vigil on Maidan Nezalezhnosti, occupying a part of its pedestrian zone. Between sixty and ninety persons were injured. Over thirty persons were arrested by the police.

25. On 30 November 2013 the Kyiv City State Administration initiated proceedings against the Batkivshchyna Party and UDAR Party and several individuals, for an order banning demonstrations between 1 and 7 December 2013 on Bankova, Hrushevskoho and Bohomoltsia Streets, European Square and Maidan Nezalezhnosti and in a nearby park. The application was granted by the Kyiv City Circuit Administrative Court which examined the case at around midnight on the same day. In its decision, the court noted that there had been information that "the Maidan protesters had called [for people] to rally on the streets, organise a revolution and topple the current regime", and that "unknown individuals had launched smoke grenades", but provided no further details. It also noted that the defendants had given the Kyiv City State Administration notice of their rally, planned for 1 December 2013, on 30 November 2013, and thus had failed to comply with the requirement laid down by the decision of the Kyiv City Council that ten days' notice should be given of any planned demonstration. This decision was upheld on 23 January 2014 by the Kyiv Administrative Court of Appeal. On 17 April 2014 the Higher Administrative Court ("the HAC") quashed those decisions as unfounded. The HAC held that the lower courts had failed to take into account that no legitimate grounds had been put forward for the restriction of the right of peaceful assembly nor had any evidence been submitted to demonstrate that the defendants in the proceedings or the participants in the rallies had had violent intentions, that the rallies had posed a real risk of disruption or increased the likelihood of crimes being committed, or that they had endangered the health or rights of others.

26. On 1 December 2013, reportedly in reaction to the dispersal of 30 November 2013, several hundred thousand people participated in a march in central Kyiv. At around 2 p.m. on the former date several hundred protesters gathered near the Presidential Administration on Bankova Street. Several individuals present there started behaving violently and, inter alia, threw stones and sticks at the police officers who were blocking the passage to the Presidential Administration. Some of those individuals also seized a

loader and reportedly tried to break through the police cordon. At around 4.30 p.m. the police officers used force to disperse the protesters on Bankova Street. Over 200 persons were injured during those events. Nine persons were arrested by the police in that connection (see, *inter alia*, paragraphs 24-32 of the 2015 report of the IAP, which is partly summarised and partly reproduced in this judgment at paragraphs 237-249 below).

27. On 8 December 2013 another demonstration took place on Maidan Nezalezhnosti, in which several hundred thousand people took part and erected barricades on Hrushevskoho, Liuteranska, Kruglouniversytetska and Bohomoltsia Streets adjacent to Maidan Nezalezhnosti.

28. On 9 December 2013, while the protesters were occupying Maidan Nezalezhnosti and parts of several adjacent streets in central Kyiv, the Kyiv City Council lodged a civil claim against several individuals and two political parties, seeking to compel them and any other person not to obstruct pedestrians' and vehicles' use of the streets in central Kyiv.

29. On the same date, at the Kyiv City Council's request, Judge G. of the Pecherskyy District Court decided to apply an interim measure in those proceedings relying, *inter alia*, on Articles 151 and 152 of the Code of Civil Procedure as worded at the material time (see paragraph 204 below). The injunction restrained the defendants and "any other person" from "obstructing pedestrians' and vehicles' use of [the streets in central Kyiv]" as that was considered necessary to ensure the enforcement of a decision on the merits of the claim. It was also stated that the court had examined the matter without informing the defendants.

30. The interim measure was challenged on appeal and eventually overturned by the Kyiv Court of Appeal on 11 March 2014. On 9 April 2014 Judge G. terminated the proceedings as the defendants' registered residences were located outside the territory over which the Pecherskyy District Court had jurisdiction.

31. In the meantime, on 10 December 2013 the relevant bailiffs' service initiated enforcement proceedings regarding the injunction and decided that police officers should be involved. In the early hours of 11 December 2013 a number of police officers attempted to remove the protesters from Maidan Nezalezhnosti and tried to dismantle the barricades on Instytutska Street. The police also attempted to enter the Kyiv Council and State Administration building, which the protesters had occupied on 1 December 2013. The stand-off between the protesters and the police lasted all night of 11 December 2013 and resulted in around forty persons being injured.

32. During the second half of December 2013 and the first two weeks of January 2014 the protests continued with certain isolated clashes and incidents involving the police and the protesters.

33. On 16 January 2014 the Verkhovna Rada adopted several laws, which became known as the 'anti-protest laws', which restricted civil rights

and liberties, and, in particular, freedom of assembly (see, for further details, paragraph 197 below).

34. On 19 January 2014, reportedly in response to the enactment of those laws, a mass march started on Maidan Nezalezhnosti. The protesters intended to proceed to the Verkhovna Rada building but found Hrushevskoho Street, leading to it, blocked by the police. Eventually, the protesters and the police clashed; the former threw, among other objects, stones and burning objects at the police officers, while the latter used tear gas, stun grenades and water cannons against the protesters. The police were alleged to have shot at the protesters with rubber bullets and shotgun shells with metallic projectiles (see, *inter alia*, paragraphs 53-54 of the 2015 report of the IAP, which is partly summarised and partly reproduced in this judgment at paragraphs 237-249 below).

35. Violent clashes between the protesters and the police on Hrushevskoho Street took place also during 20-22 January 2014, mainly in the course of police attempts to disperse the protesters, and resulted in over thousand persons suffering various injuries and at least two protesters being shot dead. Dozens of persons were arrested by the police and there were reported instances of allegedly excessive use of force and/or humiliation during or immediately following their arrest (see, *inter alia*, paragraphs 11 and 13 of the report to the Ukrainian Government on a visit to Ukraine carried out by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 24 February 2014, reproduced at paragraph 250 below).

36. Subsequently, the protesters maintained the round-the-clock vigil on and around Maidan Nezalezhnosti and also occupied several governmental buildings in that area. The confrontation between the protesters and the police continued, but to a lesser extent.

37. Reportedly, on different dates in January and the first two weeks of February 2014 a number of protesters, when outside the area controlled by the protesters, were arrested by the police or abducted by titushky. Many of those persons later alleged that they had been ill-treated either by the police or titushky (see, *inter alia*, paragraph 11 of the CPT's report of 13 January 2015, reproduced at paragraph 250 below). Also, allegations were raised that titushky were responsible for murdering several protesters, including Mr Y. Verbytskyy (see *Lutsenko and Verbytskyy*, cited above).

38. On 18 February 2014 the protesters went to the Verkhovna Rada, reportedly to protest against delays in restoring the 2004 amendments to the Constitution of Ukraine. Particularly violent clashes between the protesters and the police took place, as a result of which over thousand persons were injured and at least eight persons died.

39. Later that day, having dispersed the protesters in the area near to the Verkhovna Rada, the police advanced on the protesters who were on Maidan Nezalezhnosti. Reportedly, the police used stun grenades, tear gas,

guns with rubber bullets and shotgun shells with metallic projectiles, water cannons, armoured personnel carriers and, on certain occasions, firearms against the protesters, while the latter threw at the police sticks, stones and bottles containing a flammable liquid. As a result, hundreds were injured and more than ten persons died (see, *inter alia*, paragraphs 71-76 of the 2015 report of the IAP, which is partly summarised and partly reproduced in this judgment at paragraphs 237-249 below).

40. On 19 February 2014 the authorities publicly announced that they had launched an anti-terrorist operation to disperse the protesters and that firearms had been distributed to the law-enforcement agents concerned.

41. On that date and on 20 February 2014 the clashes between the protesters and the police on and around Maidan Nezalezhnosti continued and reportedly resulted in the death of about seventy persons, most of whom died because of firearm injuries.

42. In the evening on 20 February 2014 the *Verkhovna Rada* adopted a resolution condemning "all manifestations of violence which had led to deaths and injuries" and instructing the Cabinet of Ministers, the MoI, the Ministry of Defence and the State Security Service (the SSU)to stop the anti-terrorist operation, to stop using force against the protesters, to stop blocking the streets and to return the law-enforcement personnel to their usual places of deployment.

43. By the time of the adoption of that resolution, the standoff and clashes between the police and the protesters in central Kyiv essentially ended. The police forces gradually withdrew from that area.

44. Reportedly, on 21 and/or 22 February 2014 President Yanukovych and a number of higher governmental officials, including Prime Minister Azarov, the Prosecutor General Mr V. Pshonka and the Minister of the Interior Mr V. Zakharchenko, left Kyiv (see, *inter alia*, paragraph 84 of the Report of the Office of the Prosecutor of the ICC on Preliminary Examination Activities in 2015, partly reproduced and summarised at paragraph 268 below).

45. On 22 February 2014 the *Verkhovna Rada* adopted a resolution citing "circumstances of extreme urgency" and declaring that President Yanukovych "withdrew from his [presidential] duties in an unconstitutional manner". It scheduled early presidential elections to be held on 25 May 2014, elected Mr O. Turchynov, a member of parliament, to replace the former chairman of the *Verkhovna Rada*, who had earlier resigned, and instructed Mr O. Turchynov to coordinate the work of the Cabinet of Ministers until the formation of a new government.

IV. SPECIFIC FACTS RELATING TO THE APPLICANTS IN THE PRESENT CASE

A. Events in Kyiv on 30 November 2013 concerning Mr I. Sirenko, Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko (applications nos. 9078/14, 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 42271/14 and 19954/15) and their aftermath

1. Alleged ill-treatment of the applicants concerned

46. At about 4 a.m. on 30 November 2013, the above applicants were among the protesters taking part in the round-the-clock vigil on Maidan Nezalezhnosti in Kyiv (see paragraph 24 above). The applicants stated that they were unarmed. The Government did not contest this and further stated in their observations that the protest in question had been peaceful.

47. According to the parties' written submissions and the video-recordings and photographs provided by the applicants, Berkut officers surrounded and assaulted the protesters, including the applicants, hitting and kicking them, using rubber and plastic batons, tear gas and stun grenades in order to disperse them. Although the protesters offered no resistance to the police and many of them, having been injured, were lying on the pavement, the alleged beatings continued. Many of the protesters who tried to escape the violent dispersal and run away, including some of the applicants (see paragraph 48 below) were caught and beaten by the Berkut officers in areas adjacent to Maidan Nezalezhnosti. Allegedly, during the dispersal, the Berkut officers also swore at the protesters, notably calling them "khokhly" (*хохли*, an ethnic slur for Ukrainians, mostly used in Russian). The dispersal was carried out, according to the authorities, in order to install equipment and materials for a New Year tree on Maidan Nezalezhnosti.

48. According to the applicants' submissions and the information contained in the relevant investigation files (see paragraphs 54-56 below):

(i) During the dispersal unidentified Berkut officers hit and kicked Mr I. Sirenko several times on the trunk of his body and his limbs.

(ii) After the dispersal started, Mr P. Shmorgunov tried to leave the area in order to avoid being beaten by unidentified Berkut officers. He managed to move away, and was around 100 metres away when two unidentified Berkut officers shouted at him "Run, 'khokhol'" (see paragraph 47 above) and then hit him on the head, shoulders and legs.

(iii) Mr B. Yegiazaryan was hit on the back by unidentified Berkut officers while he was trying to help an unconscious woman who had fallen to the ground during the dispersal. He managed to leave Maidan Nezalezhnosti, but when he was around 300 metres away several other

unidentified Berkut officers ran up to him and repeatedly hit him with rubber batons on the back, neck and limbs.

(iv) During the dispersal, Mr Y. Lepyavko tried to help another protester who had been kicked to the ground by unidentified Berkut officers. At that moment, an unidentified Berkut officer hit and kicked Mr Y. Lepyavko on the head, the trunk of his body and the limbs.

(v) During the dispersal, Mr O. Grabets fell down. Unidentified Berkut officers beat him while he was lying on the pavement. He was hit and kicked on the legs and buttocks several times.

(vi) Unidentified Berkut officers hit Mr O. Bala with rubber batons and knocked him down. While he was lying on the pavement they repeatedly hit and kicked him on the head, body and limbs, so that he lost consciousness.

(vii) During the dispersal, unidentified Berkut officers repeatedly hit Mr F. Lapiy with rubber batons on the head, the limbs and the trunk of his body. In order to leave the area which the Berkut officers had surrounded, he had to walk through a "corridor" formed by several unidentified Berkut officers, who continued to beat him while he was walking.

(viii) After the dispersal started, Mr R. Ratushnyy, who was 16 years old at the time, tried to leave the area in order to avoid being beaten. He managed to move away, and was a certain distance away when an unidentified Berkut officer ran towards him and hit him with a rubber baton on the upper back. Later, another unidentified Berkut officer hit him with a rubber baton on the right leg.

(ix) During the dispersal, unidentified Berkut officers pulled Ms O. Kovalska by the hair and threw her to the pavement, while also hitting her on the head and neck.

(x) Unidentified Berkut officers repeatedly hit Mr A. Rudchyk with rubber batons on the shoulders, back and limbs. He was also hit on his head, and consequently he experienced dizziness and his nose started bleeding.

(xi) Mr A. Sokolenko, who is a doctor, was trying to give medical assistance to a protester who had been injured during the dispersal when unidentified Berkut officers hit him on the right leg and upper back. Subsequently, while he was moving away from the area, an unidentified Berkut officer hit him with a rubber baton on the left arm.

49. While some of the applicants concerned – Mr I. Sirenko, Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy and Mr A. Sokolenko (applications nos. 9078/14, 15367/14, 16280/14, 20546/14, 24405/14, 42271/14 and 19954/15) – were examined and treated by doctors shortly after the dispersal, other applicants – Mr A. Rudchyk and Mr Y. Lepyavko – underwent medical examinations several days later (applications nos. 18118/14 and 19954/15). Subsequently, further medical examinations were conducted regarding all those applicants' injuries, also as part of the official investigations into the events on 30 November 2013 (see paragraph 66 below).

50. According to the medical documents provided by the parties, Mr I. Sirenko had haematomas on the trunk of the body and the limbs; Mr P. Shmorgunov had a wound on the back of his head and haematomas on his right shoulder and right arm; Mr B. Yegiazaryan had haematomas on his back and left foot; Mr Y. Lepyavko had a closed craniocerebral injury and a contusion wound to his right shoulder; Mr O. Grabets had multiple haematomas on the trunk of his body and the limbs; Mr O. Bala had concussion and haematomas and contusion wounds to the trunk of his body and the limbs; Mr F. Lapiy had a wound to the front of his head and haematomas and scratches on his face; Mr A. Rudchyk had contusion wounds to his face and his right hand, fractures to the right forearm; and Mr A. Sokolenko had an olecranon fracture, a haematoma on his upper back, and a contusion on his right leg.

51. After the dispersal of 30 November 2013, Ms O. Kovalska did not seek medical assistance, allegedly because she was afraid that she would thereby expose herself to abusive prosecution and harassment by the authorities for having participated in the protest on that date. For the same reason, she decided not to take part in further protests.

52. Also fearing abusive prosecution and harassment, Mr R. Ratushnyy did not seek medical assistance after the dispersal of 30 November 2013. He also considered that his injuries were minor and required no particular treatment. On 11 December 2013 he was medically examined in relation to the injuries which he had allegedly sustained on that date (see paragraphs 135-137 below).

2. Alleged detention of Mr I. Sirenko (application no. 9078/14)

53. In the course of the dispersal of 30 November 2013, between thirty and forty protesters were arrested and taken to the Shevchenkivskyy District police station, including, apparently, Mr I. Sirenko (application no. 9078/14). He was detained for over three hours and was questioned. No reason for his detention was given to him, nor was a record of his questioning issued. According to the Government, Mr I. Sirenko's allegation of unlawful detention forms part of the official investigation into the events on 30 November 2013 (see paragraph 54 below). Notably, the Government submitted a copy of the PGO's letter of 27 February 2014, in which it was stated that one of the investigation files[5] also concerned "the reasons for Mr I. Sirenko's presence at the ... police station".

3. Official investigations into the events on 30 November 2013 and related proceedings

54. On 30 November 2013 the prosecutors and the police opened two criminal investigation files in respect of the dispersal of the protesters on

[5] Domestic case file no. 42013110000001053.

that day in central Kyiv[6]. On 2 December 2013 the prosecutor's file was remitted to the PGO for further investigation. The official investigations into the events on 30 November 2013 formed part of the larger domestic file covering other events during the Maidan protests, including the death and injuries of the protesters between 22 January and 20 February 2014 (see, *inter alia*, paragraphs 18-21 above).

55. In the framework of those investigations, in the period between December 2013 and January 2014 the Chair of the Kyiv State Administration (Kyiv Municipality), the Deputy Secretary of the National Security and Defence Council, and several high-ranking officers of the MoI were questioned and eventually notified of the suspicion that there had been abuse of power, essentially that they had unlawfully ordered the dispersal in question. No Berkut officer who had been deployed in central Kyiv on 30 November 2013 was questioned during that period.

56. Subsequently, in the period between February 2014 and March 2015, several other investigation files were opened, *inter alia*, against seven Berkut commanding officers on suspicion that they had illegally interfered with the protest on 30 November 2013[7]. Some of those investigation files were eventually merged.

57. In the period between February and June 2015, the investigations concerning the Chair of the Kyiv State Administration in November 2013, and four Kyiv-based Berkut commanding officers were completed and referred to the Shevchenkivskyy District Court of Kyiv for trial[8], which was ongoing at the time of the adoption of this judgment (see paragraphs 55-56 above). In the official indictment regarding the four Berkut commanding officers, approved by the PGO on 26 June 2015, it was stated, *inter alia*, that the protests at issue had been "exclusively peaceful"; that there had been no judicial decision restricting the protesters' right of assembly on 30 November 2013; that the dispersal on 30 November 2013 had been carried out illegally; and that the police officers, acting pursuant to illegal orders and instructions of their commanders and higher governmental officials, had unlawfully used force against the protesters and had thereby inflicted various injuries and physical pain on the applicants concerned.

58. The investigations concerning several other suspects (see, in particular, paragraph 56 above), were suspended, as they had absconded. The investigations concerning Berkut officers directly involved in the dispersal were being pursued in the framework of a different case file[9] at the time of the adoption of this judgment.

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[6] Domestic case files nos. 42013110000001053 and 12013110100017809 respectively.
[7] Those investigations were given other case file numbers, including nos. 42014000000001025, 42015000000000033 and 42015000000000561.
[8] Domestic case file nos. 42015000000000033 and 42015000000000561 respectively.
[9] Domestic case file no. 12013110100017809.

59. According to the Government's submissions made between November 2016 and January 2017, while many of the approximately 400 Berkut officers who had been deployed in central Kyiv on 30 November 2013 were identified and questioned after 22 February 2014, those who had apparently been seen on video-recordings to actually disperse protesters – about thirty officers – could not be identified, as during the dispersal they had been wearing balaclavas and/or helmets, and none of them had had individual identification numbers on their uniforms or helmets.

60. The Government submitted copies of different letters issued by the PGO in the course of 2016, according to which during the investigations into the dispersal of protesters on 30 November 2013, the authorities had identified about ninety victims, of whom about eighty had been questioned. Out of those eighty victims questioned, about twenty had assisted the investigators in their attempts to identify the Berkut officers who had been directly involved in the dispersal. About 270 police officers and a number of other public servants had been questioned as witnesses. An on-the-spot reconstruction (*слідчий експеримент шляхом відтворення дій, обстановки, обставин певної події*) had been carried out with the participation of two victims and one victim's representative, and many photographs and video-recordings had been examined with experts' assistance.

61. According to information published on the PGO's dedicated website, between June 2015 and December 2018 fourteen former Berkut officers, of whom at least half were former commanding officers, were officially indicted – mainly under Articles 171, 340 and 365 of the Criminal Code (see paragraph 201 below) – in connection with the dispersal of the protesters on 30 November 2013. Their cases were referred to the Shevchenkivskyy District Court for trial. The court proceedings were ongoing at the time of the adoption of this judgment. Also, on 2 and 3 March 2017 two former Kyiv-based Berkut officers were officially notified that they were suspected of having ill-treated the protesters during the dispersal of 30 November 2013.

62. In sum, all the above-mentioned investigations and court proceedings concerned either officials who were suspected of having ordered or instructed the police to disperse the protesters on 30 November 2013 or individual police officers who were suspected of having actually carried out the dispersal at issue, which resulted, *inter alia*, in the applicants' injuries. In the context of those investigations, the applicants were formally considered as victims of the suspected crimes. However, there is no information about whether the investigators suspected any individual of having used allegedly excessive force specifically in relation to the applicants concerned on that date.

4. The applicants' participation in the proceedings concerning the events on 30 November 2013

63. According to the parties' submissions and the documents they provided to the Court, on different dates between 30 November and 26 December 2013 all the applicants concerned lodged with the Kyiv prosecutor's office and/or the PGO individual complaints of their ill-treatment by the police in the course of the dispersal of protesters on 30 November 2013. Mr I. Sirenko, Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr A. Rudchyk and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 42271/14 and 19954/15) also submitted medical documents (see paragraphs 49-50 above).

64. The applicants' complaints were ultimately joined to the above-mentioned investigation files, as were other protesters' individual complaints (see paragraphs 54-56 above). All the applicants concerned were accorded the procedural status of victims in the relevant proceedings.

65. On different dates between 3 December 2013 and 25 March 2014 the applicants concerned, except for Mr I. Sirenko (application no. 9078/14), were questioned by investigators and gave a detailed account of their alleged ill-treatment by the police on 30 November 2013 (see paragraph 48 above).

66. On different dates between 2 December 2013 and 3 August 2014 forensic medical examinations regarding the alleged ill-treatment of Mr I. Sirenko, Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr A. Rudchyk and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 42271/14 and 19954/15) were carried out and essentially confirmed the injuries described above (see paragraph 50 above) and their possible timing, 30 November 2013.

(a) Further information regarding Mr O. Grabets' participation in the proceedings concerning the events on 30 November 2013 (application no. 20546/14)

67. According to the parties and the official investigation reports, after his initial questioning in January 2014, Mr O. Grabets was further questioned by the investigators and took part in an inspection in December 2015 of various photographs relating to the events at issue. He could not recognise any of the alleged offenders on those photographs.

68. According to Mr O. Grabets, on different dates between September 2015 and June 2016 he and/or his lawyer took part in the hearings before the Shevchenkivskyy District Court (see paragraphs 57 and 61 above) and were questioned about the events at issue.

(b) Further information regarding Mr I. Sirenko's participation in the proceedings concerning the events on 30 November 2013 (application no. 9078/14)

69. Between 2 December 2013 and 24 January 2014 the investigators and the police repeatedly invited Mr I. Sirenko to come and be questioned about the dispersal on 30 November 2013. In reply, Mr I. Sirenko informed them that he refused to be questioned unless the authorities provided guarantees that he would not be unfairly prosecuted and harassed on account of having participated in the protests and that he would effectively enjoy the relevant procedural rights.

70. On 23 December 2013 Mr I. Sirenko lodged with the PGO a claim for compensation for the damage caused to him because of his alleged ill-treatment by the police on 30 November 2013. The parties provided no further information as regards that claim.

71. According to the Government's submissions of 18 June 2014, although the investigators repeatedly summoned Mr I. Sirenko for questioning in March 2014, he refused to be questioned because he needed time to prepare for the questioning. According to the Government's submissions of 17 September 2015, he repeatedly refused to be questioned when the investigators summoned him again. The applicant did not contest this.

(c) Further information regarding the participation of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Bala and Mr F. Lapiy in the proceedings concerning the events on 30 November 2013 (applications nos. 15367/14, 16280/14, 18118/14, 24405/14 and 42271/14)

72. According to the Government's submissions of 17 June 2016 and the PGO's letters referred to above (see paragraph 60 above), as of mid-December 2013 the above-mentioned applicants stopped cooperating with the investigators. In particular, they failed to appear for unspecified investigative actions to which they had been duly summoned. Consequently, no investigative procedures could be carried out with their participation.

73. In that connection, the Government submitted copies of summonses addressed by the PGO to Mr P. Shmorgunov, Mr B. Yegiazaryan and Mr F. Lapiy (applications nos. 15367/14, 16280/14 and 42271/14), and copies of postal receipts demonstrating that they had been dispatched on either 9 or 10 December 2015 and returned to the PGO as undelivered. With regard to Mr Y. Lepyavko and Mr O. Bala (applications nos. 18118/14 and 24405/14), the Government submitted copies of similar documents addressed to those applicants, according to which summonses had been dispatched on 28 and 29 December 2015 respectively and delivered to them on 4 January 2016.

74. In their submissions of 25 November 2016, the applicants concerned contested that information.

75. In particular, on different dates between December 2015 and June 2016 Mr P. Shmorgunov, Mr B. Yegiazaryan and Mr Y. Lepyavko took part in various investigative actions and/or court hearings in certain cases relating to the events at issue (see paragraphs 57 and 61 above).

76. Mr O. Bala and Mr F. Lapiy stated that they had received no summonses from the PGO. Nonetheless, during the same period they took part in similar court hearings; Mr O. Bala having been questioned by the trial court by means of a videoconference call as he could not afford to travel to Kyiv.

77. In that connection, the applicants concerned submitted copies of the official reports concerning the investigative actions in question and various hearing transcripts. Some of them also submitted copies of their requests to the PGO asking for information about any developments in the investigations and copies of the PGO's replies to those requests informing them that the investigations were ongoing and that they would be duly notified when their participation was considered necessary.

78. The Government did not contest the submissions of 25 November 2016 of the applicants concerned, and submitted no further information in that regard.

(d) Further information regarding the participation of Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy and Mr A. Sokolenko (application no. 19954/15) in the proceedings concerning the events on 30 November 2013

79. According to the Government's submissions of 17 June 2016, in December 2015 summonses were sent to the above-mentioned applicants inviting them to come to the PGO in order to take part in unspecified investigative actions. On 26 December 2015 Ms O. Kovalska received her summons, while the summonses addressed to Mr R. Ratushnyy and Mr A. Sokolenko were returned to the investigators by post as undelivered.

80. According to the applicants' submissions of 13 October 2016, between March and July 2015 the lawyer of Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy and Mr A. Sokolenko submitted a number of requests to the PGO, seeking to have various investigative actions carried out, including a reconstruction of the events with their participation, and an inspection of video-recordings and photographs which allegedly contained images of the Berkut officers responsible for their alleged ill-treatment. Allegedly, the PGO did not perform the requested actions.

81. The Government did not comment on those submissions.

5. Internal inquiry conducted by the MoI panel into the events on 30 November 2013

82. On 30 January 2014 the MoI issued a report following the results of an internal inquiry regarding "the legality of the actions of the police on 30 November 2013", which was conducted in parallel to the investigations conducted by prosecutors and described in the preceding paragraphs (see paragraphs 54 et seq. above). In the report, information was given about the specific Berkut units and other police units which had been deployed in Kyiv, and about how many police officers the units had been composed of. The report also contained details about the chain of command during the events at issue, including information about the officers who had exercised operational control over the police forces involved. According to the report, those officers had been questioned by the panel about the events. The panel had also examined various video- and audio-recordings and photographs.

83. The panel found that the police officers who had been recording the events had not witnessed any "violations of public order" before the dispersal had started; that the dispersal had been ordered in order to enable the municipality to put up the New Year tree on Maidan Nezalezhnosti; that the dispersal had actually been carried out by several Berkut units; that some of the protesters had tried to obstruct their actions by throwing stones, glass and plastic bottles, burning sticks and other objects at the police officers, injuring eleven officers; and that in that connection, certain unidentified Berkut officers had used force against the protesters, including "special means" – rubber and plastic batons. The panel also found that in some unspecified instances certain unidentified Berkut officers had used excessive force, including when the protesters had offered no resistance to the police, which had been contrary to the relevant regulations. Also in violation of the relevant regulations, the police had not warned the protesters before using force against them, which could be explained, in part, by "numerous instances of clear provocation" on the part of the protesters.

84. The panel considered that those violations by police officers had been the consequences of "unprofessional" actions by officers of the MOI and Kyiv Berkut unit who had exercised general command over the police forces in central Kyiv at the time. The panel found no information indicating that either the leadership of the MoI or the Kyiv Principal Department of the MoI had given orders to use force against the protesters. The panel also considered that all individual instances of the police officers using force against the protesters had to be assessed in the framework of the official investigation conducted by the prosecutors.

85. Between 24 February and 24 April 2014 the MoI conducted another internal inquiry which concerned the dispersal of protesters on 30 November 2013 and several other events during the Maidan protests

(see paragraphs 121 and 151 below, in which reference is made to the same inquiry, in so far as it relates to the events of 1 and 11 December 2013). Its findings regarding the events on 30 November 2013 were largely the same as those in its report of 30 January 2014. Additionally, in its report of 24 April 2014 the panel noted that not all relevant circumstances could be established and assessed, as "most" of the related official documents had been destroyed by senior MoI officials on 20 February 2014.

B. Events in Kyiv on 1 December 2013 concerning Mr V. Zagorovka (application no. 42180/14) and their aftermath

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

86. On 1 December 2013 Mr V. Zagorovka took part in the protests in central Kyiv and was near the Presidential Administration building when, at about 4.30 p.m. on that day, the police responded to the protesters using tear gas, stun grenades and plastic batons.

87. According to the applicant, having been temporarily blinded and stunned by a stun grenade which had exploded right next to him, he sat down and covered his eyes with his hands. Two Berkut officers approached him and lifted him up, twisting his arms behind his back. While repeatedly beating him with plastic and rubber batons, they took him towards the Presidential Administration building. On his way, the applicant was also hit with plastic batons by other police officers. When the applicant was in front of the Presidential Administration building and surrounded by hundreds of police officers, the Berkut officers threw him onto the pavement and ordered him to remain lying on the cold asphalt with his face down. He spent about forty minutes in that position, during which time he was subjected to different abuses. Notably, a Berkut officer wearing special (combat) shoes put his foot on the applicant's head and pressed it down towards the pavement, while swearing at him. Later, different Berkut officers made the applicant kneel, told him to keep his arms straight down by his body and, while standing behind him, randomly struck him on the head with plastic and rubber batons. One blow was to the area of the applicant's right eye, causing him sharp pain and making him bleed, and because of this he raised his arms. Immediately thereafter several more Berkut officers approached him and joined those who were beating him. The applicant received numerous blows to the body. As a result, he lost consciousness several times. Several police officers tried to put one of his identification documents into his mouth, forcing him to eat it.

88. When the beating stopped, police officers searched the applicant and seized his mobile telephone and identification documents. He was ordered to put on a knitted hat.

89. The relevant events were recorded by unidentified people in civilian clothes using a camera and video equipment. The applicant submitted to the

Court video-recordings of the events which he had obtained from the public domain. According to him, part of his beating was on some of those video-recordings. The investigation files which the applicant submitted to the Court also contained screenshots of the relevant fragments of the video-recordings (see paragraph 113 below).

90. According to the medical documents submitted by the parties, the applicant's injuries principally included concussion, multiple haematomas on the face, the trunk of the body and the limbs, and erosion of the right cornea.

2. Mr V. Zagorovka's medical issues during his detention

91. On 1 December 2013 at about 7 p.m., while the applicant was under the continued supervision of the police in the area adjacent to the Presidential Administration building, he was seen by police medical personnel who placed a bandage (a patch) on his face. Following the calling of an ambulance he was diagnosed with a closed traumatic brain injury and an injury to his right eye. The ambulance doctors noted that the area of his right eye was bleeding and that he had a scratch on the left side of his forehead and advised that he should be immediately hospitalised.

92. At about 8.50 p.m. on that day the applicant was escorted by the police to Kyiv Regional Hospital, where he was examined by a doctor from the ophthalmological unit who noted that he had a contusion of his right eyeball, traumatic corneal erosion and reduced vision in his right eye, and his right eye was also bleeding. Although the doctor advised the applicant to stay at the hospital for inpatient treatment, the police refused as there was no special ward at the hospital in which to treat detainees.

93. The applicant was then taken to the Golosiyivskyy District police station in Kyiv. During his detention there on 1 and 2 December 2013 he continued to complain of acute pain and was taken to the same hospital three times. The doctors who examined him advised inpatient treatment again, but the police allegedly refused (see paragraph 92 above).

94. Subsequently, on 2 December 2013 the applicant was first taken to a police detention unit (*ізолятор тимчасового тримання* – "the ITT"), and, in the evening, to the Kyiv Pre-Trial Detention Centre (*слідчий ізолятор* – "the SIZO"). The applicant was examined by medical personnel there and also by the ambulance doctors who were called. The latter noted that he had, *inter alia*, similar injuries as described in the preceding paragraphs and that he should be hospitalised, having regard to his worsened medical condition. Before he was placed in the SIZO on that date, the police took the applicant to Oleksandrivska Hospital, but did not allow him to remain there. Since the applicant continued to complain of pain, the ITT paramedic gave him a painkiller. Also, the SIZO medical staff allegedly provided him with "primary" medical treatment, the details of which were not specified by the parties.

95. On 5 December 2013 the applicant's medical condition further worsened and, eventually, he was returned to Oleksandrivska Hospital in Kyiv for inpatient medical treatment there. He was diagnosed as having: combined cranio-thoracic trauma, a closed traumatic brain injury, haemorrhagic contusion of parts of the left side of his forehead, multiple contusions of soft tissues of the head and face, a flesh wound to the left side of his forehead, a closed chest injury, a fractured ninth rib, hypertension, minor heart failure, acute bilateral catarrhal rhinitis, a cyst on the left maxillary sinus, a first-degree contusion of the left side of his face, traumatic corneal erosion and a haematoma on the upper right eyelid. He left the hospital on 11 December 2013.

3. Decisions relating to Mr V. Zagorovka's detention and the criminal proceedings against him

96. On 1 December 2013 at 11.50 p.m., while the applicant was at the Golosiyivskyy District police station, a report on his arrest was drawn up. In the report, it was stated that the applicant had taken part in "the commission of [acts] of mass disorder, which had been accompanied by violence towards individuals [and] resistance towards the representatives of State power, with the use of different objects as weapons" and that he had been arrested on the grounds set out in Article 208 § 1 (1) and (2) of the Code of Criminal Procedure ("the CCP", see paragraph 206 below). No further details were given in that regard.

97. In the report, it was also stated that in the course of the applicant's personal search the police had seized his driving licence, a certificate confirming that he was a parent of a large family (*посвідчення батьків багатодітної родини*) and a mobile telephone.

98. On 2 December 2013 the applicant was notified that he was suspected of having committed the criminal offence of mass disorder (see paragraph 201 below). In particular, it was stated that on 1 December 2013 he and a number of other persons, including Mr G. Cherevko (application no. 31174/14, see paragraph 125 below), had gone to the Presidential Administration building "with the aim of taking an active part in [acts] of mass disorder, which had been accompanied by violence towards individuals, the destruction of property, [and] resistance towards the representatives of State power, with the use of different objects as weapons", and had been arrested while committing those acts. Prior to those events, he and the other persons concerned had prepared special equipment for self-defence, including bulletproof vests and helmets, which they had planned to use during attacks on the police. In order to avoid being identified during those events, they had worn face masks, helmets and other unspecified objects. During the events, they had also attacked police officers using sticks, bats, chains and tear-gas sprays. Using "physical force" and a loader, they had committed "acts aimed at destroying the turnstiles" which

the police had installed in order to prevent the public from passing through the area. When the police officers had tried to stop the commission of those criminal acts, the suspects in question had resisted them, using knives, rubber batons, bats, chains and tear-gas sprays, which they had prepared in advance. As a result, around seventy police officers had been injured. The official notification of suspicion does not contain any further details regarding the events at issue.

99. On 3 December 2013 a police investigator submitted to the Shevchenkivskyy District Court an application for the applicant's continued detention, reiterating the same allegations and adding that a witness, P., had seen the applicant, together with other unidentified persons, attacking police officers with rubber batons, bats, airguns, chains and tear-gas sprays on Bankova Street; that the suspicion was also based on relevant video-recordings obtained from the Internet; and that the applicant had refused to testify. No copies of the documents on which the official notification of suspicion of 2 December 2013 and the police investigator's application of 3 December 2013 were provided to the Court.

100. In the application for the applicant's continued detention, it was stated that his detention was necessary to ensure his compliance with his procedural obligations, and in order to avoid: "(i) his absconding ... as he had no permanent job; (ii) his unlawfully influencing the witnesses and the victims, as he knew them; (iii) his obstructing the criminal proceedings by other means, as he could inform other suspects whose identity had not been established about the course of the pre-trial proceedings; [and] (iv) his committing another crime".

101. According to the applicant, in the course of the criminal proceedings against him and the other protesters, there was no record of questioning in respect of the witness P., who was a police officer, in the applicant's criminal file, and the police reports regarding the video-recordings were confined to a general description of the events on 1 December 2013 and did not concern the applicant. Also, while several other police officers were questioned in the framework of the criminal proceedings against the applicant and several other protesters, none of them identified the applicant as one of the offenders.

102. On 4 December 2013, having examined the police investigator's application for the applicant's continued detention and the applicant's lawyer's application for his release, Judge G. of the Shevchenkivskyy District Court decided that the applicant's continued detention was justified pending the criminal proceedings against him. The decision mentioned that the applicant was suspected of a serious crime, that the suspicion had an evidential basis, without pointing to any specific evidence, and that there was a danger of absconding, obstruction or reoffending.

103. On 6 December 2013 the applicant's lawyer lodged an appeal against the decision of 4 December 2013, which he eventually withdrew as

the applicant was released on 11 December 2013 (see paragraph 105 below).

104. On that day the police questioned the applicant. He stated that on 1 December 2013 he had taken an active part in the protest near to the Presidential Administration building, that he had refused to comply with the police order to disperse, and that he had remained in that area and had encouraged other protesters to remain and resist the police. He acknowledged that he had committed "a crime", and "repented" of having committed it. For those reasons, and also stating that "no person had suffered because of his actions", he sought to conclude a plea-bargain agreement with the prosecution.

105. On 11 December 2013 the Pecherskyy District Court in Kyiv approved a plea-bargain agreement between the prosecution and the applicant, found him guilty of serious disturbance of public order (Article 293 of the Criminal Code), sentenced him to a fine of 850 Ukrainian hryvnias (UAH), the equivalent of about 30 euros (EUR) at the material time, and released him from detention.

106. According to the applicant, the circumstances at the time compelled him to enter into the plea bargain agreement. Notably, he wished to undergo medical treatment, his wife had been hospitalised, and his children needed to be cared for.

107. The decision of 11 December 2013 was annulled in March 2014 and on 1 June 2015 the prosecutors terminated the proceedings against the applicant on the grounds of lack of *corpus delicti* in his actions.

4. Official investigation into the events of 1 December 2013 in so far as it relates to Mr V. Zagorovka's alleged ill-treatment and detention

108. On 2 December 2013 the PGO instituted criminal proceedings[10] concerning the suspected abuse of power by Berkut officers in the course of the dispersal of protesters on 1 December 2013. According to the PGO's letter of 15 April 2016, the investigations also concerned allegations about the victims' unlawful arrest by the police and their unlawful detention in accordance with decisions by judges of the Shevchenkivskyy District Court. Ultimately, the investigation also concerned Mr V. Zagorovka who was accorded victim status in those proceedings.

109. In the meantime, on 2 December 2013 the applicant lodged a criminal complaint regarding his ill-treatment by the police on 1 December 2013 with the Shevchenkivskyy District police station, and was questioned concerning the relevant events. For unknown reasons, the applicant's complaint was officially registered after a delay – on 3 March 2015.

110. On 16 and 23 December 2013 the applicant was further questioned by prosecutors about his alleged ill-treatment. According to him, the

[10] Domestic case file no. 42013110000001056.

questioning was perfunctory – the investigators just told him to give his version of the events, and asked no further questions.

111. Between August and December 2014 the investigators questioned the ambulance doctors who had provided the applicant with medical assistance on 1 December 2013, and several police officers who had recorded the events at issue and drawn up the report on the applicant's arrest (see paragraphs 89, 90 and 96 above). Most of them could not recall all the relevant details. Only one of the police officers questioned stated that he had seen that the protesters had been beaten by the police after the dispersal. Other police officers denied having seen that.

112. According to the applicant and copies of different letters of the Kyiv Bureau of Forensic Medical Examinations he provided to the Court, although the investigators repeatedly ordered an expert report in respect of his injuries, this was carried out only in July 2015, after the investigators had submitted to the experts of that bureau all the necessary medical records regarding his injuries.

113. Between March and September 2015 the investigators questioned a number of witnesses, examined video-recordings and conducted the reconstruction of the events of 1 December 2013. The applicant was questioned again and took part in some of those investigative actions. According to him, it was only during that period that the investigators showed him photographs of certain police officers and screenshots from various video-recordings so that he could try to identify those who had used force against him. It is unknown if he identified any such officers.

114. In January 2016 the PGO asked the Kyiv Principal Department of the MoI to provide any documents relating to the deployment of their officers in central Kyiv on 1 December 2013. The Kyiv Principal Department of the MoI replied that they had no such documents.

115. Eventually, between September 2015 and June 2016, the investigators issued official notifications of suspicion regarding two Berkut officers and two officers from the Public Security Department of the MoI. In particular, one of those officers, Officer I. S., was suspected of having ill-treated the protesters and three other officers of unlawfully ordering the police to use force against the protesters and/or negligently failing to protect the protesters from police violence.

116. The official note of suspicion of 14 September 2015 regarding Officer I. S. mentioned that the dispersal on 1 December 2013 had been carried out by the police pursuant to illegal instructions and orders of high-ranking governmental officials. It also contained, *inter alia*, the following, specifically in respect of the applicant:

(i) In the course of the dispersal, which had been carried out between 4.30 p.m. and 5.30 p.m., Kharkiv Berkut officers had used excessive force against the protesters, without giving them prior warning. In particular, a number of protesters and journalists had been "brutally beaten".

(ii) Between 5 p.m. and 7 p.m. Officer I. S. and another unidentified officer from the same unit had intentionally kicked and hit Mr V. Zagorovka with a rubber baton on his head and body. They had done this while he had been lying on the ground, handcuffed with his hands behind his back and unable to commit any unlawful actions.

(iii) Because of those illegal actions, Mr V. Zagorovka had suffered various injuries (see, *inter alia*, paragraphs 91-92 above for details) which had been classified as injuries of medium severity.

117. On different dates between February and November 2016 the investigations concerning several suspects were completed and their cases were referred to relevant district courts in Kyiv for trial. As in January 2015 Officer I. S. had left Ukraine for Russia and had absconded, the prosecutors requested the court to try him *in absentia*.

118. On 18 July 2016 the Pecherskyy District Court in Kyiv convicted one of the suspects – Officer D. S., who during the events at issue had held the post of inspector at the Public Security Department of the Kyiv Principal Department of the MoI – of negligently failing to protect the protesters from police violence (Article 367 § 1 of the Criminal Code), and sentenced him to a fine of UAH 6,800, the equivalent of about EUR 240 at the material time, also depriving him of the right to hold posts in law-enforcement bodies for a term of three years.

119. In that judgment, which apparently was not challenged on appeal and became final, it was stated, *inter alia*, that those who had taken part in the protests on Maidan Nezalezhnosti between 21 November and 1 December 2013 had not violated public order and thus there had been no reasons to restrict their right of assembly; that President Yanukovych and senior government officials, particularly those from the law-enforcement bodies, had put in place a deliberate strategy to supress the protests; that to that end the law-enforcement bodies had been instructed to use excessive force against the protesters; and that the dispersal of the protesters on 1 December 2013 had been part of that strategy.

Other parts of the verdict which relate specifically to the applicant and also, to a certain extent, to Mr G. Cherevko (application no. 31174/14, see paragraph 125 below), read as follows:

> "...[B]etween noon and 4 p.m. on 1 December 2013 50 to 60 unidentified aggressive individuals arrived at Bankova Street. Wishing to hinder the conduct of the protests, which was purely peaceful, and to give the police reason to use force and special means against the protesters, those individuals openly committed illegal acts against the police officers by throwing stones and metal or wooden sticks at them, by spraying them with [tear] gas, by launching flares and other pyrotechnic objects, and by using a loader...
>
> Subsequently, from 4 p.m. onwards [some of those individuals] left the area ..., while approximately 20 of them remained near to the police cordon on Bankova Street and continued committing illegal acts ...

Having witnessed those individuals' illegal acts ... and expecting that the police would take adequate and lawful measures to stop those acts and arrest the offenders, the participants in the peaceful protests retreated and moved [about 100] metres away from the police cordon ... towards Institutska Street.

However, despite [the protesters' above actions], between 4.30 p.m. and 5.15 p.m. ... Berkut units and internal troops of [the MoI] forcibly dispersed the protesters ... under unlawful orders of unidentified officials of [the MoI] ...

In the course of the dispersal ... Berkut officers – who were not identified by the investigators – detained 9 individuals, notably ... [Mr V. Zagorovka and Mr G. Cherevko] ... and took them to the area adjacent to the Presidential Administration building.

Between 5.15 and 7 p.m. ... [Officer I. S., who at the time held the post of junior inspector with the Kharkiv Berkut unit,] ... together with another [Kharkiv Berkut officer] who was not identified by the investigators, kicked and hit [Mr V. Zagorovka] with a rubber baton on the head and trunk of his body 5 to 6 times while he was lying on the road with his hands cuffed behind his back, and while he was not offering any resistance or committing any unlawful acts and was unable to do so ... [At the time, the Berkut officers concerned] were aware that there were no [lawful] reasons for using force, and that the protesters were not offering any resistance and were not committing any acts which could endanger the life or health of law-enforcement officers. They knew that it was prohibited to hit anyone on the head or trunk of the body, and that law-enforcement officers had to act within the limits and in the manner provided for in the Constitution, the laws of Ukraine and [Ukraine's] international treaties ... They understood the nature and consequences of their actions, and intentionally and clearly exceeded their power out of disrespect for the protesters ... They committed those acts while being [sufficiently] aware of the circumstances, displaying their superiority [over the victims] and insolence, [and] showing off in front of those around them.

At that time ... [Officer D. S., who at the time held the post of inspector at the Public Security Department of the Kyiv Principal Department of the MoI], while directly observing the [above-mentioned] particularly insolent and cruel use of force by the Berkut officers against Mr V. Zagorovka, and having a real opportunity to prevent the arbitrary actions ..., intentionally failed to carry out his duties [as a police officer] and enforce the [relevant] legal norms.

[Officer D. S.] failed ... to stop the illegal actions of Kharkiv Berkut officers, and consequently they ... inflicted bodily injuries on Mr V. Zagorovka, [injuries which included] a closed craniocerebral injury, contusion wounds to the head, concussion, haematomas on the face and head, and erosion of the right cornea ... which, according to the forensic medical examination of 22 July 2015, were of medium severity...

... [Officer D. S.] ..., acting deliberately, and accepting that [similar] illegal acts would be committed by law-enforcement officers in the future: did not inform [his] supervisors that persons, in particular [Mr V. Zagorovka], had been injured ...; did not ensure that the victims were provided with the necessary assistance; and did not inform the competent investigating bodies about the unlawful actions [of the police], which led to the above-mentioned [Kharkiv Berkut] officers avoiding being held responsible for their actions..."

120. Having regard to the parties' submissions in the present case and to the information published on the PGO's dedicated website, it appears that

the criminal proceedings against three other suspects were ongoing at the time of the adoption of this judgment.

5. Internal inquiry conducted by the MoI panel into the events on 1 December 2013

121. The actions of the police on 1 December 2013 were also the subject of an internal inquiry which the MoI panel conducted, in parallel to the official investigations described in the preceding paragraphs, between 24 February and 24 April 2014 (see paragraph 85 above, in which reference is made to the same inquiry, but in so far as it relates to the events of 30 November 2013). The report of 24 April 2014, which the MoI issued after that inquiry, contained information concerning various police units involved in the public-order operations on that date and their leadership. However, according to the report, no operational plans or maps had been prepared by the police. It was also noted that not all relevant circumstances could be established and assessed, as "most" of the related official documents had been destroyed by senior MoI officials on 20 February 2014.

122. In the report of 24 April 2014, it was stated that on 1 December 2013 certain unidentified Berkut officers and officers of the MoI internal troops had used excessive force against the protesters, including "special means" – rubber and plastic batons – in violation of the relevant regulations. The MoI panel found that the Head of the Public Safety Department of the Kyiv Principal Department of the MoI had unlawfully ordered the use of force on 1 December 2013 and also found that he and several other senior MoI officials had failed to oversee how that force had been used.

123. Those and certain other senior MoI officials were found guilty of disciplinary offences: seven officers were held disciplinarily liable, but they had already been dismissed by that time; two were warned about professional impropriety; and five were reprimanded.

124. According to the report, no officer directly responsible for the ill-treatment of the protesters on 1 December 2013 could be identified, because the official data did not correspond to the actual number of MoI personnel involved in those operations, and the officers concerned had worn the same uniforms and masks.

C. Events in Kyiv on 1 December 2013 concerning Mr G. Cherevko (application no. 31174/14) and their aftermath

1. Mr G. Cherevko's alleged ill-treatment by the police

125. According to Mr G. Cherevko (application no. 31174/14), on 1 December 2013 he was observing and filming the protests near the Presidential Administration building in central Kyiv. In the course of the dispersal of the protesters, which started at about 4.30 p.m. on that day, he was beaten with plastic batons by several Berkut officers. He was

handcuffed and taken to an adjacent courtyard, where his beating continued for several hours as a result of which he lost consciousness several times. Different Berkut officers allegedly filmed the applicant being beaten and swore at him.

126. Subsequently, the applicant was taken to Kyiv Emergency Care Hospital, where he was placed in a special guarded unit suffering, according to the medical report drawn up on his arrival, from concussion, contusion to the chest, fractured fingers and multiple haematomas on the face, the trunk of the body and the limbs. He remained in hospital, undergoing medical treatment until 9 December 2013. The parties provided no information regarding in which facility the applicant had been detained until his release on 11 December 2013 (see paragraph 132 below).

2. Criminal proceedings against Mr G. Cherevko

127. At around 1 a.m. on 2 December 2013 an investigator from the Kyiv police department came to the hospital and drew up a report, arresting the applicant on suspicion of mass disorder on the grounds set out in Article 208 § 1 (1) and (2) of the CCP (see paragraph 206 below). No further details were given in that regard.

128. In the report, it was also stated that in the course of the applicant's personal search the police had seized a sum of money, a driving licence, a car certificate, a set of keys and several plastic cards.

129. On 3 December 2013 the investigator submitted to the Shevchenkivskyy District Court an application for the applicant's continued detention in connection with the criminal proceedings against him. That application was based on similar factual submissions and reasoning, like the application for Mr V. Zagorovka's detention of 3 December 2013 (application no. 42180/14, see paragraphs 98-100 above). According to the investigator, the applicant had refused to testify.

130. On 3 December 2013 Judge M. of the Shevchenkivskyy District Court ordered the applicant's continued detention on the grounds that he was suspected of having committed a serious crime, that the suspicion had an evidential basis set out in the investigator's application and that there was a danger of the applicant absconding, obstructing justice or reoffending, without giving specific details in that regard.

131. According to the applicant, during the hearing of 3 December 2013 no evidence was provided to the Shevchenkivskyy District Court to substantiate the suspicion that he had committed a crime, notably copies of the witness statements on which the investigator had relied, no witness was heard and no copies of the documents the investigator had relied on were presented.

132. On 11 December 2013 the Kyiv Court of Appeal quashed the decision of 3 December 2013 and ordered the applicant's release in view of

his family situation but confirmed the first-instance court's findings regarding the existence of a reasonable suspicion.

133. Eventually, on 5 March 2014 the criminal proceedings against the applicant were discontinued for absence of the elements of a crime in his actions.

3. Official investigation into the events of 1 December 2013 in so far as it relates to Mr G. Cherevko's alleged ill-treatment and detention

134. In the meantime, on 5 December 2013 the applicant had complained to the authorities of his beating on 1 December 2013, and on the same date he was questioned and admitted as a victim in the same set of proceedings as Mr V. Zagorovka[11] (application no. 42180/14 – see paragraph 108 above). On 20 July 2015 a forensic medical examination was carried out regarding the injuries Mr G. Cherevko had suffered on 1 December 2013. It found that they had been of medium severity.

D. Events in Kyiv on 11 December 2013 concerning Mr S. Dymenko and Mr R. Ratushnyy (applications nos. 33767/14 and 54315/14) and their aftermath

1. Alleged ill-treatment of Mr S. Dymenko and Mr R. Ratushnyy by the police on 11 December 2013

135. According to Mr S. Dymenko (application no. 33767/14) and Mr R. Ratushnyy (in so far as application no. 54315/14 is concerned), on 11 December 2013 they were taking part in the protests in central Kyiv when they were beaten by the police who attempted to disperse the protesters.

136. According to the Government, during the night of 10-11 December 2013 these applicants were near to the police cordon when the police started demolishing the protesters' barricades and moving towards the protesters thus injuring the applicants and a number of other protesters.

137. According to Mr S. Dymenko (application no. 33767/14), several Berkut officers captured him and took him into the area which they controlled. There, they threw him onto the pavement and started beating him and swearing at him. He received numerous blows and strikes to the body and face. His glasses were broken and consequently his vision was impaired. Then, he was forced to walk through a "corridor" formed by several Berkut officers, who continued to beat him while he was walking. Whenever he fell down, he was ordered to stand up and continue walking, while Berkut officers continued to beat him. The applicant was later allowed to leave that area and to receive medical assistance.

[11] Domestic case file no. 42013110000001056.

138. According to Mr R. Ratushnyy (application no. 54315/14), he was also captured by Berkut officers and taken to the area which they controlled. There, while he was lying on the pavement, several Berkut officers surrounded him and started beating him. He received numerous blows and strikes to the body and head. Consequently, he lost consciousness. When he regained consciousness, he found himself being carried away from Maidan Nezalezhnosti by Berkut officers who continued to subject him to ill-treatment. At some point an unidentified person wearing a waistcoat with an inscription "member of Parliament" ("*народний депутат*") took the applicant away from the Berkut officers and took him to an ambulance. From there, the applicant's lawyer took him to a hospital, where doctors asked him to give his personal information and describe the circumstances in which he had been injured as a precondition for his receiving medical assistance. The applicant described the events at issue and indicated his lawyer's address instead of his own. According to him, several days later the police came to the lawyer's address, searching for the applicant.

139. The applicants submitted to the Court photographs and video-recordings of the events on 11 December 2013 and medical documents.

2. Official investigations into the events of 11 December 2013 in so far as they relate to the alleged ill-treatment of Mr S. Dymenko and Mr R. Ratushnyy

140. On 12 December 2013 the police started a criminal investigation into the actions of the police officers who had taken part in the attempted dispersal of protesters on 11 December 2013[12]. On 16 December 2013 the case was transferred to the Kyiv prosecutor's office.

141. On 25 December 2013 Mr R. Ratushnyy lodged a complaint with the Kyiv prosecutor's office, alleging that he had been ill-treated by the police on 11 December 2013. On 5 February 2014 Mr S. Dymenko lodged a similar complaint with the PGO.

142. The SID of the PGO took over the investigation in question on 26 January 2015, considering that it had not been conducted properly.

143. In February 2015 the applicants concerned were accorded victim status in those proceedings; they were questioned and involved in certain other investigative procedures.

144. On 2 April 2015 and 5 July 2015 respectively forensic experts concluded that Mr S. Dymenko's and Mr R. Ratushnyy's injuries had been of minor severity.

145. On 3 November 2015 the PGO issued official notifications in respect of two officers from the Berkut unit from Zaporizhzhya: Officer V. Ts. was suspected of having ill-treated Mr R. Ratushnyy, while Officer

[12] Domestic case file no. 12013110100018224.

A. K., who at the time of the events had been the unit's commanding officer, was suspected of having unlawfully ordered his unit to use force against the protesters. Those offences were characterised principally as illegal interference with the organisation of demonstrations and abuse of power involving violence (Article 340 and Article 365 of the Criminal Code).

146. Between February and March 2016, the proceedings concerning those two Berkut officers were severed from the above case and referred to the Pecherskyy District Court for trial on the same charges[13].

147. The official indictment stated, *inter alia*, that the protests in central Kyiv between 21 November and 11 December 2013 had been notified to the Kyiv City Council; that on the night of 10-11 December 2013 the protesters had demonstrated peacefully and had not violated public order; that there had been no grounds to restrict their right of assembly; that President Yanukovych had instructed senior law-enforcement officials to use excessive force against the protesters in order to forcibly supress the protests; and that those instructions had been eventually transmitted to the commanding officers of various police units, including Berkut unit from Zaporizhzhya, which had been deployed to that end to central Kyiv on 10 December 2013.

In so far as the indictment concerned specifically the applicants it set out the following:

(i) Between midnight and 4 a.m. on 11 December 2013 Officer A. K. had given an unlawful order to the Zaporizhzhya Berkut officers under his command to forcibly disperse the protesters. Accordingly, those Berkut officers had beaten the protesters, including Mr S. Dymenko and Mr R. Ratushnyy, by hitting and kicking them and beating them with rubber batons, unlawfully trying to compel the protesters to leave the area and discontinue the protests. At the time, Officer A. K. and the other Berkut officers in question had been aware that the protesters were not violating public order or committing any illegal acts, and did not pose any threat to the life or health of others, including police officers.

(ii) Officer V. Ts. had taken an active part in the attempted dispersal of the protesters on 11 December 2013. Acting intentionally and without giving any warning, he had hit Mr R. Ratushnyy several times on the shoulder and trunk of the body. He had then taken Mr R. Ratushnyy behind the police cordon and had kicked him several times on the back while the latter had been lying on the ground. Subsequently, several other unidentified Berkut officers had joined Officer V. Ts., and together they had kicked Mr R. Ratushnyy several times on the trunk of his body and at least once on the head. Accordingly, Mr R. Ratushnyy had been subjected to painful and degrading treatment and had suffered injuries of minor severity.

[13] Domestic case file no. 42016000000000380.

148. According to the information published on the PGO's dedicated website, on an unspecified date the case was returned to the investigators owing to unspecified shortcomings. On 31 July 2017, having rectified the shortcomings, the investigators resubmitted the case to the Pecherskyy District Court.

149. The Court has not been informed of any further developments in those court proceedings.

150. According to the Government, in the framework of the investigations in question, on 22 March 2016 another Berkut officer, Officer M., was notified that he was suspected of having committed crimes on 11 December 2013 which were similar to those allegedly committed by the two above-mentioned Berkut officers. On 30 March 2016 the proceedings were suspended as Officer M. had absconded, and he was put on a wanted list. It is unknown whether that suspect's actions were related to the alleged ill-treatment of Mr S. Dymenko and Mr R. Ratushnyy, who were formally considered as victims in the context of those investigations.

3. Internal inquiry conducted by the MoI panel into the events on 11 December 2013

151. The internal inquiry conducted by the MoI, which resulted in a report of 24 April 2014 and disciplinary sanctions, as described in more detail in paragraphs 85, 121 and 123 above, also concerned the events of 11 December 2013 and reached the same findings regarding the planning of the police actions.

152. It further found that on 11 December 2013 certain unidentified Berkut officers and officers from the MoI internal troops had used excessive force against the protesters, in violation of the relevant regulations. The panel identified several senior MoI officers who had been in charge and who, according to the panel, had failed to oversee and control how that force had been used.

E. Events in Kyiv on 23 January 2014 concerning Mr D. Poltavets (application no. 36299/14) and their aftermath

1. The applicant's arrest in Kyiv on 23 January 2014 and the ensuing criminal proceedings against him

153. On 23 January 2014, while he was in the area adjacent to Maidan Nezalezhnosti to support the protests, Mr D. Poltavets was arrested by the police. In the course of his arrest the applicant was allegedly severely beaten by the police. In particular, he was hit on the head from behind, fell to the ground and was further beaten on his head and body until he lost consciousness. While unconscious, he was taken to the Golosiyivskyy District police station in Kyiv. There, he regained consciousness and was informed that he was being arrested on suspicion of mass disorder.

154. At around 9.20 p.m. on 23 January 2014 an investigator from the Golosiyivskyy District police station drew up a report on the applicant's arrest, stating that the applicant had been arrested on the grounds set out in Article 208 § 1 (1) and (2) of the CCP (see paragraph 206 below). No further details were given in that regard.

155. In the report, it was also stated that in the course of the applicant's personal search the police had seized a mobile telephone, a medical face mask, sunglasses, a wooden crucifix, a key and two coins.

156. An official notification of suspicion given to the applicant stated that on 23 January 2014 the applicant and between 3,000 and 5,000 other unidentified persons had come to Grushevskogo Street, near the Dynamo Stadium in central Kyiv, "with the aim of taking an active part in [acts] of mass disorder, which had been accompanied by violence towards individuals, the destruction of property, [and] resistance towards the representatives of the State power, with the use of different objects as weapons". To that end, prior to those events, he and the other persons concerned had prepared special equipment for self-defence, including bulletproof vests and helmets, which they had planned to use during attacks on the police. At an unspecified time, Mr D. Poltavets "had withdrawn from the crowd and had headed towards [nearby] Sadova Street, carrying a stick and a bottle containing an unknown liquid". He and other unidentified individuals "had been throwing bottles containing a flammable liquid in the direction of law-enforcement officers and their specialist vehicles". Afterwards, it was stated, Mr D. Poltavets had been arrested by the police, "while walking down Lypska Street carrying a stick (a bat) and a bottle with a red strip of material tied around the neck which contained the residue of an unknown liquid". It was also stated that "in the course of [the] unlawful acts" around one hundred police officers and other persons had been injured.

157. Later on that day the police took Mr D. Poltavets to a clinic, where he was examined by doctors who noted that he had concussion, contusion to the chest, and multiple haematomas on his face and on the trunk of his body and limbs. He remained in a special guarded unit of that clinic until 15 February 2014, and underwent medical treatment for his injuries.

158. At a detention hearing on 24 January 2014 before the Golosiyivskyy District Court in Kyiv, the applicant's lawyer argued, in the main, that the suspicion that the applicant had committed a crime was completely unfounded and that, owing to his poor health, the applicant should not have been placed in detention. He also stated that the applicant had been beaten by the police in the course of his arrest.

159. By a decision of 24 January 2014, Judge K. of the Golosiyivskyy District Court in Kyiv ordered that the applicant should remain in detention. The decision was based mainly on the grounds that the applicant was suspected of a serious crime and the suspicion had an evidential basis. In

particular, reference was made to records of questioning in respect of two witnesses and a record of an on-the-spot inspection of the scene (*протокол огляду місця події*) which had been conducted on 23 January 2014, without any further details in that regard being given.

160. No copies of the documents to which reference was made in the decision of 24 January 2014 were provided to the Court.

161. An appeal against the decision of 24 January 2014 was rejected by the Kyiv Court of Appeal on 11 February 2014.

162. On 14 February 2014 the Golosiyivskyy District Court decided to change the preventive measure imposed on the applicant and placed him under house arrest.

163. On 28 February 2014 the criminal proceedings against the applicant were discontinued by the Golosiyivskyy District prosecutor's office for absence of the elements of a crime in his actions. In particular, it was noted that the applicant had committed the actions for which he had been prosecuted "in a state of extreme necessity, with the aim of defending his constitutional rights and interests", and "with the aim of eliminating the threat to Ukraine's constitutional order, sovereignty and independence, and to citizens' right of movement, [and] freedom of speech and peaceful assembly".

2. Official investigation into the alleged ill-treatment of Mr D. Poltavets on 23 January 2014 and related criminal proceedings

164. In the meantime, on 6 February 2014 the applicant had complained of his beating to the authorities. He had been accorded victim status in the proceedings initiated by the PGO on 20 January 2014 in respect of numerous reports that protesters and journalists had been ill-treated in January 2014[14].

165. The applicant was also accorded victim status in a criminal investigation launched by the PGO on 5 February 2014 in respect of the suspicion that the police, prosecutors and judges had committed different abuses against the protesters in January and February 2014, *inter alia* subjecting them to arbitrary arrests and abusive prosecution[15].

166. Having regard to the parties' submissions in the present case and other material available to the Court, both investigations were ongoing at the time of the adoption of this judgment.

[14] Domestic case file no. 1201410020000391.

[15] Domestic case file number no. 42014100070000020.

F. Events in Kyiv on 18 February 2014 concerning Mr O. Zadoyanchuk (application no. 36845/14) and their aftermath

1. The applicant's arrest in Kyiv on 18 February 2014 and the ensuing criminal proceedings against him

167. On 18 February 2014 Mr O. Zadoyanchuk, who was taking part in the protests, was arrested by the police in the course of their attempt to take over one of the buildings adjacent to Maidan Nezalezhnosti, Zhovtnevyi Palace, which at the time was occupied by the protesters. The applicant was among those protesters who were inside the building. According to him, in the course of his arrest he was beaten, although he offered no resistance to the police. Then, the police took him and other protesters outside and ordered them to lie down on the sooty ground, where there were smouldering car tyres which were producing a lot of smoke.

168. At around 10 p.m. on 18 February 2014 the applicant was taken to the Dniprovskyy District police station in Kyiv.

169. At around 4 a.m. on 19 February 2014 an investigator from the Dniprovskyy District police station drew up a report on the applicant's arrest on suspicion of mass disorder, on the grounds set out in Article 208 § 1 (1) and (2) of the CCP (see paragraph 206 below).

170. In the report, it was also stated that in the course of the applicant's personal search the police had seized his metal necklace, a necklace made out of leather, and shoelaces.

171. The applicant's official notification of suspicion stated that between 10 a.m. and 3 p.m. on 18 February 2014 the applicant and a number of other persons had come to central Kyiv "with the aim of taking an active part in [acts] of mass disorder, which had been accompanied by violence towards individuals, the destruction of property [and] resistance towards the representatives of State power, with the use of different objects as weapons". Prior to those events, he and the other persons concerned had prepared special equipment for self-defence, including arm and shin guards (pads) and helmets, which they had planned to use during attacks on the police. During those events, in order to avoid being identified, they had worn face masks, helmets and other unspecified objects; they had also attacked police officers, beaten them, and thrown stones and bottles containing flammable liquids at them. The suspects concerned had set car tyres on fire and had also committed "acts aimed at destroying the turnstiles and specialist vehicles" which the police had installed in order to prevent the public from passing through the area. When the police officers had tried to stop the commission of those criminal acts, the suspects concerned had resisted them by carrying out "other active actions". As a result, an unspecified number of police officers and other persons had been injured.

172. At around 11 a.m. on 19 February 2014 the investigator submitted to the Dniprovskyy District Court in Kyiv an application for the applicant's

continued detention, reiterating the information contained in the official notification of suspicion of 19 February 2014. The investigator also stated that the suspicion was based on a record of an on-the-spot inspection conducted on 18 February 2014 and other material in the criminal case, without giving any further details in that regard. According to the investigator, the applicant had refused to testify. No copy of the record of the on-the-spot inspection was provided to the Court.

173. On 19 February 2014 Judge M. of the Dniprovskyy District Court in Kyiv examined that application at a hearing, with the participation of the applicant and his lawyer. During that hearing the lawyer argued, in the main, that the suspicion that the applicant had committed a crime was completely unfounded and his detention was unjustified.

174. By a decision of 19 February 2014, Judge M. of the Dniprovskyy District Court in Kyiv ordered the applicant to remain in detention on the grounds that he was suspected of a serious crime and the suspicion had an evidential basis. In particular, reference was made to the report of 19 February 2014 on the applicant's arrest and the alleged danger of absconding, obstructing justice and reoffending in respect of which no details were given other than the fact that the applicant had no permanent residence in Kyiv, was living at a friend's flat in Ivano-Frankivsk, and had no social links and no job.

175. On 22 February 2014 the Dniprovskyy District Court decided that it was no longer justified to keep the applicant in detention and released him.

176. Ultimately, on 27 June 2014 the criminal proceedings against the applicant were discontinued for absence of the elements of a crime in his actions.

2. Official investigation into the events on 18 February 2014 in Kyiv, in so far as it relates to Mr O. Zadoyanchuk

177. The applicant lodged no formal complaint with the authorities concerning his ill-treatment by the police on 18 February 2014.

178. According to him, the authorities were aware of his ill-treatment by the police on that date. In particular, he had been examined by the head of the medical unit of the SIZO where he had been detained and the ensuing medical report noted his contusion to the chest and multiple haematomas on his face, the trunk of his body and limbs. The applicant submitted to the Court a copy of that report and of medical certificate issued on 5 March 2014 by a State clinic in Kyiv which stated that from 22 February to 5 March 2014 he had undergone inpatient medical treatment in connection with, *inter alia*, respiratory disturbance and the consequences of concussion.

179. According to the Government, on 16 April 2014 the applicant was accorded victim status in the criminal investigations launched by the PGO on 5 February 2014 in relation to the suspicion that the police, prosecutors and judges had committed different abuses against the protesters in January

and February 2014[16], *inter alia* subjecting them to arbitrary arrests and abusive prosecution, which investigations were ongoing at the time of the adoption of this judgment (see paragraphs 165-166 above).

G. Disciplinary proceedings against the judges who dealt with the cases concerning the detention of Mr G. Cherevko, Mr D. Poltavets, Mr O. Zadoyanchuk and Mr V. Zagorovka (applications nos. 31174/14, 36299/14, 36845/14 and 42180/14)

180. In December 2014 the PGO, some of the applicants, their lawyers and several other individuals complained to the Temporary Special Commission ("the TSC"). The latter had been established pursuant to the Act on Restoring Confidence in the Judiciary in Ukraine to vet judges (see paragraphs 220-229 below). The complainants argued that the judges of several district courts in Kyiv had acted unlawfully, not impartially and arbitrarily when dealing with the cases of those who had been prosecuted in connection with the Maidan protests, including Mr V. Zagorovka, Mr G. Cherevko, Mr D. Poltavets and Mr O. Zadoyanchuk (see paragraphs 102, 130, 159 and 174 above).

181. Those complaints were examined by the TSC and, subsequently, by the High Council of Justice ("the HCJ"), which issued various opinions and decisions relating to the cases of the applicants concerned. In several cases those bodies considered that the judges concerned had failed to thoroughly examine all the pertinent circumstances and the parties' submissions; had failed to take into consideration the relevant evidence demonstrating that the investigators' application for the applicants' detention had not been based on a "reasonable suspicion" that they had committed a crime or the fact the pieces of evidence on which the suspicions against the applicants had been based had either missing from the case files or could not have formed a basis for the suspicions; had failed to examine whether there had been any risks requiring the application of a preventive measure in the applicants' cases; and had failed to provide adequately detailed or, in certain cases, any reasoning for their decisions authorising the applicants' continued detention.

182. In so far as the disciplinary proceedings concerned Mr V. Zagorovka's case (application no. 42180/14), in its opinion of 22 April 2015 the TSC also noted that the applicant's criminal file had contained no record of the questioning of a witness relied on, and that the police reports regarding the video-recordings of the events near to the Presidential Administration building on 1 December 2013 had been confined to a general description of the events and had contained no information about the applicant (see paragraphs 98-99 above). Furthermore, according to that opinion, Judge G. of the Shevchenkivskyy District Court, who had dealt with the applicant's case, had failed to examine complaints

[16] Domestic case file no. 42014100070000020.

by the applicant and his lawyer regarding the applicant's ill-treatment by the police.

183. On 31 March 2016 the HCJ essentially upheld the opinion of the TSC of 22 April 2015 and on 24 September 2016 the President dismissed that judge for breach of oath. By decisions of 19 July and 1 November 2016, 6 September 2018 and 5 July 2019, the HAC and the Supreme Court rejected appeals by Judge G. against his dismissal and essentially upheld the findings of the TSC and the HCJ on the merits.

184. In so far as the disciplinary proceedings concerned the case of Mr D. Poltavets (application no. 36299/14), in its decision of 17 December 2015 the HCJ found, *inter alia*, that the application for his detention had been based on records of questioning in respect of police officers which contained identical statements, while the record of the on-the-spot inspection of 23 January 2014 actually concerned the applicant's personal search, which had not been conducted in accordance with procedure and had taken place in the absence of his lawyer. Also, Judge K. of the Golosiyivskyy District Court, who had dealt with the applicant's case, had ignored his complaints that he had been beaten by the police, which he had raised during the hearing on 24 January 2014. Nor had she taken the applicant's personal information into consideration. Accordingly, the HCJ decided to petition the President of Ukraine to dismiss that judge, on which petition on 24 February 2016 the President dismissed her for breach of oath.

185. By a final decision of 28 February 2017, the Supreme Court dismissed an appeal by Judge K. against the decision of the HCJ of 17 December 2015, and essentially upheld the HCJ's findings on the merits.

186. Somewhat similar findings were contained in the decision of 21 December 2017 of the HCJ which, *inter alia*, concerned Mr O. Zadoyanchuk's detention (see paragraph 174 above). However, the HCJ considered that the procedural violations by Judge M. of the Dniprovskyy District Court in the applicant's case had not been serious enough to be characterised as "breach of oath" entailing a dismissal and that her case was time-barred. Accordingly, it decided to terminate the proceedings.

187. Essentially for the same reasons, on 15 March 2018 the HCJ terminated the disciplinary proceedings against Judge M. of the Shevchenkivskyy District Court, who had decided on Mr G. Cherevko's detention (application no. 31174/14). In that decision, the HCJ, *inter alia*, found that the judge had failed to examine the applicant's statements regarding his personal situation and to address the fact that he had been denied his defence rights, as he had been officially notified of the suspicion about eight hours after his arrest (see paragraph 130 above).

188. The disciplinary proceedings against some of the judges in this context are the subject of several applications currently pending before the Court (application no. 18760/17 and several others).

H. Disciplinary proceedings against the judge of the Pecherskyy District Court who dealt with the application for an injunction by the Kyiv City Council (applications nos. 33767/14 and 54315/14 (Mr S. Dymenko and Mr R. Ratushnyy))

189. In July 2014 Mr R. Ratushnyy's lawyer complained to the TSC (see paragraphs 220-229 below) that Judge G. of the Pecherskyy District Court had violated a number of domestic law provisions and Article 11 of the Convention when dealing with the Kyiv City Council's claim concerning the obstruction of the streets in central Kyiv, and when issuing an injunction on 9 December 2013 (see paragraph 29 above).

190. In its decision of 7 June 2017, the HCJ found that Judge G. of the Pecherskyy District Court had failed to check whether the Pecherskyy District Court had had jurisdiction to deal with the injunction application and whether the interim measure which she had decided to apply had been appropriate, having regard to the nature of the claim. In fact, by applying the impugned interim measure, she had decided on the merits of the claim. Also, the interim measure had been applied in respect of unidentified persons who had not been parties to the case.

191. The HCJ further found that Judge G. of the Pecherskyy District Court could not be disciplined as her case was time-barred. Accordingly, it decided to terminate the proceedings.

I. Payments under the Act on State Support for the Victim Participants in Mass Actions of Civil Protest and their Family Members of 21 February 2014

192. Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr G. Cherevko, Mr S. Dymenko, Mr D. Poltavets, Mr V. Zagorovka, Mr R. Ratushnyy, Mr A. Rudchyk and Mr A. Sokolenko (applications nos. 15367/14, 20546/14, 24405/14, 31174/14, 33767/14, 36299/14, 42180/14, 54315/14 and 19954/15) were included on the list of those entitled to receive allowances under the regulations of the Cabinet of Ministers on the basis of the Act on State Support for the Victim Participants in Mass Actions of Civil Protest and their Family Members of 21 February 2014 ("the Civil Protest Victims Aid Act", see paragraphs 214-215 below). According to the most recent information provided in that regard by the parties, by January 2017 no allowance had been paid to the applicants concerned, with the exception of Mr G. Cherevko (application no. 31174/14, see paragraph 193 below), mainly because there were no budgetary allocations for such payments. Mr V. Zagorovka and Mr R. Ratushnyy (applications nos. 42180/14 and 54315/14) had been invited to contact a local social insurance department as regards their entitlement to such payments, but they had failed to do so.

193. On 9 September 2016, pursuant to regulations of the Cabinet of Ministers of 18 February and 29 July 2016, Mr G. Cherevko was paid a lump sum of UAH 68,900, the equivalent of about EUR 2,270 at the material time.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

194. This section provides an overview of the relevant domestic legal framework for the examination of the present fourteen applications but also of provisions of domestic law of relevance for the examination of all thirty-three applications lodged in relation to the Maidan protests and their aftermath.

I. RELEVANT DOMESTIC LAW AND MATERIALS

A. The Constitution of Ukraine

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

Article 39

"Citizens have the right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations, after notifying the executive and local government bodies.

Restrictions on the exercise of this right may be established by a court in accordance with the law − in the interests of national security and public order only − for the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons."

Article 56

"Everyone shall have a right to compensation from public or municipal bodies for losses sustained as a result of unlawful decisions, acts or omissions by public or municipal bodies or civil servants in the performance of their official duties."

Article 92

"The following are determined exclusively by the laws of Ukraine:

(1) human and citizens' rights and freedoms; the guarantees of these rights and freedoms; the main duties of a citizen ..."

B. Domestic regulations and practice pertaining to the exercise of the constitutional right to assemble peacefully

196. Domestic regulations and practice pertaining to the exercise of the constitutional right to assemble peacefully were reproduced or summarised in *Vyerentsov v. Ukraine* (no. 20372/11, §§ 21, 25-27 and 31-36, 11 April 2013), and *Shmushkovych v. Ukraine* (no. 3276/10, §§ 17-24, 14 November

2013). In both cases the Court found that Ukraine lacked clear and foreseeable legislation laying down the rules for organising and holding peaceful demonstrations, and in *Vyerentsov* (cited above, § 95) it stressed that specific reforms in Ukraine's legislation and administrative practice had to be urgently implemented in order to bring such legislation and practice into line with, notably, the requirements of Article 11 of the Convention. The part of the judgment concerning general measures is still pending execution. Several draft laws were prepared in that connection, but were not adopted at the material time. These issues were addressed by various domestic and international human rights bodies, including the Ukrainian Parliament Commissioner for Human Rights and the United Nations Human Rights Council (see, for further details, the special report of the Parliament Commissioner summarised at paragraph 233 below and Information Note No. 11 published by the IAP, which is available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802ef0e5).

197. On 16 January 2014 the *Verkhovna Rada* adopted several laws, which became known as the 'anti-protest laws', which restricted civil rights and liberties, and, in particular, freedom of assembly. Those laws introduced harsher penalties for a number of related offences and also criminal and administrative liability for a number of acts which might be associated with the exercise of freedom of assembly. Notably, the laws increased the fine for a breach of the procedures governing the organisation of demonstrations. They also introduced, among other things, fines for wearing masks or clothes similar to the uniform of police or military forces; a fine or administrative arrest for installing tents and constructions used during demonstrations without obtaining the consent of the authorities; and a fine for driving in a motorcade of more than five cars which resulted in the obstruction of traffic, without the prior agreement of the relevant department of the MoI. Penalties were increased for such crimes as the deliberate destruction of another's property, group violations of public order, incitement to acts threatening public order, hooliganism, occupying premises used by the state authorities, putting up resistance to state officials and threats of violence to law-enforcement officials.

198. On 28 January 2014 the *Verkhovna Rada* repealed most of those laws, while some were changed. From 2 February 2014 the penalties and other restrictions described in the preceding paragraph were no longer valid.

199. Some of the principal legislative provisions which are of relevance regarding intervention by the enforcement of authorities with the exercise of the constitutional right to assemble peacefully, including those contained in the Code of Administrative Offences of 1984, the Criminal Code of 2001, the Code of Administrative Justice of 2005 and the Police Act of 1990, are summarised and/or reproduced below.

C. The Code of Administrative Offences of 1984

200. The relevant provisions of the Code, as worded at the material time, read as follows:

Article 32. Administrative detention

"Administrative detention shall be applied only in exceptional cases, in respect of specific types of administrative offences, for a maximum term of fifteen days. ..."

Article 185. Maliciously disobeying a lawful order or demand by a police officer, a member of a public body for the protection of public order or the State border, or a military officer

"Maliciously disobeying a lawful order or demand by a police officer who is carrying out his official duties ... shall be punishable by a fine eight to fifteen times the minimum monthly wage, or by correctional labour of one to two months with a deduction of 20% of earnings; or, in the event that these measures are found to be insufficient in the particular circumstances of the case and with regard to the offender's character, by administrative detention of up to fifteen days."

Article 185-1. Breach of the procedure for organising and holding meetings, rallies, street processions and demonstrations

"A breach of the procedure for organising and holding meetings, rallies, street processions and demonstrations shall be punishable by a reprimand or by a fine ten to twenty-five times the minimum monthly wage.

The same actions, [when] committed within a year of administrative penalties being applied, or [when committed] by the organiser of the meeting, rally, street procession or demonstration, shall be punishable by a fine twenty to one hundred times the minimum monthly wage, or by correctional labour of one to two months, with a deduction of 20% of earnings; or by administrative detention of up to fifteen days."

Article 185-2. Creating conditions for organising and holding meetings, rallies, street processions and demonstrations, in violation of the established procedure

"The provision by officials of premises, transport, or technical means, or the creation of other conditions for organising and holding meetings, rallies, street processions and demonstrations, in violation of the established procedure, shall be punishable by a fine twenty to one hundred times the minimum monthly wage."

Article 247. Circumstances in which no administrative-offence proceedings can be pursued

"Proceedings concerning an administrative offence shall be ... terminated in the following circumstances:

(1) in the absence of the occurrence and elements of an administrative offence;

..."

Article 261. Administrative arrest

"A report should be drawn up regarding administrative arrest specifying ... the time of and reasons for the arrest ..."

Article 262. Bodies (officials) empowered to carry out administrative arrests

"...

Administrative arrest shall be carried out by:

(1) [the police] if a person has committed ... [the offence of] malicious disobedience [in respect of] a lawful order of the police..."

Article 263. Duration of administrative arrest

"Administrative arrest of a person [suspected of having committed] an administrative offence shall last no longer than three hours."

Article 268. The rights of a person whose administrative liability is engaged

"A person whose administrative liability is engaged shall be entitled to study the case material, give explanations, present evidence, make requests, and have the assistance of a lawyer ... during the examination of the case ..."

Article 287. The right to challenge a decision on an administrative offence

"A decision on an administrative offence may be challenged by the person in respect of whom it was adopted, and by the victim.

A [court] decision imposing an administrative sanction may be challenged under the procedure envisaged by this Code."

Article 289. Time-limits for challenging a decision on an administrative offence

"An appeal against a decision on an administrative offence may be lodged within ten days of the date of the pronouncement of the decision."

Article 294. A court decision on an administrative offence becoming enforceable and being reviewed

"A court decision on an administrative offence shall become enforceable after the expiry of the time-limit for lodging an appeal, except for a decision imposing a sanction envisaged by Article 32 of this Code ...

An appeal shall be examined by a judge of the appellate court within twenty days of it being received.

...

A court of appeal shall review the case within the scope of the appeal. The court of appeal is not limited to arguments of the appeal if the incorrect application of substantive law or the violation of procedural norms is established during the [appeal] hearing. The court of appeal can examine new pieces of evidence which have not been examined before, if it finds that the failure to present them to the [first-instance] court was justified or that the [first-instance] court rejected them without good reason.

The court of appeal shall have power:

(1) to reject the appeal and leave the contested decision unchanged;

(2) to quash the contested decision and terminate the proceedings;

(3) to quash the contested decision and adopt a new decision; [or]

(4) to change the contested decision.

...

A decision of the appellate court shall become enforceable once it is delivered, and cannot be appealed against.

..."

Article 296. Consequences of quashing a decision [of a first-instance court] and terminating a prosecution for an administrative offence

"... Damage caused to a person by the unlawful imposition of administrative detention ... as a sanction shall be compensated for under the procedure established by law."

D. The Criminal Code of 2001

201. The table below contains an outline of the provisions of the Criminal Code relevant to the present case:

Article of the Code	*Grounds for criminal liability*	*Maximum sanction*
163	Violation of secrecy of correspondence and telephone or computer communication	Seven years' imprisonment
171	Hindering the lawful professional activity of journalists	Five years' restriction of liberty
289	Hijacking a vehicle	Twelve years' imprisonment with confiscation of property
293	Serious disturbance of public order	Two years' imprisonment
294	Mass disorder (rioting)	Fifteen years' imprisonment
340	Illegal interference with the organisation of assemblies, rallies and demonstrations	Five years' imprisonment
365	Exceeding authority or official powers	Ten years' imprisonment with a prohibition on the right to occupy certain positions or engage in certain activities for three years
366	Forgery by an official	Five years' imprisonment with a prohibition on occupying certain positions or engaging in certain activities for three years
367	Neglect of official duty	Five years' imprisonment with a prohibition on occupying certain positions or engaging in certain activities for three years, and a fine 250 times the [level of monthly non-taxable] income

371	Knowingly unlawful arrest and detention	Ten years' imprisonment with a prohibition on occupying certain positions or engaging in certain activities for three years
372	Knowingly unlawful criminal prosecution	Ten years' imprisonment
375	Knowingly unlawful judicial decision	Eight years' imprisonment

E. The Civil Code of 2003

202. Articles 16, 23, 1166, 1167, 1173 and 1174 of the Civil Code provide guarantees regarding the protection of civil rights and civil liability for pecuniary and non-pecuniary damage, and the obligation of persons who cause damage – State bodies included – to provide compensation for such damage. State bodies are obliged to provide compensation for damage caused to physical or legal persons by their unlawful decisions, actions or inactivity, irrespective of whether the State bodies or officials were at fault.

203. Article 1176 provides that damage caused to an individual by unlawful conviction, unlawful criminal prosecution, unlawful application of a preventive measure, unlawful arrest, and/or unlawful administrative arrest or correctional labour must be compensated in full, irrespective of the guilt of officials of bodies of inquiry, pre-trial investigation authorities, prosecutor's offices or courts. It specifies that the right to compensation for damage caused to an individual by unlawful actions of the bodies of inquiry, pre-trial investigation authorities, prosecutors or courts [would] arise "in cases envisaged by law". It further provides that the procedure for claiming compensation for damage caused by such bodies "shall be established by the law".

F. The Code of Civil Procedure of 2004

204. As worded at the material time, Articles 151 and 152 of the Code of Civil Procedure empowered civil courts to apply an interim measure restraining certain actions at any stage of the proceedings concerning a civil dispute, if possible enforcement of a decision on the merits of the pending civil claim might become complicated or impossible in the event that such a measure was not applied.

G. The Code of Administrative Justice of 2005

205. The relevant provisions of this 2005 Code, as worded at the material time, read as follows:

Article 182. Features of the proceedings relating to the administrative claims lodged by the authorities with a view to restricting the exercise of the right to freedom of peaceful assembly

"1. Immediately upon receipt of a notification concerning the organisation of meetings, rallies, processions, demonstrations, etc., the executive authorities [and] bodies of local self-government shall have the right to apply to the District Administrative Court of the respective locality with an action seeking to prohibit these events or otherwise restrict the right to freedom of peaceful assembly (concerning the place or time of their organisation, etc.).

2. An action received on the date on which the aforementioned ... events take place or thereafter shall be left without examination.

...

5. The court shall allow the plaintiff's claims in the interests of national security and public order, where it establishes that carrying out the meetings, rallies, processions, demonstrations or other assemblies may create an imminent risk of disturbances or crimes, or endanger the health of the population or the rights and freedoms of other people. In its ruling, the court shall indicate the manner in which the exercise of the right to peaceful assembly is to be restricted.

6. The ruling of the court in respect of cases concerning restriction of the exercise of the right to peaceful assembly shall be enforced immediately. ..."

H. The Code of Criminal Procedure of 2012 ("the CCP")

206. The relevant provisions of the CCP, as worded at the material time, read as follows:

Article 176. General provisions on preventive measures

"...

2. Arrest [without a court order] (*затримання*) is a provisional preventive measure which can be used on the grounds and under the procedure defined by this Code.

3. The investigating judge or the court shall reject an application for a preventive measure if the investigator or the prosecutor has not proven that there are sufficient grounds to believe that none of the more lenient preventive measures would be sufficient for the prevention of the established risk or risks. The most lenient preventive measure is a personal undertaking and the most severe one is pre-trial detention.

4. Preventive measures shall be applied: during the investigation – by the investigating judge at the request of a prosecutor, or at the request of an investigator, approved by a prosecutor; and during the trial – by the court at the request of a prosecutor."

Article 177. Purpose and grounds for the application of preventive measures

"...

2. A preventive measure shall be applied on the grounds of a reasonable suspicion that the person has committed a criminal offence and provided there are risks giving sufficient grounds for the investigating judge or the court to believe that the suspect,

the accused or the convict could commit actions specified in paragraph one of this Article ..."

Article 206. General duties of a judge regarding the protection of human rights

"1. Any investigating judge whose territorial jurisdiction extends to a person held in custody shall be entitled to issue a decision ordering any public authority or official to ensure respect for that person's rights.

2. Whenever an investigating judge receives information from any source whatsoever which gives grounds for a reasonable suspicion that there is a person within the court's territorial jurisdiction who has been deprived of his or her liberty without a valid court decision, or has not been released from custody after the payment of bail in accordance with the procedure laid down in this Code, that judge is required to issue a decision ordering any public authority or official in whose custody the person is held to immediately bring that person before the investigating judge in order to verify the grounds for the deprivation of his or her liberty.

3. The investigating judge shall be obliged to release the person deprived of his or her liberty unless the public authority or official holding the person in custody presents a court decision which has already become enforceable, or demonstrates the existence of other legal grounds for depriving the person of his or her liberty.

...

5. Irrespective of whether an application has been lodged by an investigator or a prosecutor, the investigating judge shall be obliged to release the person from custody unless the public authority or official holding him or her in custody demonstrates:

(1) the existence of legal grounds for detaining the person concerned in the absence of a decision of the investigating judge or the court;

(2) that the maximum custody period has not been exceeded; [and]

(3) that there has been no delay in bringing the person before a court.

6. If, during a court hearing, a person states that he or she was subjected to violence during his or her arrest or detention in a [relevant public facility] ..., the investigating judge is required to record such a statement or accept a written application from that person, and:

(1) ensure the prompt forensic medical examination of that person,

(2) order the appropriate State body to conduct an investigation into the facts set out in that person's application; [and]

(3) take the necessary measures to ensure that the person concerned is protected in accordance with law.

7. The investigating judge shall have a duty to act as prescribed in paragraph 6 of this Article, irrespective of whether the person concerned has filed an application, if his or her appearance or state or any other information known to the investigating judge give the investigating judge grounds to reasonably suspect that the [relevant regulations] were infringed during the person's arrest or detention ...

8. The investigating judge shall not be required to take action as set out in paragraph 6 of this Article if the prosecutor demonstrates that such action has been already taken or is being taken.

9. The investigating judge is required to take the necessary measures to ensure the availability of defence counsel for the person deprived of his or her liberty. The investigating judge shall adjourn any hearing in which the person is to take part for the period necessary in order to provide the person concerned with defence counsel if he or she wishes to have defence counsel, or if the investigating judge decides that the circumstances as established during the criminal proceedings require the participation of defence counsel."

Article 208. Arrest by a competent official [without a court order]

"1. [In the absence of a court order a] competent official is entitled to arrest (*затримати*) a person suspected of having committed a crime for which a prison sentence may be imposed, only in the following cases:

(1) if the person has been caught whilst committing a crime or attempting to commit one; or

(2) if immediately after a criminal offence the statements of an eyewitness, including the victim, or the totality of obvious signs on the body, or clothes or at the scene of the event indicate that this person has just committed an offence ...

4. A competent official who has carried out the arrest shall immediately inform the arrested person, in a language which he/she understands, of the grounds for the arrest and of what crime he/she is suspected of having committed. The official shall also explain to the arrested person his/her rights: to be legally represented; to be provided with medical assistance; to make statements or to remain silent; to inform [third] persons ... of his/her arrest and whereabouts; to challenge the grounds for the arrest; as well as the other procedural rights set out in this Code.

5. A report shall be drawn up in respect of an individual's arrest containing, [in particular,] the following information: the place, date and exact time (the hour and minute) of the arrest ...; the grounds for the arrest; the results of the search of the person; requests, statements or complaints of the arrested person, if any; and a comprehensive list of his/her procedural rights and duties. The arrest report shall be signed by the official who drew it up, and by the arrested person. A copy shall immediately be served on the arrested person after obtaining his/her signature ..."

Article 211. Duration of detention in the absence of a decision by the investigating judge or the court

"1. The duration of a person's detention in the absence of a decision of an investigating judge or a court may not exceed seventy-two hours after [his or her] arrest, the moment of which shall be determined as provided for in Article 209 of this Code.

2. An individual arrested in the absence of a decision by the investigating judge or the court shall be released or brought before the court for the examination of an application to impose a measure of restraint on him or her no later than sixty hours after his or her arrest."

Article 214. Start of the pre-trial investigation

"1. An investigator or a prosecutor shall immediately, no later than twenty-four hours after an application is submitted or notice is given that a crime has been committed, or upon discovering themselves from any source that a crime has been

committed, enter such information in the Integrated Register of pre-trial investigations and shall start an investigation...

2. The pre-trial investigation shall start as soon as the relevant data have been entered in the Integrated Register of pre-trial investigations..."

Article 284. Termination of criminal proceedings

"...

3. An investigator or a prosecutor may issue a decision to terminate criminal proceedings which is amenable to appeal in accordance with the procedure established by this Code.

...

5. A copy of an investigator's decision to terminate criminal proceedings shall be sent to the applicant [who is applying to terminate the criminal proceedings], the victim, and the prosecutor. A prosecutor has the right to quash the decision on the grounds that it is unlawful or unsubstantiated within twenty days of receiving the copy of the decision. The prosecutor may also quash the investigator's decision to terminate the criminal proceedings upon an application being lodged by the applicant or the victim, if such an application is lodged within ten days of a copy of the decision being received by the applicant or the victim.

A copy of a prosecutor's decision to terminate criminal proceedings shall be sent to the applicant, the victim, his or her representative, the suspect, and defence counsel.

...

8. A court's decision to terminate criminal proceedings may be challenged on appeal."

Article 303. Decisions, actions or failures to act of the investigator or the prosecutor which are amenable to appeal during the pre-trial investigation, and the right to appeal

"1. During pre-trial proceedings, the following decisions, actions or failures to act of the investigator or the prosecutor are amenable to appeal:

(1) An omission by the investigator or the prosecutor consisting of a failure to enter information on the criminal offence in the Integrated Register of pre-trial investigations after an application or notice is received stating that the crime has been committed; a failure to return temporarily seized property as prescribed by Article 169 of this Code; or a failure to carry out other procedural actions which he or she is required to carry out within the time-limit specified by the present Code. [Such an appeal may be made] by the applicant, the victim, his or her representative or legal representative, the suspect or the suspect's defense counsel or legal representative, the representative of the legal person in respect of whom the proceedings are being conducted, or the owner of temporarily seized property;

...

(3) an investigator's decision to terminate criminal proceedings. [Such an appeal may be made] by the applicant, the victim, or his or her representative or legal representative;

(4) a prosecutor's decision to terminate criminal proceedings. [Such an appeal may be made] by the applicant, the victim, his or her representative or legal representative, or the suspect or the suspect's counsel or legal representative;

..."

Article 305. Legal consequences of lodging an appeal against a decision, action or failure to act of an investigator or prosecutor during a pre-trial investigation

"1. Lodging an appeal against decisions, actions or failures to act of an investigator or prosecutor during a pre-trial investigation shall not stop the decisions or actions of the investigator or prosecutor from being executed.

2. The investigator or prosecutor may set aside his or her own decisions referred to in paragraphs 1, 2, 5 and 6 of Article 303 of this Code, or terminate the action or failure to act complained of, which [shall] result in the proceedings on appeal being terminated.

The prosecutor may set aside his or her own decisions referred to in paragraph 3 of Article 303 of the Code and appealed against in accordance with the procedure provided for in paragraph 5 of Article 284 of this Code, which shall result in the proceedings on appeal being terminated."

Article 306. Procedure for examining an appeal against a decision, action or failure to act of an investigator or prosecutor during a pre-trial investigation

"1. Appeals against decisions, actions or failures to act of an investigator or prosecutor shall be examined by an investigating judge of a first-instance court ...

2. Appeals against decisions, actions or failures to act during a pre-trial investigation shall be examined within seventy-two hours of such appeals being received, except for appeals against decisions to terminate criminal proceedings, which shall be dealt with within five days of being received.

3. The examination of appeals against decisions, actions or failures to act during a pre-trial investigation shall be carried out with the mandatory participation of the person who has lodged the appeal or his or her defence counsel or representative, and the investigator or prosecutor whose decisions, actions or failures to act are being challenged. The absence of the investigator or prosecutor shall not be an obstacle to the appeal being examined."

Article 307. Decision of the investigating judge following the examination of an appeal against a decision, action or failure to act of an investigator or prosecutor during a pre-trial investigation

"...

2. A decision of the investigating judge following the examination of an appeal against a decision, action or failure to act during a pre-trial investigation may provide for:

1) the quashing of the decision of the investigator or prosecutor;

2) the obligation to terminate an action;

3) the obligation to perform a certain action; [or]

4) the dismissal of the appeal.

3. The decision of the investigating judge following the examination of an appeal against a decision, action or failure to act of the investigator or prosecutor is not amenable to appeal, unless it concerns a decision on the dismissal of an appeal against a decision to terminate criminal proceedings."

Article 309. Decisions by the investigating judge amenable to appeal during a pre-trial investigation

"...

2. During a pre-trial investigation, decisions of the investigating judge dismissing an appeal against a decision terminating criminal proceedings ... may be challenged by means of a [further] appeal."

Article 310. Procedure for challenging on appeal the decisions of an investigating judge

"1. The investigating judge's decisions may be challenged in accordance with the appeal procedure."

I. The Police Act of 1990 (repealed on 2 July 2015) and the Statute of the Police Patrol and Guard Service of Ukraine of 1994 (repealed on 5 March 2019)

207. Sections 11-14 of the Police Act, as worded at the material time, set out a number of conditions under which the police was empowered to use force against and to arrest individuals. *Inter alia*, police officers had power to arrest individuals suspected of having committed a crime. They also had power to apply measures of physical coercion and special tools, such as handcuffs, rubber truncheons and tear-provoking substances, in order to stop the commission of offences, including mass disorder. In addition to this, police officers had power to apply such measures in order to overcome resistance to their lawful orders if such resistance was accompanied by force directed against police officers or other individuals, provided that other means had been tried but had failed to enable the police to fulfil their duties, including those of maintaining public order.

208. The Statute of the Police Patrol and Guard Service of Ukraine, which was adopted by the Ministry of Interior on 28 July 1994 and the text of which is available via the Ukrainian official electronic database of legal acts[17], contained specific regulations which police officers had to follow when exercising their duties of ensuring public order and safety in connection with "authorised" or "unauthorised" demonstrations (Sections 295-340 of the Statute). Sections 310-312 of the Statute provided that the police had to draw operational plans and maps regarding public-order operations during demonstrations. Section 338 of the Statute provided that a demonstration could be dispersed if it was not authorised by the relevant authorities, if it was banned by a relevant decision owing to a breach of the

[17] http://zakon2.rada.gov.ua/laws/show/z0213-94.

procedure for organising and holding of demonstrations, or if, in the course of a demonstration, there arose a threat to the life or health of citizens or the danger of a breach of public order, or material damage to the state, collective or private property, or a breach of the traffic or sanitary rules. According to Section 340 of the Statute, if an "unauthorised" demonstration was held, the police had to warn the participants and inform them of the relevant legal provisions and the liability for their breach; in case of a failure to comply with the lawful demands, the police could detain the organisers or active participants for breach of public order and unlawful activities.

J. The Compensation Act of 1994

209. The relevant provisions of the Act of 1 December 1994 on the procedure for claiming compensation for damage caused to citizens by the unlawful acts of bodies of inquiry, pre-trial investigation authorities, prosecutor's offices and courts ("the Compensation Act of 1994") are reproduced in *Dubovtsev and Others* (cited above, § 48).

K. The Act on the Application of Amnesty in Ukraine of 2011

210. The Act sets out general regulations concerning the application of amnesty.

211. On 27 February 2014 the *Verkhovna Rada* introduced amendments to the Act to include the notion of "individual amnesty", which, according to Article 1, it could grant to an individual. The amendments also included a list of individuals who were granted full amnesty and had to be released immediately.

L. Amnesty laws

212. Between 19 December 2013 and 21 February 2014 the *Verkhovna Rada* adopted several laws aimed at, mainly, preventing the prosecution and punishment of persons who had participated in the Maidan protests. The laws provided, *inter alia*, for the release from administrative responsibility for breach of the procedure for organising and holding meetings and from criminal responsibility for mass disorder. Also, during the period before 21 February 2014, the laws allowed for the release of law-enforcement officials from responsibility for abuse of power committed during the Maidan events. The laws were summarised in Information Note No. 10 published by the IAP, which is available at https://rm.coe.int/16802ef0e4.

213. The Amnesty Law of 21 February 2014, which repealed the previous amnesty laws adopted between 19 December 2013 and 29 January 2014, envisaged an amnesty (release from legal responsibility) for various crimes, including mass disorder, and for any administrative offences which

had been committed between 21 November 2013 and 28 February 2014 (the date on which that law entered into force) in connection with the Maidan protests. In particular, Articles 1 and 4 of that law provided that the related criminal and administrative proceedings had to be terminated. Articles 5-7 designated the bodies responsible for the implementation of that law and set out the procedures which had to be followed. Article 9 banned the collection, storage and dissemination of personal data of those who had participated in the protests. In its final and transitional provisions, the law stated that it was applicable specifically to the criminal proceedings against Mr V. Smaliy (see *Kadura and Smaliy*, cited above, §§ 41-55).

M. Social protection regulations

214. From 21 February 2014 onwards the *Verkhovna Rada*, the Cabinet of Ministers and several other principal government bodies enacted different regulations granting various allowances and privileges, including tax exemptions, to those who had been injured while taking part in the Maidan protests and the Revolution of Dignity and to the relatives of protesters who had died as a result of being injured during those events.

215. In particular, on 21 February 2014 the *Verkhovna Rada* adopted the Civil Protest Victims Aid Act.

216. Between August 2014 and December 2015 the Cabinet of Ministers adopted various resolutions on the social protection of persons who had received serious, moderate and minor bodily injuries while participating in the mass actions of civil protest that had taken place in the period from 21 November 2013 to 21 February 2014. The regulations set a one-off payment of financial assistance at fifty times (regulations no. 324), twenty-five times (regulations no. 525) and ten times (regulations no. 1098), respectively, the monthly minimum level of subsistence for persons who had received such bodily injuries while participating in the mass protests.

217. In accordance with those regulations, the list of persons who are entitled to those payments is to be compiled by the Ministry of Health, based on the results of forensic examinations of the persons concerned, and is to be approved by that ministry, in coordination with the Ministry of Social Policy, the MoI and the PGO.

218. On 19 October 2016 the Cabinet of Ministers allocated funds totalling UAH 7,322,500 for 505 protesters who had sustained minor bodily injuries (UAH 14,500 each – the equivalent of about EUR 500 at the material time).

219. During public hearings at the *Verkhovna Rada* on 9 February 2017 it was noted, *inter alia*, that many of those entitled to receive allowances or privileges had not been able to make use of their entitlement because of a lack of coordination in the authorities' activities in this area, insufficient

information concerning the allowances and privileges provided for, and a lack of budgetary allocations.

N. The Restoration of Trust in the Judiciary in Ukraine Act of 8 April 2014

220. The Restoration of Trust in the Judiciary in Ukraine Act was adopted by the *Verkhovna Rada* on 8 April 2014, and entered into force on 11 April 2014. It set out a special vetting procedure applicable to judges of the courts of general jurisdiction, mainly targeting breaches of ethics and procedure in proceedings related to the Maidan protests.

221. To that end, the Act provided for the creation of a temporary special commission, the TSC, which was empowered to carry out a vetting procedure on judges for a period of one year from the date when it was formed.

222. The TSC had to be composed of fifteen members: the Plenary Supreme Court, the *Verkhovna Rada* and the Government Commissioner on Issues of Anti-Corruption Policy each had to appoint five members. The TSC was considered to be "formed" when nine members were appointed.

223. Legal entities and individuals had six months from the date when it was advertised that the TSC had been formed to lodge applications for particular judges to be subjected to the vetting procedure.

224. The hearings of the TSC had to be public and the judges concerned had a right to take part in the hearings and make representations either in person or through a lawyer.

225. The TSC was entitled to receive any information necessary for the exercise of its function from courts and law-enforcement bodies, and to study such information, including judges' personal files.

226. Having completed the vetting procedure in respect of a judge, the TSC had to adopt an opinion which had to have reasons and be published on the official website of the HCJ. Thereafter, the opinion had to be transferred to the HCJ.

227. The HCJ was obliged to examine an opinion of the TSC concluding that a judge was guilty of breach of oath.

228. Where the TSC concluded that there were elements of a crime in a judge's actions, its opinion had to be referred to the PGO for further examination.

229. In July 2014 the TSC started assessing the decisions and conduct of judges who had considered civil, administrative and criminal cases related to the Maidan protests between 21 November 2013 and 11 April 2014, the date on which that Act had entered into force. Before it was officially announced on 18 June 2016 that its mandate had terminated, the TSC initiated 309 vetting procedures in respect of 331 judges. It completed sixty-six checks on sixty-three judges and submitted forty-one proposals to the HCJ to dismiss forty-six judges for breach of oath. It also proposed to

the High Qualification Commission of Judges that twelve judges be disciplined. It terminated checks on five judges. According to the information published in September 2017, the HCJ either dismissed or proposed the dismissal of thirty-four judges who had dealt with cases against the protesters.

O. Domestic court decisions concerning awards in connection with criminal proceedings

230. The Government submitted copies of a number of decisions delivered by the courts of different levels of jurisdiction between December 2012 and October 2015, which essentially provided for the payment by the State of compensation awards to different individuals on account of different police officers' conviction for excessive use of force against those individuals. In addition to those, the Government submitted a copy of a decision of 15 May 2007, by which the Sumy Regional Court of Appeal awarded compensation to an individual for his unlawful arrest by the police while taking part in a demonstration, regarding which the court relied on another (criminal) court's factual findings in a decision by which criminal proceedings against the police officer who had unlawfully ordered the arrest in question had been terminated pursuant to an amnesty law. In all the decisions described in this paragraph, the courts relied, in the main, on Articles 1167 and 1174 of the Civil Code of 2003.

231. The Government also submitted copies of several decisions delivered by the Babushkinskyy District Court between November and December 2014. In particular, relying, *inter alia*, on Article 1174 of the Civil Code of 2003 and sections 1(1), 2(2), 3(5) of the Compensation Act of 1994 (see paragraphs 202, 203 and 209 above), the court made awards of UAH 50,000 – about EUR 2,625 at the material time – to different individuals in compensation for non-pecuniary damage on account of their unlawful prosecution, their detention for five days, and the application of house arrest for over four months for their participation in the anti-government demonstration in Dnipro on 26 January 2014. In that regard, the court referred to a decision of the Dnipropetrovsk prosecutor's office terminating the criminal proceedings against those individuals for the reason that no crime had been committed. In accordance with different decisions of the Dniproipetrovsk Regional Court of Appeal and the Higher Specialised Court for Civil and Criminal Matters, copies of which were submitted by the Government, the awards became final. Further details concerning those decisions of the Babushkinskyy District Court are set out in *Dubovtsev and Others* (cited above, §§ 23-29).

II. SPECIAL REPORT OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS

232. On 28 February 2014 the Ukrainian Parliament Commissioner for Human Rights presented her special report on violations of human rights and freedoms during the events which had taken place in Ukraine between 21 November 2013 and 22 February 2014.

233. In her report, the Commissioner pointed to a number of "systemic problems" as regards the human rights situation during the protests which, in her view, required legislative amendments, the improvement of administrative and judicial practice, and a "relevant response" from the PGO and the MoI. Among the identified systemic problems were:

(i) the lack of clear and foreseeable national regulations for the exercise of the right to freedom of peaceful assembly;

(ii) recurrent violations of peaceful protesters' procedural rights during arrest and detention;

(iii) the unlawful and excessive use of physical force and special means by officers of special police units against protesters;

(iv) the lack of effective, impartial, objective and transparent investigations into all facts relating to the use of physical force and special means by law-enforcement officers against protesters and journalists, the disappearance of protesters, and damage to their property and vehicles; and the lack of proper information for civil society as regards the outcome of investigations and the bringing of perpetrators to justice; and

(v) the unlawful and excessive use of physical force by the police during arrests of underage persons, as well as the violation of applicable procedures relating to arrest, questioning and detention.

III. MATERIAL FROM COUNCIL OF EUROPE BODIES

A. Resolution of the Council of Europe Parliamentary Assembly of 30 January 2014 (1974)

234. During its session in January 2014 the Council of Europe Parliamentary Assembly adopted a resolution (1974, 30 January 2014) addressing the situation relating to the protests in Ukraine. Part of the resolution reads as follows:

> "...
>
> The Assembly is especially concerned about credible reports of torture and maltreatment of protesters by the police and security forces. Such behavior, which has been transmitted on several television channels, is unacceptable and the perpetrators need to be punished to the full extent for the law. There cannot be any impunity for such actions. The Assembly is equally concerned about reports that journalists are specifically targeted by the security forces, in contradiction of the principle of freedom of the media. In addition, it is concerned about reports that three policemen

have been stabbed, one of them fatally, by protesters. It considers that such acts of violence against servicemen are unacceptable in a democratic society and should be fully investigated.

..."

B. Report of the Council of Europe Commissioner for Human Rights of 4 March 2014

235. On 10 February 2014 the Council of Europe Commissioner for Human Rights published, on his official website,[18] information on his visit to Ukraine (Kyiv, Vinnytsia, Dnipropetrovsk and Zaporizhzhya) from 4 to 10 February 2014, expressing in particular his concern over cases of "apparent abductions – accompanied by serious beatings and ill-treatment – by unidentified persons". According to the publication, the Commissioner and his delegation encountered allegations and other evidence of "police cooperation with civilians popularly designated by the catch-all term 'titushki' who were frequently armed with truncheons, bats or 'traumatic' (riot-control) firearms and wearing masks".

According to the publication, during the visit the Commissioner obtained information regarding the Maidan-related investigations and had "reason to believe that the [reportedly low] number of complaints received by the prosecutorial authorities [regarding the abuses against the protesters could] be a reflection of the lack of trust by the public as to how effectively their complaints [would] be treated by this institution". It was also stated that "certain of the Commissioner's official interlocutors [had] recognised that thus far, investigative / prosecutorial authorities [had] been mainly engaged in pursuing accountability against participants in protests for organising 'mass disorders' or 'occupying buildings'".

236. Subsequently, on 4 March 2014 the Council of Europe Commissioner for Human Rights published a report on that visit, in which he assessed the human rights aspects of the then ongoing Maidan protests.

It was reported that many persons, who had "in one way or another been affected by the violent events" and whom the Commissioner's delegation had interviewed, had raised various allegations of ill-treatment by the police and persons in plain clothes. The alleged ill-treatment consisted of beatings, which had continued inside police and "unmarked cars" during the victims' transportation to police stations; shooting at the victims with rubber bullets while specifically targeting the head and face; inflicting injuries upon them by stun grenades; using water cannons against them in freezing temperatures; stripping them fully or partially of their clothing in "an improvised 'distribution point' in Mariinsky park in Kyiv"; and forcing

[18] https://www.coe.int/en/web/commissioner/-/firm-action-against-police-impunity-needed-in-ukraine-concludes-commissioner-muiznieks

them to kneel on the ground with their hands behind their backs while continuing to beat them.

It was stated that the medical expert, who had accompanied the Commissioner during the visit, had observed physical marks still visible on the victims, had reviewed the relevant medical records and had interviewed medical staff and/or patients. According to the report, the medical information thus obtained had been consistent with the victims' accounts of the alleged ill-treatment. In this connection, the Commissioner noted that those injuries revealed, *inter alia*, "a clear pattern of [the police] targeting the head and face".

According to the Commissioner, there had been an increasing number of credible reports about "police co-operation with unidentified civilians in the course of policing of demonstrations". Those civilians had been frequently armed with truncheons, bats or 'traumatic' firearms and wore masks. In this connection, the delegation had been shown a photo of a regional police chief surrounded by masked men bearing wooden sticks and yellow armbands. Also, it was noted that, during his meeting with the Commissioner in February 2014, the Minister of Interior had acknowledged that during "a certain period of time the police [had] sought reinforcements among former law enforcement officials, former army officers and Afghan war veterans, who [had] acted together with current law enforcement officials to protect public order"; however, this practice had been eventually abandoned. All of the Commissioner's official interlocutors "clearly confirmed that there [had been] no legal basis in Ukraine allowing for cooperation between the police and groups of masked civilians bearing non-standard weapons".

In the report, it was also stated that at the material time "human rights activists [had] faced serious obstacles in their work and there [had been] widespread fears of possible retaliation and reprisals on the part of law-enforcement authorities and/or those working with them". In that regard, reference was made to "instances of intimidation, harassment, or threats against human rights activists", which had been reported to the Commissioner during and after the visit. The Commissioner expressed his serious misgivings about the existence of a "separate register for those who [had been] injured in clashes with the police in the Emergency Hospital in Kyiv". According to him, this made it "very easy to identify possible targets for retaliation".

Reference was also made to "credible reports of several abductions – in some instances, from hospitals - by groups allegedly working with the police". According to those reports, the persons abducted had been ill-treated and turned over to the police or abandoned to their fate. One such person was Mr Y. Verbytskyy (see *Lutsenko and Verbytskyy*, cited above).

Certain parts of the Commissioner's report concerned the functioning of the judiciary during the period at issue. In particular, it was reported that

there were numerous allegations from persons who had been arrested in connection with the protests and their lawyers about "inaction of judges and prosecutors in the face of defendants' visible injuries and/or allegations of ill-treatment"; as well as about judges and prosecutors refusing to grant defendants' requests for forensic medical examination in that regard. Also, it was stated that "in spite of the fact that there was no national legislation regulating the procedures for holding public assemblies, the administrative courts in Ukraine regularly imposed bans on public gatherings, at the request of local public authorities". Reportedly, up to 85 percent of all public assemblies were banned by the Ukrainian courts. Generally, the Commissioner noted that:

> "...
>
> 50. The present crisis has brought into sharp relief the serious shortcomings in the functioning of the Ukrainian judicial system. During his meetings with various interlocutors, the Commissioner noted with concern that public trust in the rule of law was very low, and there were widespread perceptions that the judiciary does not serve the cause of justice or perform its function in an independent and impartial manner. This is a major problem which should be addressed without further delay.
>
> ..."

C. Report of the International Advisory Panel (IAP)

237. The IAP was constituted by the Secretary General of the Council of Europe in April 2014 to assess whether the investigations carried out by the national authorities into the violent incidents which had taken place during the Maidan demonstrations between 30 November 2013 and 21 February 2014, as a whole, satisfied the requirements of Articles 2 and 3 of the Convention and the case-law of the Court. In contrast, the Panel did not see it as its role to examine whether the arrest, detention, treatment and trial of numerous protesters, or the investigation into those events, were in compliance with the requirements of Articles 5 or 6 of the Convention.

238. Furthermore, in the introduction of its report, published on 31 March 2015, the IAP clearly stated how it viewed its role and the limits thereto:

> "...
>
> As is clear from the terms of the Mandate, it was never the role of the Panel to conduct or assist the investigation into, or to establish the facts concerning, the violent incidents in question. This was and is exclusively the responsibility of the Ukrainian investigatory authorities, namely the PGO, the Ministry of the Interior ("the MoI") and the State Security Service ("the SSU"), all of which were charged with responsibility for various casefiles in the Maidan-related investigations. Nor did the Panel have the role of determining whether the investigation of an individual case satisfied the requirements of the Convention. Indeed, it notes that certain Maidan-related applications are pending before the European Court. Its role was essentially a supervisory one, the Panel reviewing in broad terms whether the

> investigations carried out at national level into the deaths, serious injuries and acts of ill-treatment complied with international standards. In making this assessment, the Panel has on various occasions scrutinised the adequacy of the investigation of individual incidents that had attracted particular notoriety. This was done not for the purpose of arriving at a conclusion on the quality of the specific investigation but rather as providing useful indications of the adequacy of the investigations seen as a whole.
>
> ..."

239. The members of the panel - Sir Nicolas Bratza (Chair), a former President of the European Court of Human Rights; Mr Volodymyr Butkevych, a former Judge of the European Court of Human Rights; and Mr Oleg Anpilogov, a former prosecutor of Ukraine, and a member of the Kharkiv Regional Council at that time - were appointed by the international community, the opposition and the national authorities, respectively.

240. In its report of 31 March 2015, the IAP drew attention to serious deficiencies, both structural and operational, in the independence and effectiveness of the relevant investigations and found that they did not comply with the requirements of Articles 2 and 3 of the Convention.

241. It also found continuing evidence of impunity and a lack of accountability as regards law-enforcement officers in Ukraine, specific instances of which were described in the report. However, in reaching those findings, the panel expressly acknowledged the very substantial challenges which the authorities had confronted since taking on the investigatory role in February 2014: the unprecedented scale and breadth of the investigations into the Maidan events; the lack of any effective investigations by the authorities of the previous regime in the first three months of the Maidan demonstrations; the considerable problems posed by the fact that key figures of the former government had absconded from Ukraine, documents had been lost or destroyed, and weapons had disappeared; the lack of any identifying marks on the law-enforcement officers who had taken part in the violent events; and the competing demands made of the authorities in relation to investigating other serious events postdating those in the Maidan protests. In addition, the Panel stressed that it was never its role to conduct or assist the investigation into, or to establish the facts concerning, the violent incidents in question. This, it said, was exclusively the responsibility of the PGO, the MoI and the SSU, all of which were charged with responsibility for various case files in the Maidan-related investigations. As regards responsibility for determining whether the investigation of an individual case satisfied the requirements of the Convention, the Panel also observed that Maidan-related applications were pending before this Court.

242. When the report was published the Chairman of the IAP provided a press briefing, the relevant passages of which read as follows:

> "...

It was the view of the Panel that, despite the numerous calls which had been made to introduce an independent and effective mechanism within Ukraine for investigating crimes committed by law enforcement officers, there were several examples of a lack of practical independence in the Maidan investigations. In particular, the Ministry of the Interior had been given an investigative role in crimes which had undeniably been committed by law enforcement officers and had been allocated the investigation of crimes allegedly committed by the so-called *titushky*, despite the undisputed evidence that *titushky* had been engaged, supported, and armed by former officials of the Ministry.

The Report further contains a series of criticisms of the lack of effectiveness of the investigations. This was considered, first, to result from a number of deficiencies in the staffing and resources of the Prosecutor General's Office and in the allocation of the investigative work. The number of investigators devoted exclusively to the Maidan investigations was found by the Panel to have been wholly inadequate and the lack of direction and continuity which resulted from the appointment of three Prosecutors General within a year, as well as the removal from their role of two of the leaders of the Maidan investigations, was found to have had a serious impact on their progress, quality and effectiveness. Further, the distribution of certain of the case-files between the Prosecutor General's Office, on the one hand, and the Kyiv City Prosecutors' Office and the Ministry of Interior, on the other, was found to have been neither coherent nor efficient.

The effectiveness of the investigations into the Maidan events was, in the view of the Panel, vitally dependent on close cooperation between the investigating authorities. The lack of such cooperation with the Prosecutor General's Office by the other two investigating authorities was found by the Panel to have had a seriously negative impact on their effectiveness. There were, in its view, strong grounds to believe that the attitude of the Ministry of the Interior had been uncooperative and, in certain respects, obstructive.

A similar lack of cooperation was found on the part of the State Security Service in the investigations into the counter-Maidan operation in February of last year. While the Panel questioned whether all had been done by the Prosecutor General's Office to ensure effective cooperation on the part of the other two authorities, the principal responsibility lay in the Panel's view with those two authorities.

The Panel also expressed concern about the decisions of the courts, which had in its view undermined the effectiveness of the Maidan investigations and, more generally, weakened the deterrent effect of the judicial system. In particular, the decision of the Percherski District Court to release to house arrest the commander of the Berkut unit, who had been charged with 39 murders and who has since his release disappeared, has had a serious impact on the progress and outcome of the investigations into one of the gravest episodes of violence at Maidan.

It was the view of the Panel that, as a direct consequence of these deficiencies, the investigative response to the violent events had been significantly protracted.

The Panel was further of the view that the events at Maidan were of such importance that the authorities were required to provide sufficient information about the investigations to facilitate meaningful public scrutiny of them. Here again, failings were found. While it was acknowledged that efforts had been made to inform the public, the Panel concluded that there was no coordinated communication policy in place between the three investigating bodies so as to ensure the delivery of consistent and comprehensive information about the investigations as a whole. Nor did the Panel

consider that the information provided to the public was of itself sufficient to protect the rights and interests of the victims and next-of-kin.

Having reviewed the current status of the various case-files, the overall conclusion of the Panel was that substantial progress had not been made in the investigations and that, while this might to some extent be explained by the challenges faced, the deficiencies found had undermined the authorities' ability to establish the circumstances of the Maidan-related crimes and to identify those responsible.

..."

243. Extracts from the report specifically relating to investigations into the dispersal of protesters on 30 November 2013 read as follows (emphasis added by the IAP, references omitted):

"...

223. In November 2014 the PGO outlined to the Panel, for the first time, the content and status of the casefile concerning the involvement of the Berkut officers in the events of 30 November 2013. All 390 Berkut officers, who could potentially have been involved, had been identified and questioned. Various analyses led the PGO to believe that approximately 30 officers had ill-treated protesters and that 96 protesters had received injuries. No officer had admitted ill-treating any protester or seeing any officer doing so. None of the victims recognised any law enforcement officer. The PGO confirmed that it had not yet identified any of the 30 or so Berkut officers possibly involved and it was hoped that expert examinations would assist.

224. The PGO representatives criticised the results of the relevant MoI internal inquiry. The report recorded that senior officers had instructed law enforcement officers to remove the protesters in order to install the New Year tree in compliance with the Police Act. No information was given about particular persons and all that could be drawn from the report was that each Berkut officer had himself evaluated the risk and the need for the use force. The PGO representatives concluded from this that the MoI did not want to investigate this episode and remarked that all 390 Berkut officers continued to carry out law enforcement duties.

225. Media reports indicated that, on 27 January 2015, the PGO issued notices of suspicion to four former Berkut commanders for abusing their powers by obstructing demonstrations. The Pecherskyi District Court released all four officers to home arrest. On 30 January 2015 that court suspended those officers from duty in the special unit to which they had been assigned.

..."

244. Paragraphs 226-230 of the report contain information specifically relating to the official investigations into the allegedly unlawful use of special means against protesters. In particular, those investigations were carried out by the PGO that issued a series of official notifications of suspicion as regards several former high-ranking officials of the MoI, suspecting them of "illegal supply of special means from the Russian Federation which [had been] used by law-enforcement officers to suppress the [Maidan] protests, resulting in grave consequences". Also, an official notice of suspicion was issued as regards Mr M. Azarov, the former Prime Minister, who allegedly had been responsible for the enactment of the

regulations authorising the law-enforcement officers to use the special means against the protesters. Some of the investigations concerned were completed and awaited referral for trial, while other investigations were still ongoing at the material time.

245. Extracts from the Report specifically relating to the allegedly arbitrary prosecution of protesters read as follows (emphasis added by the IAP, references omitted):

> "...
>
> *4. The PGO investigation concerning the abusive prosecution of protesters*
>
> **(a) The scope of the investigation**
>
> 316. In January and February 2014 over 130 protesters were prosecuted as a result of their participation in the protests. While the PGO indicated that most of those prosecutions had been closed under the Amnesty Law of 21 February 2014, this criminal investigation had been opened to establish any abuse of power by the authorities.
>
> **(b) Pre-trial investigation**
>
> 317. The PGO investigation indicates that, from January to February 2014, Berkut officers, Internal Troops and other MoI law enforcement officers apprehended persons solely because they had participated in the protests, knowing that there was no basis for their arrest and in violation of the requirements of the law. Those persons had been delivered to district police offices. Investigators and prosecutors had opened criminal proceedings without any legal basis and investigating judges had ordered their pre-trial detention without foundation.
>
> 318. At the press conference of the PGO on 19 November 2014, it was indicated that the PGO would shortly proceed against 28 investigators, nine prosecutors and 13 judges.
>
> ..."

246. Some parts of the report concern specifically the official investigations into the alleged engagement of titushky by law-enforcement officials in order to counter the Maidan protests.

According to the information contained in paragraphs 291-299, 338-340, 416-418 and 434 of the report, at the material time series of official investigations into that matter were conducted in parallel by the PGO and the MoI and there was an overlap, in both evidence and suspects, between some of those investigations. In that connection, the IAP further noted that "the serious allegations [had] existed from the outset as to the involvement of the former MoI leadership in engaging, supporting, organising and arming titushky for the purpose of intimidating and using violence against the Maidan participants". It opined that the fact that the pre-trial investigation of certain crimes, allegedly committed by titushky against the Maidan protesters, had been allocated to the MoI constituted "another instance of a lack of operational independence in the investigations".

In so far as the report concerned the investigations conducted by the PGO, it was noted that the latter suspected that hundreds of titushky had been involved in "anti-Maidan activities" from 30 November 2013 to 20 February 2014. They had been brought in by the former Minister of the Interior and had been organised, paid, given instructions and armed, to the extent that they had carried arms, by the MoI. They had assaulted, kidnapped and killed protesters. It was suspected that Mr V. Zubrytskyi and Mr O. Chebotariov were key organisers of the titushky operations.

In the framework of the investigations conducted by the MoI, those individuals and eleven other suspected titushky had been served with official notices of suspicion on various charges related to those incidents. While two of the suspected titushky concerned had been arrested and, at the material time, awaited trial, the other suspects had absconded.

Also, according to the report, a suspect in another case, Mr Y. Krysin, was standing trial on charges of malicious hooliganism for the assault of a journalist during the protests.

There was no information that any former or acting official of the MoI had been notified of suspicion in the framework of those investigations.

247. In paragraphs 376-391 of the report, the IAP addressed the alleged issue of impunity of law-enforcement officers during and after the Maidan protests. In particular, it noted that since the Maidan events senior State officials had made a number of public statements, reflecting "an unwillingness to hold responsible all the perpetrators of crimes during the Maidan demonstrations". In some instances, this had been explained by the fact that a number of suspected law-enforcement officials "had gone to fight in the East on Ukraine's behalf [and] had atoned for their deeds".

Also, the report included some further information concerning the alleged issue of impunity of Berkut officers, as follows:

> "...
>
> 389. Law enforcement units and, in particular Berkut units, played a significant role in the Maidan events between November 2013 and February 2014. They are widely seen as having been instrumental in the suppression of the demonstrations.
>
> 390. After the Maidan events, at the end of February 2014, the Minister of the Interior disbanded the Berkut special force and, subsequently, created another special police force for public order protection. The decree of 8 May 2014 establishing the new special police force for public protection is substantially the same as the decree of 24 October 2013, which governed the functioning of the Berkut police force. According to the MoI, a commission was created for the purposes of vetting Berkut officers. The Panel put oral and written questions to the MoI to establish the precise number of Berkut officers who had successfully passed the vetting procedure, been transferred to other posts or been dismissed. However, the Panel did not receive consistent or clear replies to its queries.
>
> 391. It has been reported by the lawyers representing victims in Maidan cases that the newly created special police force for public protection is currently managed by senior officials from the former Berkut. In his public statement, the Head of the newly

established SID Mr Horbatiuk commented that, apart from making some staff reductions, these changes merely amounted to a change of title of the Berkut special unit rather than being a genuine attempt to deal with those who had been implicated in the Maidan events.

..."

248. Extracts from the Report relating to certain specific shortcomings in Maidan-related investigations read as follows (emphasis added by the IAP, references omitted):

"...

C. The investigations prior to 22 February 2014

392. The Panel accepts that there were many operational obstacles to the carrying out of effective investigations during the three-month period of the Maidan demonstrations. Most of the crime scenes were in parts of Kyiv controlled by the protesters, rendered inaccessible by manned barricades and the site of mass and violent conflict. The bodies of the dead and injured had very often been moved, thereby compromising the investigation of the circumstances of the relevant incident, including, for example, the trajectory of bullets. Medical records were to be found in different locations and were often not complete: injured persons had been treated in a variety of on-site medical centres out of necessity or out of fear, since there had been reported instances of persecution, including kidnappings, of those admitted to hospital with protest-related injuries; certain persons had gone abroad for medical treatment as they feared for their safety; some victims who had gone to hospital gave false information to hide the source of their injuries; and submissions were made to the Panel that hospitals had failed properly to preserve evidence, notably bullets which had been extracted from bodies. Distrust of the authorities was such that victims did not lodge complaints which would have disclosed their presence at the protests.

393. However, even accepting these operational difficulties, there was little evidence before the Panel attesting to a genuine attempt on the part of the authorities prior to 22 February 2014 to pursue investigations of the acts of violence during the Maidan demonstrations, beyond the mere registration of complaints made in the Unified Register.

394. There were exceptions, where investigations were pursued into events that had attracted media coverage, nationally and internationally. However, even these investigations were not pursued with any practical effect.

395. Thus, an investigation into the illegal dispersal of protesters in the early morning of 30 November was initiated relatively speedily. However, in January 2014 the Pecherskyi District Court exempted all five high-ranking suspects from liability and complications related to the amnesty granted to the suspects have blocked the proceedings ever since, with the exception of those against one suspect. No law enforcement officers were notified of suspicion at a time when their superiors would have had no difficulty in identifying the officers deployed that night.

...

398. While the MoI press releases of 23 January and 4 February 2014 refer to certain investigatory steps, notably ballistic examinations, as having taken place in relation to the fatal shootings of 22 January 2014, the new Prosecutor General and his Deputy, charged with the Maidan investigations, reported that the MoI investigation files furnished to them as regards the killings and injuries of protesters, which were

joined in the PGO's main Maidan investigation (casefile 228), had been essentially empty...

399. The Panel concludes that there was no genuine attempt, prior to 22 February 2014, to pursue investigations into the acts of violence during the Maidan demonstrations.

The lack of genuine investigations during the three months of the demonstrations inevitably meant that the investigations did not begin promptly and this constituted, of itself, a substantial challenge for the investigations which took place thereafter and on which the Panel's review has principally focused...

II. THE INVESTIGATIONS AFTER 22 FEBRUARY 2014: COMPLIANCE WITH ARTICLES 2 AND 3 OF THE CONVENTION

...

412. As to the operational independence of the Maidan investigations, the Panel notes that crimes committed by law enforcement officers against participants of Maidan demonstrations currently fall within the investigative jurisdiction of the PGO. During those investigations, the PGO investigators have not only carried out investigative acts themselves but have also instructed operational units of the MoI to carry out specific investigative acts. Crimes allegedly committed by private individuals have been allocated to the investigative jurisdiction of the MoI. According to the PGO, when deciding on the investigative jurisdiction in respect of a criminal case and when instructing the MoI to carry out an internal enquiry or specific investigative acts, the PGO has always taken into consideration the possibility of a conflict of interest.

413. Despite this assurance, the Panel finds that there have been a number of deficiencies as regards the operational independence of the investigations of Maidan-related crimes.

414. The first example was raised by the PGO itself in a letter to the MoI dated 4 March 2014. The letter related to the main casefile 228 which concerned multiple episodes of deaths and injuries of Maidan protesters at the hands of law enforcement officers as well as the organisation of the violent suppression of Maidan demonstrations. The PGO complained in the letter about the fact that the investigative acts, relating to the identification of documents that had served as a basis for the distribution of weapons to the law enforcement officers and their use against protesters, had been entrusted to the very MoI officials who had been involved in the preparation of the documents related to use of such weapons against protesters during the Maidan events.

...

419. More generally, the Panel emphasises the importance in the present context, where the trust of the public in the criminal justice system is at stake, of the appearance of independence of the bodies with investigative responsibilities. In this regard the Panel is concerned about certain appointments within the current leadership of the MoI, one of the main investigating authorities. It appears that certain members of the current MoI leadership also held senior positions in the Ministry during the Maidan demonstrations, when, under the leadership of Mr Zakharchenko, the MoI sought to disperse the demonstrations through violence, intimidation, abusive prosecution and detention of protesters. Without making any findings as to the personal responsibility of any of the officials for the acts of violence, the Panel considers that their appointments contributed to the lack of appearance of

independence and served to undermine public confidence in the readiness of the MoI to investigate the crimes committed during Maidan.

Conclusion

420. The Panel notes the numerous calls to introduce an independent and effective mechanism within Ukraine for investigations of crimes committed by law enforcement officers. The need for such a mechanism is highlighted by the crimes committed during the Maidan demonstrations.

The Panel concludes that, in certain important respects, the investigations into the Maidan cases lacked practical independence in circumstances where the investigating body belonged to the same authority as those under investigation. The Panel further considers that the appointment post-Maidan of certain officials to senior positions in the MoI contributed to the lack of appearance of independence and served to undermine public confidence in the readiness of the MoI to investigate the crimes committed during Maidan.

...

1. Staffing and resources in the PGO

...

431. The Panel concludes that the number of PGO investigators involved in the Maidan investigations during 2014 was wholly inadequate.

The Panel further concludes that there was, in addition, an absence of continuity at senior prosecutor level in the PGO in three respects. The appointment of three successive Prosecutors General in the first 12 months of these investigations must have been detrimental to the investigations, from the standpoint both of their overall direction and the credibility of the authorities' response to the Maidan violence. The removal from the Maidan investigations of the two leaders of those investigations must have had a seriously adverse impact on the progress, quality and effectiveness of investigations. All save one of the senior prosecutors appointed to the MID of the PGO after 22 February 2014 appear to have been dismissed or removed from the Department by October 2014.

...

2. Allocation of the investigative work

...

436. The Panel did not consider the allocation of investigative work between the PGO, on the one hand, and the Kyiv City Prosecutor's Office and the MoI, on the other, to be coherent or efficient. Nor did the Panel find the PGO's supervision of the investigative work of the Kyiv City Prosecutor's Office to have been effective.

...

3. MoI and SSU co-operation with the PGO

437. As explained above, the fullest co-operation and coordination between the PGO, the MoI and the SSU was crucial for the effectiveness of the Maidan investigations. However, the evidence before the Panel points to a distinct lack of co-operation with the PGO investigations on the part of the MoI and the SSU.

(a) Lack of co-operation by the MoI

438. From an early stage, the PGO made a number of serious complaints, both in public statements and before the Panel, about a lack of co-operation on the part of the MoI, which the PGO argued bordered at times on obstructiveness. In letters to the MoI dated 1 and 4 March 2014, the PGO complained about the inadequate responses of the MoI to PGO investigative requests. The PGO letter of 12 June 2014 criticised the 'dangerous tendency' in the MoI not to respond to PGO requests concerning investigations against law enforcement officers, a tendency which had become worse since the arrest of the three Berkut officers in early April 2014. In his press conference of 13 June 2014, the then Prosecutor General, Mr Makhnitskyi, referred to an 'informal and hidden opposition' to the investigations exerted by officials of the MoI, a position he again emphasised to the Panel in November 2014.

The MoI denied these allegations when the Panel raised them during the meetings of September and November 2014. The MoI maintained that it had responded properly to all PGO requests, including supplying all requested information to the extent that it was available. The former regime had made sure that their activities were not documented, with the result that the MoI did not have all deployment information. Any weapons used by Berkut officers were used illegally and the MoI had been unable to trace the weapons. The MoI representatives stated to the Panel that they had no information either as to the distribution of weapons to Berkut officers or as to the alleged sending of Berkut officers with their weapons to the anti-terrorist operation in the eastern regions. The MoI also referred to the difficulties caused by the replacement of the majority of the senior MoI officials after Maidan and to certain operational difficulties that were said to have hindered the investigative process.

439. Despite these explanations on the part of the MoI, there remained serious points of concern for the Panel as regards the MoI's co-operation with the PGO investigations.

440. In the first place, on 24 February 2014 Mr Makhnitskyi announced to the Verkhovna Rada that he had already requested the MoI to furnish detailed information and documentation relating to the deployment of law enforcement officers involved in public order activities, including documentation concerning the issue of weapons. While it seems to have been accepted that few deployment or operational planning records had been created or retained prior to 22 February, the PGO complained to the Panel about the failure of the MoI thereafter to co-operate in reconstituting the planning, deployment and operations information, which information was crucial to the investigation when law enforcement officers carried no individual markings.

441. Secondly, most of the serious crimes were allegedly committed by, or with the acquiescence of, MoI law enforcement officers. Internal inquiries by the MoI were therefore the first step in establishing basic operational matters, such as mission planning, deployment and the issue of firearms, as well as any acts of wrongdoing.

However, in both their contemporaneous letters to the MoI and directly to the Panel, the PGO complained about the lack of internal inquiries and about the delay and quality of the reports received. This meant, the PGO submitted, that it was required to establish basic information through time-consuming and detailed investigative work; it added that certain internal information could not be retrieved through this external process.

Three internal inquiry reports in particular were a cause for concern. The report sent to the PGO on 30 January 2014, which covered the events of the early morning of 30 November, failed to identify any of the 30 or so Berkut officers whom it was considered had been involved. In addition, in its letter to the MoI of 12 June, the PGO criticised the main Maidan-related internal inquiry of the MoI dated 24 April 2014 as

being both inadequate and belated: it did not cover the activities of Mr Zakharenko or of a number of senior MoI officials; it did not establish the circumstances in which Berkut weapons and related documents had disappeared; and it had not been delivered to the PGO until 24 May 2014. The Panel has seen this report and considers the PGO criticisms to be justified. It also notes that the MoI letter of 13 July 2014 in response to the PGO did not address these complaints. The Panel has also been furnished with the MoI internal inquiry reports concerning Mr Sadovnyk's escape from house arrest. It agrees with the PGO that they do not address the key issues. This incident constituted one of the most serious setbacks to the investigation. However, the first internal inquiry report failed to treat as problematic the fact that the MoI surveillance officer had waited all day (from 7:00 a.m. to 11:00 p.m.) to check in situ the cause of the alarm signal, thereby leaving Mr Sadovnyk a 15-hour start on those searching for him. The second report merely recorded the administrative formalities completed by the MoI officers charged with supervising Mr Sadovnyk's home arrest.

442. Thirdly, the PGO complained, in its letters to the MoI and to the Panel, about the failure by the operational units of the MoI to carry out investigative acts in time, adequately or at all. The PGO letters to the MoI between March and June 2014 contain a series of detailed and serious complaints in this respect. The PGO letter of 12 June 2014 drew attention to the fact that the MoI had still not provided responses as to the location of Berkut officers since 20 February or as to the circumstances of the disappearance of Berkut firearms. The letter noted, for example, that no comprehensive analysis of the mobile phones of Berkut officers had been carried out to establish their deployment and movements. The PGO letter noted that the MoI had gone so far as to state that they had not been able to find a single witness who had seen a Berkut officer firing from the concrete barricades, even though there was extensive footage on the Internet showing this to have occurred, openly and over a period of time. The Prosecutor General, in his press conference on 13 June 2014, reiterated these criticisms. In its response 13 July 2014, the MoI did not address these particular criticisms by the PGO.

443. Fourthly, as noted above, the PGO had been questioning or seeking to question MoI law enforcement officers, including former Berkut officers. In its letter to the PGO of 12 May 2014, the MoI sought to dissuade the PGO from doing so, citing the need to maintain a good moral and psychological climate within the MoI units which were dealing with the armed aggression on Ukraine: the MoI proposed considering the initiation of legislation to release those officers from responsibility for their Maidan-related actions unless they had committed 'a grievous or an especially grievous offence'. The PGO letter of 12 June 2014 criticised the fact that the MoI had transferred certain former Berkut officers, with their weapons, to participate in the anti-terrorist operation in the eastern regions without PGO approval and in order to conceal material evidence. At his press conference on 13 June 2014, Mr Makhnitskyi reiterated these latter complaints, referring to the Minister's letter of 12 May, and underlined that this attitude of the MoI had greatly complicated the possibility of obtaining good and early results in the investigations. The MoI published a press release on the same day to the effect that the Berkut officers were required for the anti-terrorist operation in the eastern regions and that none had been charged by the PGO with crimes. There were, in the view of the MoI, no grounds to accuse the MoI of hindering the investigations.

444. The Panel has noted that the PGO complaints about a lack of MoI co-operation, and about its impact on the effectiveness of the investigations, are serious and have been made consistently and in a detailed manner since March 2014 in public, to the MoI itself and to the Panel. The MoI responses, to the PGO and to the

Panel, have been both brief and general. The Panel was particularly struck by the contents of the MoI letter of 12 May 2014 and by the subsequent failure of the MoI to address the specific criticisms in the PGO's letter of 12 June 2014. That being said, the Panel is not convinced that the PGO took all necessary steps to follow-up on these failures in order to ensure effective co-operation by the MoI in the investigations.

Conclusion

445. Co-operation by the MoI was crucial to the effectiveness of the PGO investigations. The Panel concludes that there are strong grounds to believe that the MoI attitude to the PGO has been unco-operative and, in certain respects, obstructive. While the PGO complained to the MoI, the Panel considers that not all necessary steps were taken by the PGO to ensure effective co-operation by the MoI in the investigations.

It further concludes that there are strong grounds to believe that this attitude of the MoI has had a seriously negative impact on the investigations. The illustrative example, detailed below, of the PGO attempts to question and arrest Berkut officers, serves to confirm this finding.

...

451. SSU co-operation was also important to the effectiveness of the PGO investigations. While the Panel has noted a reticence on the part of the PGO to investigate thoroughly the possible responsibility of the SSU at an operational level, it considers that the above elements provide grounds to believe that the SSU failed adequately to co-operate with the PGO and that this had a negative impact on the investigations into the counter-Maidan operation of the SSU.

4. The role of the courts

...

457. When reviewing the progress of the Maidan investigations, the Panel was particularly struck by a number of key decisions of the Kyiv Pecherskyi District Court, the competent court for many Maidan-related criminal proceedings, which had had seriously negative consequences for the investigation, even where those decisions were subsequently reversed on appeal.

...

Conclusion

465. The Panel concludes that the decisions of the Pecherskyi District Court, the main court of jurisdiction in many Maidan-related proceedings, failed to comply with the requirements of Articles 2 and 3 of the Convention, undermined aspects of the effectiveness of the Maidan investigations and, more generally, weakened the deterrent effect of the judicial system in place.

...

C. Promptness, reasonable expedition

...

486. The Panel has already concluded that the lack of any genuine investigations during the first three months of the demonstrations inevitably meant that the investigations did not begin promptly and that this constituted, of itself, a substantial challenge to the effectiveness of the investigations which took place thereafter.

487. The Panel has also concluded that the investigations have been marked with serious deficiencies and it considers that those deficiencies have significantly protracted the investigative response to the violent events during the Maidan demonstrations.

488. It is not the Panel's role to reach a conclusion as to whether delays in the investigation of a particular case were incompatible with Articles 2 and 3 of the Convention. Nevertheless, the Panel records that it received submissions as regards particular delays from Amnesty International. Most concerned the delayed completion of medical expert examinations or delays in reporting the results of such examinations to victims or next-of-kin. Other alleged delays mainly related to forensic examinations. For example, the PGO submissions accepted that, as at November 2014, results in two key matters were still awaited: the forensic examination of the cause of the fire in the Trade Union Building and the ballistic tests on the weapons with which the Omega unit was armed in February 2014.

Conclusion

489. The Panel has already found that the absence of investigative activity during the three months of the demonstrations meant that the investigations did not begin promptly. It also considers that the serious deficiencies in the investigations thereafter have significantly protracted the investigative response to the violent events in Maidan.

D. Public scrutiny of the investigations

...

495. In making its assessment, the Panel would first underline the breadth and complexity of the Maidan-related crimes and of the ensuing investigations which, it considers, called for the provision to the public of a broad outline of the basic structure of those investigations. Without basic information on what crime was being investigated and by which competent authorities and on the state of progress in those casefiles, no sufficient public scrutiny of those investigations could take place. The NGOs submissions to the Panel raised this very point. The Heaven's Hundred NGO was formed at the end of July 2014 in order to be able to understand, and thereby obtain some control over, the course of the investigations. However, the NGO was unable to follow even the basic structure of the investigations. Amnesty International considered the information given to have been so selective, incomplete, confusing and general that no clear larger picture of the state of the investigations was presented to the public. This was also the Panel's impression. Even with the more direct access it had to the investigating authorities, the Panel itself had some difficulty in piecing together the available information in order to form an overview.

...

499. By way of illustration the investigations were spread, as noted above, over three investigating bodies, the PGO, the MoI, and the SSU, with regional offices of the first two also having jurisdiction over certain casefiles. While the initial tripartite press conference of 3 April 2014, a month into the investigations, was a positive initiative, it concentrated on those cases which had already attracted some media attention, rather than providing a broad outline of the investigations as a whole. The three authorities did not appear together again until the press conference on 8 December 2014. It seems that this press conference had been prompted by the requested appearance of all three authorities before the joint meeting of the Parliamentary Committees on 10 December 2014. A further PGO/MoI joint conference was held on 2 February 2015: again, the information given on the progress

of the investigations was difficult to place within the larger investigation picture and appears to have been in response to growing criticism about a lack of progress in the investigations.

500. A further illustration of the lack of a communication policy is the unevenness in the official presentation of the investigations. Thus, certain events, such as those of 18-20 February and the actions of titushky, were frequently invoked, whereas certain other events, such as the actions of Berkut officers in the early morning of 30 November 2013, the events of 1 December 2013, the events of the night of 11/12 December 2013 and the numerous injuries and deaths of law enforcement officers, were barely referred to. Similarly, the general pattern of communication during the first 12 months of the Maidan investigations appears to have been sporadic. While in the immediate aftermath of the Maidan events there were regular communications to the public, little additional information was provided until more regular updates began in mid-November 2014. While the Panel acknowledges the efforts recently made to improve the level of communication, including the provision of updates, this does not resolve the underlying problem of a lack of a communication policy designed to ensure the delivery of consistent and comprehensive information about the investigations as a whole.

501. It may be that, in certain cases, no information was provided as there had been no progress made in the investigation: however, any such lack of progress was also of importance and should have been reported to the public.

Conclusion

502. The Panel considers that ensuring a sufficient degree of public scrutiny of the Maidan investigations is a means of securing accountability for the violence perpetrated during the demonstrations. In addition, the events at Maidan were of such importance, that the authorities were required to provide sufficient information about the investigations so as to facilitate meaningful public scrutiny of them. That necessitated, inter alia, a coordinated communication policy by the three competent investigating bodies to ensure the delivery of consistent and comprehensive information about the investigations as a whole.

While some efforts were made, the Panel found that there was no such communication policy in place, as a result of which the information delivered to the public was insufficient. This failure by the authorities undermined the role of public scrutiny in securing accountability and, in addition, failed to satisfy the public's right to know what happened during the Maidan demonstrations.

E. Involvement of victims and next-of-kin

...

506. ... In general, the Panel considers that, given the particular nature and breadth of the Maidan investigations, better coordination between the investigating authorities and the victims and their representatives would have made a substantial contribution to the effectiveness of those investigations and helped to avoid the risk of error.

507. It is true that victims have the right, once the pre-trial investigation has ended, to have access to the casefile. However, investigations have ended in so few cases that it is not possible to draw general conclusions as to the adequacy of this process. Even if information given to the general public on the state of the investigations might otherwise have been of value, the inadequacies already identified above meant that the public information was insufficient to safeguard the rights or the legitimate interests of the victims or next-of-kin.

Conclusion

508. The Panel's role is not to determine whether the investigation of an individual case satisfied the requirements of the Convention and, in this regard, limits its conclusions to recalling the case-law of the European Court relating to the involvement of victims and next-of-kin in any criminal investigation. While the Panel has noted certain positive initiatives taken, in particular by the PGO, it does not consider that these steps, or the information provided to the public, were of themselves sufficient to protect the rights and legitimate interests of the victims and next-of-kin.

..."

249. The IAP's concluding remarks read as follows:

"536. The deep scars left in Ukrainian society by the violent events in Maidan will take long to heal. An important part of any such healing process is the conduct of an effective and independent investigation into the acts of violence. As has been widely acknowledged, there has been a clear lack of public confidence in Ukraine in any such investigation. On the contrary, there has been a widespread perception of impunity on the part of the law enforcement agencies and of an unwillingness or inability on the part of the investigatory authorities to bring to justice those responsible for the deaths and injuries. As is noted in the Report, this perception has been highlighted on previous occasions by various Council of Europe bodies. The Council itself has expressed the view that 'impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system'. It was in recognition of the need to create or restore public confidence in the investigation of the Maidan events that the establishment of the Panel was first proposed by the Secretary General.

537. The Panel has in its Report drawn attention to serious deficiencies, both structural and operational, in the independence and effectiveness of the investigations which have so far been carried out and which the Panel has found do not comply with the requirements of the European Convention or the case-law of the European Court. The Panel has, however, also drawn attention to the changes made during the course of the past year to improve the level of compliance with international standards. Chief among these has been the creation of the Special Investigations Division (SID) within the PGO in December 2014. This body, which will include staff from the PGO, the MOI and the SSU, will be dedicated to the Maidan investigations and to cases of financial crimes committed under the former regime.

538. The creation of the SID is a welcome development and, since it was established, certain progress already appears to have been made in the investigations. However, it is right to recall that the Division was not established until 10 months after the end of the Maidan violence and following a series of staff changes that had broken continuity at senior prosecutor level within the PGO. The experience of the investigators and prosecutors in the SID is unknown and questions still remain as to whether the secondments from the MOI and the SSU might threaten the independence of its investigations. It remains also to be seen whether the new tripartite approach to the investigations is able to provide a timely solution to the lack of co-operation, and, in certain instances, obstructiveness, identified in the Report, which have in the view of the Panel undermined the effectiveness of the investigations to date. In this respect, the Panel has been encouraged by the recent statements of the former Prosecutor General, Mr Yarema and the Head of the SID, Mr Horbatiuk, that the working relations between the PGO and the MOI are now running smoothly.

539. The Panel is further encouraged by the more active position adopted by the current Verkhovna Rada to improve the quality of the Maidan investigations and to achieve more positive results, after a long period of virtual inactivity on the part of the former legislature. This is reflected in the recent initiative shown by the Committees for Legislative Support of Law Enforcement Activities and for Preventing and Combating Corruption in holding a joint hearing with the Prosecutor General, the Minister of the Interior and the Chief of the SSU. The statement of the Committees, following the hearing, that the three bodies had failed to carry out a full, prompt and impartial investigation of the Maidan events so as to bring to justice those responsible, in strict compliance with the law, constituted an important public recognition of the deficiencies in the investigations to date. The Committees' criticisms of the organisation of the investigations, the lack of a proper strategy, the fragmented way in which the crimes were being investigated and the lack of proper communication and coordination between the various investigative bodies, match many of the criticisms found by the Panel. The Committees' decision, inter alia, to recommend to the authorities measures for improving the investigations and to require the provision of monthly reports containing information on the completion of pre-trial investigations and the bringing of cases before the courts, is a welcome initiative.

540. The challenges facing the investigation remain formidable. But it is fervently to be hoped that, guided by the conclusions reached by the Panel in its Report, effective progress will be made in the investigations, thereby instilling public confidence in the legal system and helping to bring closure to this tragic chapter in the history of Ukraine."

D. Reports on visits to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

1. Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 18 to 24 February 2014, published on 13 January 2015

250. The relevant extracts from the CPT's report, which refer in part to some of the applicants in Maidan-related applications before the Court and other persons involved in the same events, read as follows (emphasis added by the CPT; with several exceptions, references omitted):

"...

I. INTRODUCTION

...4. Regrettably, a new threshold of violence was crossed following subsequent waves of protests against the adoption of so-called 'anti-protest laws' on 16 January 2014. There were numerous reports of ill-treatment of '*Maidan*' protesters by members of Internal Affairs special forces, and unidentified individuals assisting them, in the course of the public order operations of 19-23 January 2014 on Hrushevskoho Street in Kyiv and of 26-27 January 2014 in front of the Regional Administration building in Dnipropetrovsk as well as during similar interventions in other cities. Some of these reports of ill-treatment were supported by video footage and generated public outcry. The then Prime Minister resigned days after the carrying out of these operations.

There were also growing concerns about instances referred to as possible enforced disappearances.

...

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Treatment of persons apprehended by or with the authorisation, support or acquiescence of law enforcement officials

1. Persons apprehended during the public order operations of 19-23 January and of 18-21 February 2014 in Kyiv

11. In Kyiv, the CPT's delegation received numerous allegations and gathered other evidence of a widespread pattern of ill-treatment of '*Maidan*' protesters by members of Internal Affairs special forces or by groups of unidentified individuals in civilian clothes closely co-operating with them at the time of actual apprehension and/or shortly afterwards in the course of the public order operations of 19-23 January and 18-21 February 2014.

More specifically, in many such cases, the persons with whom the delegation spoke alleged that they had been the subject of particularly excessive use of force during apprehension (e.g. extensive beatings involving the use of batons or other hard objects until they were unable to move by their own means or until they lost consciousness). In a number of instances, during the period immediately following apprehension, reference was made to being lifted and thrown to the ground, being dragged by the feet down the stairs, repeated kicks and punches, receiving large amounts of tear gas, blows with batons, gun butts or bullet-proof jackets, strangulation, stabbing and shooting with rubber bullets at close range. This violence was allegedly deployed even though the apprehended persons were apparently not offering any type of resistance and complied with orders given by law enforcement officials, had allegedly been brought under control, and/or were in a poor state of health. Some persons interviewed also claimed that, once apprehended, they had been hit with batons whilst being forced to run through a 'corridor' formed by members of Internal Affairs special forces or had been initially asked by law enforcement officials to choose with which 'special means' they would like to be 'dealt with' (e.g. being shot at with a rubber bullet gun or receiving baton blows). The aim of the various types of alleged ill-treatment was apparently to inflict the maximum possible pain or damage to the health of the apprehended persons.

The law enforcement officials who were the subject of allegations of ill-treatment were almost exclusively members of the now disbanded '*Berkut*' special police unit (PMOP '*Berkut*') and officials of the Interior Troops; most of them were said to wear balaclavas and none had individual identification numbers on their uniforms/helmets which could make them clearly identifiable during subsequent investigations. Several detained persons interviewed claimed that they saw commanding officers (wearing a visible indication of their ranks) during their alleged beating by subordinates. These officers apparently encouraged their ill-treatment or did nothing to stop it. Groups of individuals allegedly supporting members of the '*Berkut*' special police unit and the Interior Troops were most often referred to as '*Titushky*' or anti-*Maidan* activists. [11][11. So-called '*Titushky*' (or anti-*Maidan* activists) were generally believed to be unidentified private individuals (e.g. sports club members, private security officers or former law enforcement official) specifically recruited to assist law enforcement officials (or to provoke incidents during '*Maidan*' demonstrations). They often allegedly had specific dress codes or wore distinct armbands to be identified by law enforcement officials during public order operations.]

...

13. In some instances, in particular during the operations of 19-23 January 2014, the alleged beatings were followed or combined with humiliation by members of the PMOP '*Berkut*'/Interior Troops (e.g. apprehended persons being stripped naked in cold weather and photographed; having their hair cut; toothpaste, shoe cream or other products being spread on their faces; having their trousers cut and being mocked; being made to kneel and sing to the glory of '*Berkut*' special police).

...

14. During the visit, the delegation also heard several accounts of physical ill-treatment of apprehended protesters during initial questioning by members of the '*Berkut*' special police unit/Interior Troops or by unidentified individuals in civilian clothes co-operating with them and believed to be law enforcement or other public officials. In virtually every such case, the aim of the questioning was apparently to obtain information about the organisation and the alleged funding of the '*Maidan*' protests.

The alleged ill-treatment during questioning by members of '*Berkut*' police forces or Interior Troops included punches, kicks and baton blows and was said to have happened in secluded areas, within the buildings where the apprehension took place or in a yard.

15. It is of concern that several detained persons with whom the delegation spoke firmly believed that a few members of the '*Berkut*' special police unit/Interior Troops who had apprehended, questioned and allegedly ill-treated them were, in reality, law enforcement officials from a foreign country, namely the Russian Federation. Indeed, some claimed that those officials had had distinct accents when speaking Russian.

...

16. As regards alleged ill-treatment during questioning by unidentified individuals in civilian clothes during the operations of 18-21 February 2014, it apparently involved kicks, blows with hard objects and the use of electroshock devices (with different voltage levels). The persons concerned had their hands tied with plastic straps behind their back and were held in tents, on the site where the so-called 'anti-*Maidan*' protest camp was located, shortly before handover to '*Berkut*' police officers or other uniformed law enforcement officials who apparently had stayed outside the tents. When visiting the site in question on the morning of 22 February 2014, the delegation found several plastic straps fully matching the descriptions given by the detained persons interviewed.

It clearly emerged from the delegation's findings that the unidentified individuals in question worked with the authorisation, support or acquiescence of law enforcement officials. At the same time, in several instances, the persons concerned were thought to be Internal Affairs or other public officials (including members of the '*Berkut*' special police unit) who did not identify themselves during questioning or thereafter. For instance, when interviewed by the delegation, 'G' had little doubt that the civilians who allegedly questioned him and applied electroshocks to him were law enforcement officials, notably on the basis of their attitude and the methodical way in which they worked.

17. It should also be mentioned that the delegation heard a few allegations of physical illtreatment (e.g. beatings, pushing back of the eyeballs, etc.) of persons apprehended by members of '*Berkut*' police officers/Interior Troops or by unidentified individuals in civilian clothes (some reportedly being former law enforcement officials) during transfers in unmarked/private vehicles to Internal Affairs directorates.

At the same time, it should be placed on record that hardly any allegations of ill-treatment were received as regards police convoy officers. On the contrary, many persons interviewed made positive comments about them.

18. Most detained persons interviewed said that they had been treated correctly during interviews by investigators and other staff working in Kyiv Internal Affairs district directorates/divisions. That said, the delegation heard rare accounts of threats (e.g. death threats or threats of insertion of a baton into the detained person's anus) by investigators during questioning prior to the arrival of a lawyer, in order to make them sign self-incriminating statements or other documents.

19. As regards staff working in the ITT in Kyiv, as had been the case during the visit in 2013, the delegation did not receive any complaints of ill-treatment.

...

3. Assessment

24. The delegation's findings during the visit in February 2014 suggest that the deliberate illtreatment of '*Maidan*' protesters by or with the authorisation, support or acquiescence of members of the '*Berkut*' special police unit/Interior Troops and other uniformed law enforcement officials during and after apprehension was an accepted means of enforcing law and order in the context of the public order operations at issue. In several instances, the alleged ill-treatment was of such a severity that it could be considered as amounting to torture.

...

25. The allegations referred to in paragraphs 11 to 23 were detailed, plausible and consistent. Moreover, many of them were supported by medical and/or other evidence, in the form of video footage, statements by potential witnesses, opinions shared by hospital doctors[15][15. For instance, hospital doctors interviewed by the delegation during the visit in Dnipropetrovsk expressed their view that some of the injuries observed were unlikely to have been sustained in the course of a fight but were rather the result of assaults, as was claimed by the patients], lesions directly observed by the delegation's medical members, entries in the medical documentation examined in the police and penitentiary establishments visited and forensic medical reports (some of which had been drawn up upon urgent requests by police investigators). To sum up, the allegations had a high degree of credibility.

...

26. Despite consistent allegations on the presence of law enforcement officials from the Russian Federation within Ukrainian special forces operating in central Kyiv, the information gathered during the visit was not sufficiently precise and plausible to allow the delegation to fully assess their degree of credibility.

...

At the same time, the accounts heard from '*Maidan*' protesters about their deprivation of liberty and questioning by some individuals, in civilian clothing, believed to be 'undercover' law enforcement or other public officials among 'anti-*Maidan*' activists in Kyiv's Mariinskyi Park were both consistent and plausible.

...

Allegations according to which '*Maidan*' protesters in Kyiv and Dnipropetrovsk were apprehended by or with the assistance of groups of unidentified private individuals with the authorisation, support or acquiescence of law enforcement

officials leave little room for doubt. These were generally backed by public video footage and statements by public officials. However, the degree of involvement of such groups in the planning and/or operational conduct of the police interventions at issue remained totally unclear. In their letter of 10 April, the Ukrainian authorities indicated that evidence related to crimes (including murder) committed by individuals from the socalled 'anti-*Maidan*' group had been found. At the same time, there was no proof that they provided support to the law enforcement officials in performing their duties. The Committee considers that this matter should continue to be examined very closely in the context of ongoing investigations.

...

B. Action to combat torture and other forms of ill-treatment (including excessive use of force)

1. Government action to combat ill-treatment by law enforcement officials during public order operations

30. The manner in which public order operations were carried out by Internal Affairs special forces, in particular ... '*Berkut*' and the Interior Troops, on Kyiv's Independence Square on 30 November 2013 and on Bankova Street on 1 December 2013 did not help law enforcement officials to earn respect from the public. Instead, it fuelled the growing hostility towards them.[18] [18. Public video footage showed excessive force being used when dispersing protesters on 30 November 2013. Further, on other public videos, unidentifiable law enforcement officials could be seen hitting persons who clearly appeared to be in their custody without offering any resistance/in handcuffs during the operations of 1 December 2013.] The CPT noted that Government officials publicly apologised for police action on 30 November 2013 and that inquiries had been initiated by the relevant authorities. At the same time, there was a general feeling that much more should have been done to prevent a repetition of similar incidents. This prompted the Committee to send a delegation, led by its President, to hold talks with the Prosecutor General and the Minister of Internal Affairs in December 2013.

31. Regrettably, a month later, a 'police versus protesters' mindset had further developed among law enforcement officials on the ground. This development had partly been encouraged by the Ukrainian authorities. Whilst making firm public declarations in respect of protesters who reportedly committed or would commit various offences during the protests, the highest representatives of the Prosecution Service and the Ministry of Internal Affairs said too little to ensure that all law enforcement officials understood that any forms of ill-treatment of protesters would be severely punished. Important legislative and other measures were yet to be taken to improve police accountability, including a legislative initiative to ensure the proper identification of individual law enforcement officials. At the same time, the hasty drafting and adoption of controversial 'anti-protest laws' on 16 January 2014 were construed as sending the wrong message to Internal Affairs forces in charge of public order operations. In a statement made shortly after the adoption of these laws, the Council of Europe's Commissioner for Human Rights expressed concern about provisions which 'could exempt from criminal liability police officers who committed human rights violations during the ... demonstrations' and stressed that impunity for these violations could 'only encourage repetition of such crimes and deny justice for the victims'.

In this context, many of the delegation's interlocutors considered that members of the '*Berkut*' special police unit and the Interior Troops had good reason later to believe that they could ill-treat '*Maidan*' protesters with impunity, in particular during

the subsequent public order operations in January 2014. The Minister of Internal Affairs at the time had subsequently to adopt new instructions intended to prevent unacceptable police behaviour. However, the delegation's findings showed that these instructions had little effect during the operations of 18-21 February 2014 in Kyiv. Certainly, members of the '*Berkut*' special police unit and Interior Troops appeared to be less minded to expose persons in their custody to various forms of public humiliation. However, they were apparently only more anxious *not to be seen* to ill-treat protesters as opposed to actually no longer inflicting ill-treatment.

32. ...

The CPT understands that the presence of plain-clothes law enforcement officials may be necessary to carry out certain policing tasks during public order operations. However, in the light of the delegation's findings in Kyiv, the Committee can certainly not rule out that at least some individuals who allegedly apprehended, questioned and even ill-treated protesters were actually public officials who simply never identified themselves at the time of apprehension or during subsequent on-site questioning. Any such cases would clearly run counter to the basic principles of accountable policing.

...

2. Government action to combat ill-treatment by unidentified private individuals acting with the authorisation, support or acquiescence of public officials during public order operations

39. As previously indicated, it clearly emerged from the delegation's findings that, no matter how they were referred to ('*Titushky*', anti-*Maidan* activists, citizen volunteers, etc.), a large number of unidentified private individuals apprehended protesters with the authorisation, support or acquiescence of Internal Affairs officials or assisted law enforcement officials in the apprehension of protesters during the public order operations in Kyiv and Dnipropetrovsk in January and February 2014. They were also said to have been involved in a partial 'outsourcing' of the illtreatment of '*Maidan*' protesters during or shortly after apprehension and to have stopped the alleged beating whenever they were instructed to do so by uniformed law enforcement officials or before handover to Internal Affairs special forces.

...

4. The role of investigative judges/courts at the remand-in-custody stage in combating police ill-treatment

46. The report on the 2013 periodic visit highlights a major development with the adoption of Section 206 of the Code of Criminal Procedure which places upon judges a legal obligation to play a proactive role in combating ill-treatment and other serious human rights abuses by law enforcement officials. However, the situation in practice left much to be desired.

The delegation's findings during the visit in February 2014 do not bring any indication of progress in this area. On the contrary, the persons interviewed claimed that court hearings were particularly brief, investigative judges did not ask about their injuries, interrupted them when they started to complain about police ill-treatment or, in the few instances where judges did listen carefully, took no action and contented themselves with reading out decisions apparently prepared in advance. The CPT cannot but conclude that the lack of action by judges contributed to the emergence of a general feeling of impunity for any abuses committed by law enforcement officials during the '*Maidan*' demonstrations.

...

C. The practical operation of procedural safeguards against police ill-treatment

52. In both Kyiv and Dnipropetrovsk, the practical operation of procedural safeguards against ill-treatment – in particular the proper recording of detentions, the right of notification of custody and the right of access to a lawyer, including free legal aid – appeared to be somewhat better when compared with the CPT's findings several months previously during the visit in October 2013. However, the delegation found that the relevant provisions of the Code of Criminal Procedure had been routinely ignored by law enforcement officials with initial periods of actual deprivation of liberty of up to 12 hours, and in a few cases up to 24 hours, often unrecorded.[37]

...

54. Given the extraordinary circumstances that prevailed at the time of the visit, the failure to provide prompt access to a doctor for persons detained by law enforcement agencies is of particularly grave concern to the Committee. It became clear to the delegation that, before being thoroughly examined by a doctor and receiving appropriate medical care, severely injured persons were held for many hours following apprehension under conditions further endangering their health, in grossly overcrowded, unheated police vehicles and, for many of them, in the Internal Affairs district directorates/divisions to which they were subsequently allocated. A number of those persons were hardly in a position to be questioned by an investigator due to their state of health but had nevertheless been subjected to interrogation for some hours and had had to sign documents before emergency doctors were called in and/or before being taken to hospital. The delegation observed for itself during the evening of 18 February 2014 in Kyiv that transfers to hospitals from Internal Affairs directorates could take several hours.

..."

2. Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 9 to 16 September 2014, published on 29 April 2015

251. During its visit to Ukraine from 9 to 16 September 2014, the delegation of the CPT reviewed the action which had been taken by prosecutors to investigate allegations of ill-treatment of detained persons by law-enforcement officials during the Maidan protests in Kyiv between November 2013 and February 2014. To that end, the delegation held extensive consultations with the Prosecutor General, two Deputy Prosecutors General and several investigative prosecutors and consulted a number of investigation files.

In its report of 29 April 2015, the CPT noted that in all the cases which had been examined by the delegation, the investigators and prosecutors had carried out "many essential investigative steps (such as interviewing all the ... alleged victims concerned as well as various witnesses, including law-enforcement officials; commissioning of forensic medical examinations; analysis of extensive video footage; onsite reconstruction of the sequence of events; etc.)".

However, according to the report, it transpired that the relevant investigations had been hampered by various factors, including, protracted forensic examinations; considerable delays in judges approving certain investigative actions (such as searches or the recovery of information concerning the use of mobile phones); poor cooperation and exchange of information between the bodies conducting investigations in the Maidan-related cases; overlap of the investigations in certain cases conducted in parallel by those bodies; the investigators' inability to identify law-enforcement officials who had worn balaclavas or helmets and had had no individual identification number on their uniform or helmet during the events at issue; the investigators' inability to obtain official documents regarding the deployment of law-enforcement officials at that time because they had been either destroyed or classified as secret; and the unavailability of many of the high-ranking law-enforcement officials and Berkut officers, who either had left Ukraine or had been deployed to the country's eastern regions to take part in the anti-terrorist operation. The report also noted that "in cases in which the ill-treatment had allegedly been inflicted by private individuals (titushky) at the instigation of law enforcement officials, investigations were being carried out by the police".

In all cases examined by the delegation of the CPT, the investigations "had reached a deadlock, since investigators had not identified any law-enforcement official as a potential perpetrator".

IV. MATERIAL FROM THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

252. In the aftermath of the Maidan protests, the Government of Ukraine invited the OHCHR to monitor the human rights situation in the country and to provide regular public reports thereon. To that end, on 14 March 2014 the OHCHR deployed the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU). According to the Agreement between the Government and the OHCHR of 31 July 2014, one of the objectives of the HRMMU is to "establish facts and circumstances and conduct a mapping of alleged human rights violations committed in the course of anti-Government demonstrations and ensuing violence between November 2013 and March 2014" [19].

In that connection, between 2015 and 2019 the HRMMU collected various information regarding the alleged human-rights violations during the Maidan protests and the related investigations and court proceedings through, *inter alia*, interviews with numerous victims and witnesses,

[19] See paragraph 5.1.(c) of the Agreement between the Government of Ukraine and the United Nations Office of the High Commissioner for Human Rights on deployment of the short-term human rights monitoring mission in Ukraine of 31 July 2014. Full text of the Agreement is available at http://zakon.rada.gov.ua/laws/show/995_001-14.

monitoring of trials, visits to places of detention, and contacts with governmental and non-governmental organisations. On that basis, the OHCHR and the HRMMU issued a number of reports which contain information pertinent to the present case.

In particular, in its report of 15 May 2014 on the human rights situation in Ukraine, the OHCHR noted that there was information that in January-February 2014 "a number of attacks, abductions, severe beatings and killings of Maidan activists, as well as arson of cars belonging to the Auto-Maidan [had been] committed by the so-called 'titushky', also referred to as an 'Anti-Maidan' group".

253. In its report of 25 September 2017 on the human rights situation in Ukraine between 16 May and 15 August 2017, the OHCHR stated that "little progress [had] been achieved in bringing perpetrators to account, and many suspects [had] fled Ukraine, contributing to impunity for [those] grave human rights violations and lack of justice for victims". In that connection, the OHCHR noted, *inter alia*, that, while some of the former Berkut officers suspected of having committed serious crimes during the Maidan protests participated in the ongoing trials, the authorities had failed to ensure the appearance of the majority of the suspects at trial. In particular, the OHCHR referred to the information from the PGO that twenty-one former Berkut officers had fled Ukraine for Russia and that their extradition to Ukraine had been refused by the Russian authorities.

254. The report on the human rights situation in Ukraine between 16 November 2017 and 15 February 2018, published by the OHCHR on 19 March 2018 contained*, inter alia,* information regarding the suspected involvement of titushky in the attacks on the Maidan protesters and the investigations into those matters.

In the report, it was stated that titushky were "armed civilians, sometimes wearing camouflage and masks, often with criminal records, who [had been] engaged by law enforcement to attack protestors". The OHCHR considered that there had been "apparent coordination" between the SSU, the police and titushky and, in this connection, provided certain details from the relevant criminal proceedings, which were ongoing at that time, including those concerning the suspected transfer by senior officials of the MoI of automatic firearms and ammunition to titushky to be used against the protests.

The OHCHR expressed its concern that the coordination at issue had not been reflected in the related criminal charges and that there were indications of "special treatment afforded to the titushky" by the courts. In that connection, it referred, among others, to the case of a suspected titushky leader, who had been tried on charges of having been responsible, as an organiser, for murder of a journalist during the protests. In the course of the trial, the former had been released from custody, although allegedly he had continued committing crimes, including violent acts. Eventually, he had

been convicted of hooliganism and had been given a four-year suspended sentence.

255. Its report on the human rights situation in Ukraine from 16 February to 15 May 2019, published on 25 June 2019, contains, *inter alia*, further observations of the OHCHR concerning the Maidan-related investigations (citations omitted):

> "...
>
> 68. OHCHR is concerned that independent and impartial investigations and prosecution of the killings and violent deaths perpetrated during the Maidan protests have been hampered by the lack of cooperation extended by the Ministry of Internal Affairs and the SBU to the Prosecutor General's Office Special Investigations Department (SID). Moreover, a number of senior police officers suspected or accused of committing crimes against the protestors retained their positions, having a chilling effect on their subordinates to testify about police involvement in the killings. The then senior police officials also disregarded their duty to ensure that their subordinates bore identification, posing a serious challenge to the identification of those who clashed with the protestors. In addition to the above, lack of organisational support and funding for the work of forensic bureaus complicates identification of individual perpetrators. OHCHR also notes that the 'immunity law' prevents the SID from effectively proceeding with investigation into the killings of 13 law enforcement officers during the Maidan events.
>
> ..."

256. Further details regarding the above issues hampering the progress of the Maidan-related investigations are contained in the *Briefing Note on Accountability for Killings and Violent Deaths During the Maidan Protests*, which was published in February 2019 by the HRMMU and to which reference was made in the OHCHR's above report of 25 June 2019. The briefing note also contains a summary of the developments in the investigations into the killings and violent deaths of ninety-eight individuals. According to it, only one person had been found guilty of unintentional killing of a protestor, while two other convicted persons had been found guilty of hooliganism in relation to an incident that had resulted in the killing of another protestor. The proceedings regarding most of the identified suspects were ongoing at the time. In particular:

> "...
>
> 65. Another twelve individuals are on trial or under investigation: (i) the leader of the group of 'titushky' charged with abduction and killing of a protestor on 22 January 2014 in Kyiv; (ii) the former Head of the SBU department for Kyiv city and Kyiv region and former deputy Head of the Public Safety Department of the Ministry of Internal Affairs charged with abuse of authority that led to the killing of fifteen Maidan protestors on 18 February 2014 in Kyiv; (iii) a member of 'titushky' group accused of killing one Maidan protestor in the night of 19 February 2014 in Kyiv; (iv) two officers of Khmelnytskyi SBU charged with abuse of authority that resulted in the unintentional killing of a woman in Khmelnytskyi on 19 February 2014; and (v) five Berkut servicemen accused of the killing 48 Maidan protestors and an internal

troops sniper suspected of killing one of these protestors on 20 February 2014 in Kyiv.

..."

Also, according to the briefing note, the investigations into the killing of seventeen protestors and thirteen law-enforcement officers had still to identify individual perpetrators.

V. REPORTS OF OTHER INTERNATIONAL ORGANISATIONS

A. Amnesty International

257. On 23 December 2013 Amnesty International published a report entitled "'EuroMaydan': Human rights violations during protests in Ukraine". According to the report, Amnesty International monitored the Ukrainian authorities' compliance with human rights standards since the beginning of the Maidan protests and documented various "violations of the right to peaceful assembly, excessive use of force by law enforcement officers, unfair trials and harassment of those who have complained about excessive use of force". To that end, it interviewed over twenty individuals claiming to be victims of human rights violations, their families and lawyers.

Amnesty International reported that "dozens of people who [had] participated in the demonstrations [were at that time] detained and subjected to unfair legal proceedings and charged with criminal offences". It expressed its belief that this had been done "solely because of their exercise of their right to peaceful assembly".

According to Amnesty International, judges authorising those protesters' continued detention had disregarded "obvious contradictions and inconsistencies" in the submissions of the law-enforcement agents and had failed to consider whether alternative preventive measures could have been applied, despite the protesters' lawyers had made requests in that regard. In that connection, Amnesty International referred to, among others, the cases of Mr G. Cherevko, Mr V. Zagorovka (applications nos. 31174/14 and 42180/14) and Mr V. Kadura (see *Kadura and Smaliy*, cited above).

258. On 1 February 2014 Amnesty International issued a public statement reporting that it had documented numerous similar human rights violations committed by the authorities during the protests in Ukraine, some of which had led to fatalities. Amnesty International also stated that individuals who had complained about police ill-treatment had had "little chance of getting their complaints heard, let alone acted upon" and that there were protesters who feared repercussions for complaining. Also, there was no official statistics regarding the number of people who had complained about their ill-treatment since the beginning of the Maidan protests.

259. On 18 February 2015 Amnesty International published a report entitled "Ukraine: A Year After Maydan, Justice Delayed, Justice Denied", in which it mainly assessed the effectiveness of the official investigations into the alleged human rights violations committed by the law-enforcement agents during the Maidan protests. Amnesty International considered generally that the authorities had failed to conduct prompt, effective and impartial investigation into those violations and identified a number of factors which had allegedly contributed to that situation.

Those were, in particular, (i) the MoI's and the SSU's lack of cooperation with the PGO in the investigations and, the former bodies' resistance to and obstruction of the latter's attempts to collect and secure evidence and to ensure the participation of law-enforcement agents as suspects or witnesses in the relevant proceedings; (ii) the investigators' inability to question many of the police officers concerned as after the Maidan protests they fled to Russia; (iii) the lack of investigators with the appropriate skills and experience to conduct comprehensive investigations into the high volume of the relevant case material, the insufficient staffing and equipment available for forensic examinations, and the courts' lack of resources to process expediently the high number of procedural requests submitted by the investigators; (iv) the investigators' failure to secure large proportions of the relevant material and documentary evidence during the Maidan protests and afterwards and the scarce efforts they had made to gather the victims' and witnesses' testimony; and (v) the victims receiving "little or no information about the progress of investigation into their cases".

In this report, Amnesty International also gave a short overview of the dispersals of protesters by the police on 30 November and 1 December 2013. It noted, inter alia, that "on the night of 29-30 November during the violent dispersal of the then peaceful demonstration video footage showed police officers hitting unresisting protesters with batons and kicking them" and that "in some cases the police could be seen to be pursuing men and women in order to hit them".

As to the protest on Bankova Street on 1 December 2013, it noted, *inter alia*, that (references omitted):

> "...
>
> At least 50 Berkut officers and over a hundred of protesters were injured in Bankova Street during clashes between law enforcement officials and protesters, including a small number of violent protesters, on 1 December 2013. On that day, many thousands came to central Kyiv in protest at the violent dispersal of the small peaceful gathering on the previous night. The gathering remained overwhelmingly peaceful. However, a small group of protesters in the neighbouring Bankova Street (where the Presidential Administration is located) engaged in violence. Video footage shows a few protesters driving a road grader towards the police line and stopping in front of it. Some men in front of the generally peaceful crowd were throwing stones at police officers, wielding heavy chains and sticks. The police charged the crowd a number of times, indiscriminately beating fleeing protesters. Some of those who fell or found

themselves surrounded by police, were beaten with batons and kicked repeatedly despite putting up no resistance.

..."

In connection with those events, Amnesty International referred, inter alia, to the cases of Mr I. Sirenko, Mr G. Cherevko and Mr V. Zagorovka, who had been injured by the police on 30 November and 1 December 2013 respectively (applications nos. 9078/14, 31174/14 and 42180/14). They had raised complaints of their ill-treatment before the authorities and, in so far as Mr G. Cherevko and Mr V. Zagorovka are concerned, submitted video and photographic material in support of their complaints to the authorities, however no information had been provided to them regarding any progress in the relevant investigations.

260. On 26 February 2016 Amnesty International issued a public statement entitled "Ukraine: Two Years After EuroMaydan: The Prospect For Justice Is Threatened", in which it also mainly addressed the question of effectiveness of the official investigations in the Maidan-related abuses, including those allegedly committed by titushki "who [were] believed to have been widely deployed by the authorities during the protests to intimidate protesters". In particular, it noted that there were indications of a certain progress made in the investigations regarding "better-documented episodes of police violence", which included the dispersals of protesters in central Kyiv on 1 December 2013 and 23 January and 18 February 2014. Notably, the investigators had conducted a number of forensic examinations, witness identifications and questionings. According to Amnesty International, the reported progress was due mainly to the activities of the Special Investigations Department of the PGO in 2015; notably, that body had better coordinated the investigations and had regularly provided updates on the relevant proceedings to the public.

However, Amnesty International considered that most of the factors preventing the effective conduct of the relevant investigations, which it had identified in its report of 18 February 2015, had persisted. Generally, it stated that "two years after the EuroMaydan protests, the Ukrainian authorities had failed to deliver justice and adequate reparations to the victims of abuses committed during the protests, or to restore confidence in the justice system and the rule of law in Ukraine".

B. Human Rights Watch

261. On 2 December 2013 Human Rights Watch published a report[20] entitled "Ukraine: Excessive Force Against Protesters, Hundreds Injured in Kiev as Riot Police Crack Down". It reported that its researchers had

[20] https://www.hrw.org/news/2013/12/03/ukraine-excessive-force-against-protesters

documented the dispersals of protesters in central Kyiv on 30 November and 1 December 2013 and had interviewed a number of victims and witnesses thereof. The report contained a somewhat detailed account of those events and also quotations or summaries of the relevant witness testimonies.

As to the events on 30 November 2013, it was noted that the protesters had behaved peacefully and that the police had "violently dispersed" them, without giving a warning. The police had hit and kicked the protesters, including those protesters who had fallen to the ground, and also had beaten them with batons. Also, Human Rights Watch obtained video-recordings demonstrating that the police also had chased, grabbed and hit protesters on adjacent streets.

In so far as the report concerned the events on 1 December 2013, it was noted, inter alia, that there had been a series of violent clashes between the police and protesters near the presidential administration building on Bankova Street; that, according to media reports, in response to violent behaviour of a "group of activists", who had thrown various objects at the police and had used a loader in an attempt to break through the police cordon, the latter had attacked the protesters, using tear gas and smoke grenades and hitting them with batons; and that various witnesses had told Human Rights Watch that the police had beaten "many people, including some who [had not behaved] violently or who [had tried to] run away from the clashes to adjacent streets".

262. In 2019 Human Rights Watch published its 29th annual World Report, in which it was stated that "[the] abuses and crimes committed during the 2014 Maidan protests ... had remained unaddressed several years later, despite numerous pledges from Ukrainian authorities to ensure justice". According to Human Rights Watch, after those events the law-enforcement authorities had failed to preserve evidence and to prevent suspects from fleeing the country.

263. On 27 November 2019 Human Rights Watch published an article on its website addressing the developments in the Maidan-related investigations on 20 November 2019 (see paragraph 22 above). An extract from that article reads as follows:

> "As of last week, all ongoing cases into those crimes were effectively suspended when most Maidan-related investigations were passed from the Prosecutor General's Office to another body, the State Bureau of Investigations. This transfer of pretrial investigations was part of a broader overhaul of the prosecutor's office, which retains its oversight function.
>
> In their appeal to senior government officials, activists and lawyers representing Maidan victims expressed concerns about this development because no specific unit within the bureau has been tasked with dealing with the Maidan investigations. The removal of investigators who have for years worked on the colossal volume of evidence in these cases would mean a great loss of continuity, knowledge, and understanding. Activists have warned of the cases' 'imminent collapse'."

C. Office of the Prosecutor of the International Criminal Court

264. Although Ukraine is not a member of the International Criminal Court (ICC), it has accepted the ICC's jurisdiction over alleged crimes committed on its territory since November 2013.

265. In particular, on 17 April 2014 the Government of Ukraine lodged a declaration under Article 12(3) of the Statute of the ICC accepting its jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014.

266. On 25 April 2014, in accordance with its Office's policy on preliminary examinations, the Prosecutor of the ICC opened a preliminary examination into those matters.

267. Before November 2015 the Office of the Prosecutor of the ICC received more than twenty communications under Article 15 of the Statute in that regard. The Office also received a detailed joint communication regarding alleged crimes in the context of the Maidan events from some thirteen civil society organisations. Furthermore, the Office of the Prosecutor of the ICC analysed information publicly available from several non-governmental and intergovernmental organisations. Between 9 November 2014 and 29 October 2015 the Office conducted three missions to Ukraine to hold meetings with Ukrainian authorities and representatives of civil society organisations and also held meetings with various relevant actors at the seat of the Court in The Hague and in other places.

268. In its Report on Preliminary Examination Activities in 2015, the Office of the Prosecutor of the ICC provided its preliminary analysis of crimes allegedly committed during the Maidan protest events. It noted that the information available to it indicated that serious human rights abuses had occurred in the context of the Maidan events. In particular, according to that information, in response to the Maidan protests, Ukrainian security forces had frequently used excessive and indiscriminate force against protesters and other individuals, such as journalists covering the events. Such violence and ill-treatment reportedly had occurred primarily in the context of violent clashes and confrontations with protesters as well as during and immediately after the apprehension of protest participants. In addition, during the events at issue protesters and other individuals participating in or associated with the Maidan movement often had been violently targeted by "pro-government groups of civilians – often referred to as 'titushky' – who [had] coordinated with, and [had] provided support to, law enforcement during public order operations". In carrying out these acts, security forces and titushky had targeted individuals on the basis of their actual or perceived political affiliation (namely their opposition to the Yanukovych Government).

On the basis of that information, the Office of the Prosecutor of the ICC considered that such conduct could constitute "persecution" and an "attack

directed against a civilian population" under Article 7 of the Rome Statute. In that latter context, it noted (references omitted):

> "...
>
> 92. Additionally, the acts of violence do not appear to be a mere aggregate of random acts, but rather evidence a pattern of behaviour suggesting that such acts formed part of a campaign or operation against the Maidan protest movement. In this respect, it is noted that the alleged acts committed share common features in terms of their characteristics and nature (including in relation to a pattern of excessive and indiscriminate use of force, such as during public order operations, and the means used, such as batons, firearms and other special means), the population targeted (Maidan protesters and other civilians in the vicinity of the protests), the alleged perpetrators (state security forces – most often the Berkut and Interior Troops – and titushky), and locations (mainly the sites of demonstrations, predominantly in the city centre of Kyiv and to a lesser extent in other regions and cities in Ukraine, such as Cherkasy and Dnipropetrovsk).
>
> 93. While some of the acts of violence appear to have been extemporaneous and incidental to the situation of unrest, the information available tends to indicate that the commission of violence against protesters, including the excessive use of force causing death and serious injury as well as other forms of ill-treatment, was actively promoted or encouraged by the Ukrainian authorities. In this respect, the Office considers that it is possible to infer the existence of a state policy to attack the civilian population, within the meaning of article 7(2)(a), from the available information concerning: coordination of, and cooperation with, anti-Maidan citizen volunteers (i.e., titushky, or groups of unidentified private individuals) who violently targeted protesters; the consistent failure of state authorities (at multiple levels) to take any meaningful or effective action to prevent or deter the repetition of incidents of violence (including to genuinely pursue or investigate complaints or otherwise take measures to manage or hold accountable the law enforcement units alleged to be responsible for serious ill-treatment of protest participants); and the apparent efforts to conceal or cover up alleged crimes. These considerations, viewed together with the overall political situation and repetition of the conduct, suggest that the violent acts of security forces and titushky were carried out pursuant to or in furtherance of a state policy aimed at suppressing the protest movement.
>
> ..."

In this connection, the Office of the Prosecutor of the ICC opined that the information available to it did not provide a sufficient basis to believe that the "attack" had been systematic or widespread under the terms of Article 7 of that Statute, and expressed its willingness to reassess its preliminary analysis in the light of any new information.

269. According to the reports on preliminary examination activities in 2017 and 2018, the Office of the Prosecutor of the ICC received and was reviewing additional information related to the period specified in Ukraine's first declaration under Article 12(3) of the Rome Statute (from 21 November 2013 to 22 February 2014), in order to determine whether that information would alter the previous assessment of the alleged crimes that had occurred in the context of the Maidan events.

THE LAW

I. JOINDER OF THE APPLICATIONS

270. Having regard to the common factual and legal background of the fourteen applications under examination, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court). As regards the other Maidan-related applications, for the reasons stated above (see paragraph 5 above), some have been grouped together, not all could be joined, but all judgments relating to those applications and delivered by the Court on the same day as the present judgment should be read as a whole.

II. MR I. SIRENKO'S APPLICATION (NO. 9078/14)

271. Mr I. Sirenko complained under Articles 3 and 5 of the Convention about his ill-treatment and detention by the police on 30 November 2013 and under Articles 8, 11 and Article 1 of Protocol no. 1 on account of the allegedly unlawful and brutal dispersal of the protest on that date. He also relied on Article 13 in relation to Articles 3 and 5.

272. The Government argued that the applicant's complaints were inadmissible for non-exhaustion of domestic remedies, stating, *inter alia*, that Mr I. Sirenko had refused to take part in the investigations.

273. Mr I. Sirenko replied that he had considered the relevant investigations ineffective, and therefore he had not been required to take part in them. In particular, during the Maidan protests, all the law-enforcement machinery had been functioning to supress the Maidan protests in an arbitrary manner.

274. The Court notes that the core of Mr I. Sirenko's grievances under all the Convention provisions on which he relied, concern the abuses, and in particular the ill-treatment by the police, to which he had been allegedly subjected in connection with his participation in the protest on 30 November 2013. The general principles regarding exhaustion of domestic remedies in respect of complaints such as those brought by Mr I. Sirenko are set out in paragraphs 291-299 below.

275. At the domestic level, Mr I. Sirenko lodged his complaint of ill-treatment by the police with the prosecutors on 30 November 2013 and underwent a forensic medical examination on 3 December 2013. However, he subsequently refused to take part in any of the investigative actions to which he was summoned, despite the fact that, apparently, he was accorded the procedural status of victim. The initial reason for his refusal to cooperate with the investigations was, according to him, his fear that he might be unfairly prosecuted and harassed by the authorities on account of his participation in the Maidan protests. After the change of government in

February 2014 he said that he needed additional time to prepare his legal position, and on that basis refused to be questioned by the investigators. Eventually, he gave the investigators no reason at all for his refusal to cooperate (see, notably, paragraphs 69-71 above).

276. The Court notes that, regarding the period before the end of February 2014, there were indeed reported instances of kidnappings and ill-treatment of protesters (see, *inter alia*, paragraphs 236 (the 2014 report of the Council of Europe Commissioner for Human Rights), 248 (notably, paragraph 392 of the 2015 report of the IAP) and 257 (the 2013 report of Amnesty International) above). According to the IAP, during the Maidan protests "distrust of the authorities was such that victims did not lodge complaints which would have disclosed their presence at the protests" (see paragraph 392 of the 2015 report of the IAP reproduced at paragraph 248 above).

277. However, Mr I. Sirenko provided no acceptable justification for his refusal to take part in the proceedings following the change of government in late February 2014. The applicant must have been aware that his refusal could potentially contribute to the very outcome that he complained about before the Court – the alleged failure by the authorities to establish the facts, to declare relevant actions unlawful and to impose sanctions. While it is true that the domestic proceedings are ongoing (see paragraphs 61-64 above), there is no indication that Mr Sirenko ever changed his mind and decided to cooperate with the authorities later.

278. Thus, having regard to the subsidiary nature of the Convention complaint mechanism and to Article 35 of the Convention and, specifically, for the reasons stated in the preceding paragraphs, his refusal to cooperate with the authorities precludes the Court from examining his complaints under Article 3 of the Convention on the merits.

279. Furthermore, for the same reasons, Mr Sirenko cannot be considered to have exhausted the relevant domestic remedies also in regard to his complaints under Articles 5, 8 and 11 of the Convention and Article 1 of Protocol No. 1, seeing that all these complaints were closely dependent on the authorities being able to establish the facts regarding the events of 30 November 2013. For the reasons in the preceding paragraph, his complaint under Article 13 is manifestly ill-founded.

280. Accordingly, the Court declares all the applicant's above complaints and, consequently, his application no. 9078/14 inadmissible, pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

A. Alleged ill-treatment of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr G. Cherevko, Mr S. Dymenko, Mr D. Poltavets, Mr V. Zagorovka, Mr F. Lapiy, Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy, Mr O. Zadoyanchuk and Mr A. Sokolenko and failure to conduct effective official investigations (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 31174/14, 33767/14, 36299/14, 36845/14, 42180/14, 42271/14, 54315/14 and 19954/15)

281. The fifteen applicants listed above, relying expressly or in substance on Article 3 of the Convention, complained that they had been subjected to torture or inhuman or degrading treatment by the police in the course of the dispersals of protesters in central Kyiv on 30 November, 1 and 11 December 2013, 23 January and 18 February 2014. They stated that because of this they had suffered physical pain and anxiety and had had feelings of fear and humiliation.

They argued that their ill-treatment had been part of the authorities' organised and planned effort to suppress the Maidan protests through disproportionate means, and had been aimed at punishing and intimidating them on account of their actual or suspected involvement in the protests.

They also complained that the authorities had failed to carry out an effective official investigation into the relevant events.

282. Article 3 of the Convention reads as follows:

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

1. Admissibility

(a) Exhaustion of domestic remedies

(i) The parties' submissions

283. The Government argued that the applicants' complaints were inadmissible for non-exhaustion of domestic remedies.

284. In particular, the Government stated that, with the exception of Mr O. Zadoyanchuk (application no. 36845/14), the applicants' complaints were premature, as the relevant investigations and related court proceedings were still ongoing. Those investigations, which concerned very complex and unprecedented facts, were effective for the purposes of the Convention, as they had been launched promptly after the events at issue and involved a large number of investigative actions, including the questioning of numerous witnesses, victims and suspects, searches and forensic examinations. In addition, some of the applicants concerned were actively participating in the relevant proceedings. The authorities were taking all reasonable measures and regularly published up-to-date information

concerning the progress in the criminal cases concerned, as could be seen from the letters issued by the PGO between January and August 2016 (see paragraph 60 above).

285. The Government further stated that Mr G. Cherevko, Mr D. Poltavets and Mr V. Zagorovka (applications nos. 31174/14, 36299/14 and 42180/14) had lodged no complaint with the domestic authorities concerning specific investigative actions or inactivity on the part of the investigators.

286. In their observations on the merits of the applicants' complaints under Article 3 of the Convention in applications nos. 15367/14, 16280/14, 18118/14, 24405/14 and 42271/14 (Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Bala and Mr F. Lapiy), the Government also stated that since mid-December 2013 the applicants concerned had not been cooperating with the investigators, and had failed to appear for certain investigative actions to which they had been duly summoned.

287. Finally, the Government argued that Mr O. Zadoyanchuk's complaints were inadmissible for non-exhaustion of domestic remedies, because he had raised no complaint before the domestic authorities as regards his alleged ill-treatment by the police (application no. 36845/14).

288. The applicants argued that there had been a number of serious deficiencies in the investigations, and consequently, several years on, the authorities had been unable to identify and punish those responsible for the applicants' ill-treatment.

289. Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Bala and Mr F. Lapiy (applications nos. 15367/14, 16280/14, 18118/14, 24405/14 and 42271/14) further argued that they had not received the summonses to which the Government had referred, that generally they had not been informed of the investigative actions, and that they had had to make repeated requests and complaints to the authorities in order to learn about any developments. These applicants stated that they had taken an active part in the proceedings and submitted various documents in that regard (see paragraphs 72-77 above).

290. Mr O. Zadoyanchuk (application no. 36845/14) contended that he had not been required to make a complaint to the authorities, as this would not have led to an effective investigation into his ill-treatment by the police.

(ii) The Court's assessment

(α) General principles

291. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose

responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. This rule is therefore an indispensable part of the functioning of this system of protection (see *Vučković and Others v. Serbia* [GC], no. 17153/11, § 69, 25 March 2014).

292. The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports* 1996-IV, and *Vučković and Others*, cited above, § 71). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II).

293. There is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others*, cited above, § 67, and *Vučković and Others*, cited above, § 73). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; and *Vučković and Others*, cited above, § 74).

294. The Court has also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Ringeisen v. Austria*, 16 July 1971, § 89, Series A no. 13; *Akdivar and Others*, cited above, § 69; and *Vučković and Others*, cited above, § 76). Therefore, its application must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights (see *Akdivar and Others*, cited above, § 69, and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 286, ECHR 2012 (extracts)).

295. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68; *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and

7 others, § 69, ECHR 2010; *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010; and *Vučković and Others*, cited above, § 77).

296. In a number of cases where the complaints concerned alleged unlawful use of force by State agents, the Court has held that civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, are not adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see, *inter alia*, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 116, 5 July 2016, and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 227, ECHR 2014 (extracts)).

297. As a general rule, in cases concerning allegations of treatment contrary to Article 3 and failure to conduct an effective official investigation, there is a burden on those claiming to be the victims of such treatment to ensure that his or her allegations are raised before both the relevant domestic authorities and the Court with the necessary expedition and in a substantiated manner, to ensure that they may be properly, and fairly, resolved. Also, individuals bear the responsibility of cooperating with procedures flowing from the lodging of their complaints, assisting in clarifying any factual issues where such lie within their knowledge, and maintaining and supporting their complaints and applications (see, notably, *Selmouni v. France* [GC], no. 25803/94, §§ 74 and 79, ECHR 1999-V; *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 160, ECHR 2009; and *Mocanu and Others*, cited above, §§ 263-68).

298. In particular, the duty of diligence incumbent on applicants contains two distinct but closely linked aspects. On the one hand, the applicants must contact the domestic authorities promptly concerning progress in the investigation – which implies the need to apply to them with diligence, since any delay risks compromising the effectiveness of the investigation. On the other, they must lodge their application promptly with the Court as soon as they become aware or should have become aware that the investigation is not effective (see *Mocanu and Others*, cited above, § 264, with further references).

299. With regard to the second aspect of this duty of diligence – that is, the duty on the applicant to lodge an application with the Court as soon as he or she realises, or ought to have realised, that the investigation is not effective – the Court has stated that the issue of identifying the exact point in time that this stage occurs necessarily depends on the circumstances of the case and that it is difficult to determine it with precision (ibid., § 266, with further references).

(β) Application of the above principles to the present case

300. At the outset, the Court notes that the complaints under examination concern the alleged use of force by the police on dates

between November 2013 and February 2014 against Maidan protesters, including the fifteen applicants listed above in connection with their actual or suspected participation in the protests in central Kyiv. The Court also observes that, with the exception of Mr O. Zadoyanchuk (application no. 36845/14), the applicants concerned made individual complaints to prosecutors and were questioned by investigators concerning the relevant events. They retained their victim status in the relevant proceedings which were ongoing at the time of the adoption of this judgment.

– *Allegedly premature complaints*

301. In so far as the Government argued that the Article 3 complaints of the applicants concerned, with the exception of Mr O. Zadoyanchuk (application no. 36845/14), were premature because the relevant proceedings were still ongoing, the Court reiterates that in such cases, it is the duty of the applicant to lodge an application with the Court as soon as he or she realises, or ought to have realised, that the investigation in question is not effective (see the authorities cited in paragraphs 297-298 above). The issue of identifying the exact point in time that this occurs necessarily depends on the circumstances of the case, and it is difficult to determine it with precision (ibid.). In the present case, it has to be noted that numerous domestic and international reports identified various shortcomings in the initial and later stages of the investigations in question (see, *inter alia*, the reports reproduced or summarised at paragraphs 232, 233, 236, 240, 241, 250, 251, 253, 257, 258, 259 and 262 above). The applicants' concerns, which are, to a certain extent, based on that information, therefore do not appear to be unfounded. Moreover, the relevant proceedings have been ongoing for more than six years.

302. While it is true that at the time of introduction of the applications it was too early to draw conclusions on the effectiveness of the investigations, the Court's assessment of the admissibility of applications cannot be made in disregard of relevant developments since their introduction. In the present case, the parties made detailed submissions referring to such later developments and the Government relied on documents and information about pending domestic proceedings, some of which continue to this date. Insofar as the applicants, except Mr Sirenko (see paragraphs 277-280 above), acted diligently by cooperating with the ongoing domestic investigations including after the introduction of their applications (see paragraphs 298 and 299 above) and having regard to the considerations in the preceding paragraph, the Court cannot accept that their applications should now be rejected as being premature. Furthermore, the Court has consistently held that when examining a complaint it can take into account facts which have occurred after the lodging of the application but are directly related to those covered by it (see, among others, *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 249-251, 28 November 2017).

– *Alleged failure to lodge complaints concerning the effectiveness of the investigations at the domestic level*

303. As to the Government's argument that Mr G. Cherevko, Mr D. Poltavets and Mr V. Zagorovka (applications nos. 31174/14, 36299/14 and 42180/14) lodged no complaint with the domestic authorities concerning specific investigative actions of the investigators or inactivity on their part, the Court finds nothing in the Government's submissions or generally in the file which would demonstrate that such a complaint might have led to any expedition in or improvement of the proceedings of which the applicants complained. Accordingly, the Government's objection in that regard should be dismissed.

– *Alleged failure on the part of some applicants to cooperate with the investigations*

304. The Court observes that Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Bala and Mr F. Lapiy (applications nos. 5367/14, 16280/14, 18118/14, 24405/14 and 42271/14) provided copies of various procedural documents demonstrating that in the intervening period, and particularly in 2014-2016, they had been involved either personally or through their lawyers at various stages of the proceedings; in particular, they had provided testimony and made various procedural requests (see paragraphs 74-77 above). The reliability of that evidence was not contested by the Government, and the Court finds no reason, on the basis of the material available, to consider that those applicants failed to cooperate with the investigations.

305. While the parties did not inform the Court about whether Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy and Mr A. Sokolenko (application no. 19954/15) had eventually appeared in order to participate in any further investigative actions in connection with the summonses sent to them in December 2015, or about any other developments in that regard, the Court considers that there are no grounds to consider that they failed to comply with their duty of diligence. As indicated by the documents they submitted to the Court, in 2015 the applicants concerned lodged various procedural requests for specific investigative actions with the PGO, whereas the Government provided no details of the investigative actions in which they had been invited to take part in December 2015 (see paragraphs 79-81 above).

306. Furthermore, the Court notes that there is no information suggesting that the behaviour of the relevant applicants in the proceedings was such as to hinder or otherwise have negative implications for the investigations and/or related court proceedings (compare and contrast with *Tymoshenko v. Ukraine*, no. 49872/11, §§ 240-241, 30 April 2013, for instance).

307. Thus, the Court finds that these nine applicants lodged their complaints with the domestic authorities sufficiently promptly and cooperated in the subsequent domestic proceedings (see paragraphs 297-298 above). Accordingly, the Government's objection in their regard should be dismissed.

– *Alleged failure of Mr O. Zadoyanchuk (application no. 36845/14) to lodge a complaint with the domestic authorities*

308. Mr O. Zadoyanchuk contended that he had not been required to make such a complaint to the authorities, as this would not have led to an effective investigation into his ill-treatment by the police.

309. In the present case, the Court cannot exclude that certain information was available to the authorities which indicated that Mr O. Zadoyanchuk had been injured at the time of his arrest (see paragraph 178 above). In somewhat comparable circumstances, the Court has previously held that an applicant's failure to lodge a complaint might not be decisive where the authorities ought to have been aware that he or she could have been subjected to ill-treatment (see *Velev v. Bulgaria*, no. 43531/08, §§ 59-60, 16 April 2013, and, for a more recent authority, *Gjini v. Serbia*, no. 1128/16, §§ 93-94, 15 January 2019).

310. However, the Court considers that in the circumstances of the present case the applicant's failure to lodge an individual complaint with the authorities could potentially contribute to the very outcome that he complains about before the Court – the alleged failure by the authorities to establish the facts, to declare relevant actions unlawful and to impose sanctions (see the Court's similar findings regarding the application by Mr I. Sirenko (no. 9078/14) in the present case at paragraph 277 above).

311. Even though the Government informed the Court that the applicant had been accorded victim status in the ongoing domestic proceedings concerning the events at issue and that the issue of his alleged ill-treatment by the police was due to be examined in the framework of those proceedings (see paragraph 179 above), there is no concrete information demonstrating that the applicant ever asked for that status, that he ever wished to take part in the relevant proceedings or that they indeed concerned his individual situation. Thus, having regard to the subsidiary nature of the Convention complaint mechanism and to Article 35 of the Convention (see paragraphs 291-298 above), the Court is precluded from examining his complaints under Article 3 of the Convention on the merits.

312. Accordingly, the Court rejects Mr O. Zadoyanchuk's complaints under Article 3 for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention (application no. 36845/14).

(b) Victim status

313. The Government stated that Mr G. Cherevko (application no. 31174/14) had been paid compensation in respect of his alleged ill-treatment (see paragraph 193 above in relation to the sum of EUR 2,270 paid in September 2016), and that he had not challenged its amount. Therefore, they argued that Mr G. Cherevko could no longer be considered a victim as regards his complaint under the substantive limb of Article 3 of the Convention.

314. The Government further argued that Mr V. Zagorovka (application no. 42180/14) could no longer be considered a victim as regards his allegations of ill-treatment by the police and an ineffective investigation into this matter, as under the domestic law he could claim compensation in respect of those allegations. In particular, Mr V. Zagorovka had been included on the list of those entitled to receive a special allowance under the Civil Protest Victims Aid Act of 2014 and the regulations of the Ministry of Health concerning allowances for those who had suffered moderate injuries (see paragraphs 214-217 above).

315. The applicants contested the Government's submissions, pointing to the ongoing investigations in their cases.

316. The Court notes that, in the present case, which concerns the applicants' allegations that the police unlawfully used force against them, a finding that the authorities failed to conduct a thorough and effective official investigation into those allegations would have implications for the assessment of whether the authorities provided the applicants concerned with sufficient redress for their complaints under Article 3 of the Convention (see paragraph 296 above).

317. In the light of the foregoing, the Court cannot answer the question of whether the applicants lost their victim status as regards the alleged breach of Article 3 of the Convention, within the meaning of Article 34, without first examining the merits of the applicants' complaints under Article 3 and, in particular, establishing whether the authorities complied with their procedural obligation under Article 3 of the Convention. Accordingly, it joins the Government's objections as to Mr G. Cherevko's and Mr V. Zagorovka's victim status (see paragraphs 313 and 314 above) to the merits of those applicants' complaints under Article 3 of the Convention (applications nos. 31174/14 and 42180/14).

(c) Conclusion as to admissibility

318. The Court further considers that the Article 3 complaints of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr G. Cherevko, Mr S. Dymenko, Mr D. Poltavets, Mr V. Zagorovka, Mr F. Lapiy, Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy and Mr A. Sokolenko (applications nos. 15367/14,

16280/14, 18118/14, 20546/14, 24405/14, 31174/14, 33767/14, 36299/14, 42180/14, 42271/14, 54315/14 and 19954/15) are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and are not inadmissible on any other grounds. Those complaints should therefore be declared admissible.

319. In contrast, as indicated previously, Mr O. Zadoyanchuk's complaints under Article 3 are declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention (application no. 36845/14).

2. Merits

(a) Alleged ill-treatment of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy and Mr A. Sokolenko on 30 November 2013 and the alleged absence of an effective investigation (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 42271/14 and 19954/15)

(i) The parties' submissions

320. The ten applicants listed above complained under Article 3 of ill-treatment by the police and ineffective investigations in their cases.

321. The applicants also argued that important investigative actions had been delayed or had not been carried out at all. No sufficient resources had been allocated to the investigations. This had resulted in the loss of crucial evidence, the authorities' inability to accurately establish what had occurred, including the nature and origin of the applicants' injuries, and in the majority of the suspects absconding. Moreover, the MoI had refused to provide information concerning the identity of the police officers involved in the dispersal of protesters, and had also used other means to obstruct questioning and other investigative actions as regards the police officers who had continued to serve in the police. Generally, the investigations had been ongoing for a lengthy period of time and had not been completed. No person had been found guilty or punished for the applicants' ill-treatment. Insufficient information about the investigations had been provided to the applicants or the public at large.

322. In support of their arguments, the applicants relied on different reports of national and international organisations and bodies, notably the 2015 report of the IAP (see paragraphs 240-249 above).

323. The applicants concerned also contended that the problem of identifying their alleged offenders had been linked to the fact that the domestic regulations had allowed police officers to wear helmets and balaclavas effectively precluding their identification, and Berkut officers had worn uniforms with no distinguishing badges.

324. The Government made submissions concerning the effectiveness of the relevant investigations which were essentially similar to those regarding the admissibility of the applicants' complaints under Article 3 of the

Convention (see paragraph 284 above) and argued on that basis that there had been no violation of that provision under its procedural limb. The Government further argued that the applicants concerned had lodged no complaints with the domestic authorities concerning specific investigative actions or inactivity.

325. The Government did not comment on the applicants' complaints under the substantive limb of Article 3 of the Convention.

(ii) The Court's assessment

(α) Procedural limb

326. The Court observes that the applicants' complaints concern both the substantive and procedural aspects of Article 3 of the Convention. Being sensitive to the subsidiary nature of its task and recognising 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, the Court considers it appropriate to firstly examine whether the applicants' complaints of ill-treatment were adequately investigated by the authorities (see, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 155 and 181, ECHR 2012; *Kaverzin v. Ukraine*, no. 23893/03, § 107, 15 May 2012; *Baklanov v. Ukraine*, no. 44425/08, §§ 70, 71 and 91, 24 October 2013; *Dzhulay v. Ukraine*, no. 24439/06, § 69, 3 April 2014; *Chinez v. Romania*, no. 2040/12, § 57, 17 March 2015; and *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, § 77, 3 December 2015).

– *General principles*

327. The obligation to carry out an effective official investigation into arguable allegations of treatment infringing Article 3 suffered at the hands of State agents is well established in the Court's case-law (for the most recent authority, see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 114-23, 28 September 2015, and for a full statement of principles by the Grand Chamber, see *El-Masri*, cited above, §§ 182-85, and *Mocanu and Others*, cited above, §§ 316-326).

328. In order to be "effective", such an investigation, as with one under Article 2, must be adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II, and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 172, 14 April 2015). This means that it must be capable of leading to the establishment of the facts and to a determination of whether the force used was or was not justified in the circumstances, and of identifying and – if appropriate – punishing those responsible (see, *inter alia*, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 301,

ECHR 2011 (extracts); and *Mustafa Tunç and Fecire Tunç*, cited above, § 172).

329. The essential purpose of an investigation under Article 3 of the Convention is to secure the effective implementation of domestic laws prohibiting torture and inhuman or degrading treatment and punishment in cases involving State agents or bodies, and to ensure their accountability for ill-treatment occurring under their responsibility (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 358, 6 April 2004). The Convention only requires that there should be "an investigation capable of leading to the punishment of those responsible" (see *Egmez v. Cyprus*, no. 30873/96, § 70, ECHR 2000-XII). Nevertheless, the outcome of the investigations and of the ensuing criminal proceedings, including the sanction imposed as well as disciplinary measures taken, has been considered decisive. It is vital in ensuring that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined (see *Gäfgen v. Germany* [GC], no. 22978/05, § 121, ECHR 2010).

330. The Court has already held that the procedural obligation under Article 3 continues to apply in difficult security conditions. Even where events leading to a duty to investigate occur in the context of generalised violence and investigators are confronted with obstacles and constraints which compel the use of less effective measures of investigation or cause an investigation to be delayed, the fact remains that Article 3 requires that all reasonable steps must be taken to ensure that an effective and independent investigation is conducted (see *Mocanu and Others*, cited above, § 319).

331. Although this requirement is not an obligation of result, but of means, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (see *El-Masri*, cited above, § 183).

332. A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Bouyid*, cited above, § 121).

333. The investigation must be thorough, which 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 to close their investigation (see *El-Masri*, cited above, § 183).

334. For an investigation to be effective, the persons responsible for carrying it out must be independent from those investigated. This means not

only a lack of hierarchical or institutional connection, but also a practical independence (see *Bouyid*, cited above, § 118).

335. Whatever mode is employed, the authorities must act of their own motion and the victim should be able to participate effectively in the investigation (see *Bouyid*, cited above, § 122).

336. In addition to a thorough and effective official investigation which is what is required under the procedural limb of Article 3, in order to remedy a breach of Article 3 at national level, it is necessary for the State to make an award of compensation to the applicant, where appropriate, or at least give him or her the possibility of seeking and obtaining compensation for the damage he or she has sustained as a result of the ill-treatment (see *Gäfgen*, coted above, § 118, and paragraph 399 below in relation to the question of victim status under Article 3).

– *Application of those principles to the present case*

337. Turning to the circumstances of the present case, the Court notes that the applicants' complaints of ill-treatment by the police during the dispersal of the protesters on 30 November 2013 were duly raised at domestic level and were arguable, having regard to their detailed submissions, the available medical evidence, and the information from the related domestic proceedings, as well as information which can be gleaned from relevant international reports (see, *inter alia*, paragraphs 47-50, 55-57, 63-64, 236, 243, 250, 259, 261 and 268 above). Given the Court's settled case-law, cited above, the authorities were thus required to conduct effective investigations into the applicants' alleged ill-treatment.

338. The Court further notes that the authorities promptly launched an official investigation into the dispersal of the protesters by the police on 30 November 2013 (see paragraph 54 above).

339. Given that the police openly used considerable force against the protesters and that a great deal of video and photographic material regarding the events at issue was available in the public domain, at a very early stage of that investigation the investigators must have had at least a general understanding of what had occurred. The parties did not contest this, and the fact that several high-ranking officials were identified in December 2013 as people who were suspected of having unlawfully ordered the dispersal in question also attests to this (see paragraphs 47 and 55 above).

340. Furthermore, within relatively short periods of time (generally within several weeks), all the applicants concerned, as well as many other protesters, provided the investigators with quite detailed accounts of their alleged ill-treatment and – in the cases of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr A. Rudchyk and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 42271/14 and

19954/15) – relevant medical documents (see paragraphs 47-50, 57 and 63-64 above).

341. Moreover, in January 2014 the MoI completed its internal inquiry into the events and issued a report in which the police officers who had commanded and controlled the dispersal of 30 November 2013 were identified (see paragraphs 82-84 above).

342. However, despite the fact that they have lasted more than six years, the investigations have so far not led to the identification of those who allegedly directly used force against the applicants concerned (see paragraphs 59 and 61-62 above).

343. In this connection, the Court notes that the investigations concerned events involving not only the ten applicants listed above but also dozens or even hundreds of other alleged victims, witnesses and potential suspects. There is no doubt, as the IAP report recognised also, that considerable time and effort may legitimately be required to conduct the necessary investigative actions in such cases.

344. Moreover, regard must be had to the information – from both domestic and international sources – that the dispersal of 30 November 2013 apparently formed part of the authorities' deliberate strategy to put an end to and further hinder the pro-European protests. In the words of the Office of the Prosecutor of the ICC "the acts of violence do not appear to be a mere aggregate of random acts, but rather evidence a pattern of behaviour suggesting that such acts formed part of a campaign or operation against the Maidan protest movement" (see paragraph 92 of the Report of the Office of the Prosecutor of the ICC on Preliminary Examination Activities in 2015, partly reproduced and summarised at paragraph 268 above). This fact necessarily extended and complicated the issues to be dealt with in the relevant proceedings. Moreover, the investigations into the events on 30 November 2013 formed part of the larger domestic file covering other events during the Maidan protests (see, among others, paragraphs 18-21, 54 and 57 above).

345. Also, there were instances when some of the victims in the proceedings failed to cooperate (see paragraph 60 above), although, as the Court established above (see paragraph 307 above) the applicants whose Article 3 complaints were declared admissible were not among them.

346. That being said, there is also considerable material in the relevant case files demonstrating serious deficiencies in how various government bodies responded to the requirement to conduct an effective official investigation in the first months after the events of 30 November 2013.

347. In particular, there are indications that the identification of the police officers who had taken part in the dispersal of 30 November 2013 was substantially impeded as none of them had individual identification numbers on their uniforms or helmets. Many of them also wore balaclavas.

348. While in January 2014 the panel of the MoI, which conducted an internal inquiry into the events on 30 November 2013, identified and questioned the commanding officers (see paragraphs 82-84 above), no police officer directly involved in the dispersal on the ground was identified or questioned immediately or soon after the events.

349. Furthermore, at no time before the change of government in late February 2014 did the PGO, which was in charge of the relevant investigations since 2 December 2013, make attempts to obtain documents relating to the planning or conduct of the related police operations or the relevant records of questioning of the commanding officers in the framework of the MoI inquiry. Moreover, there are indications that the MoI's relevant internal documents, including operational plans and the personal files of the police officers concerned, might eventually have been destroyed (see paragraphs 85 and 259 above).

350. The Court also notes that, according to the report of the IAP, prior to 22 February 2014 there was, in general, no genuine attempt to pursue investigations into the acts of violence which had occurred during the Maidan demonstrations, and in most cases the investigation files were effectively empty at the end of February 2014 (see paragraph 248 above (paragraphs 393 and 399 of the 2015 report of the IAP)).

351. The foregoing provides a sufficient basis for the Court to find that there were significant shortcomings in the investigations into the events of 30 November 2013 and that precious evidence was not collected in a timely fashion.

352. As regards the investigations which were conducted after 22 February 2014, when there was a change of government, the Court notes that the investigators made a certain amount of progress. Notably, in the course of 2014 almost all the police officers deployed to central Kyiv on 30 November 2013, including those deployed in the vicinity of the area where the ten applicants concerned were on that day, were identified and questioned. Also, dozens of victims and witnesses were questioned, and various other investigative actions, including searches of premises and forensic examinations, were carried out.

353. As indicated by the official indictments, copies of which were provided to the Court, the investigators eventually established what had happened as regards a significant number of relevant events, and identified many individuals who, according to the investigators, had to bear responsibility for having ordered the police to use allegedly excessive force against the protesters during the events at issue. Also, the investigators found that there were around thirty officers who had actually used excessive force against the protesters and identified at least two of them (see paragraphs 57, 59 and 61-62 above).

354. Nonetheless, it appears that the police officers who actually used allegedly excessive force specifically in relation to the applicants on

30 November 2013 have remained unidentified (see paragraphs 61-62 above).

355. In this connection, the Court draws particular attention to the fact that there were reported instances of the MoI refusing to cooperate with the investigations, particularly when the PGO sought to question acting police officers, including those involved in the dispersal of protesters on 30 November 2013. This is evidenced by the information from the PGO and various international reports (see paragraphs 20, 21, 248, 249 (notably, paragraphs 438-45 and 538 of the 2015 report of the IAP reproduced therein) and 259 (the report of Amnesty International of 18 February 2015) above). Some of those reports point to obstruction and alleged lack of independence on the part of the MoI in that senior police officers who were suspected of being responsible for the abuses against the protesters were said to have continued serving (see, for instance, paragraph 21 above and paragraphs 419-20 of the 2015 report of the IAP reproduced at paragraph 248 above).

356. The Court also notes that there has been no substantial progress in the court proceedings concerning those suspects whose cases were eventually referred for trial. Some of those proceedings have been ongoing at first instance since February and June 2015 (see paragraphs 57 and 61-62 above). No information as to why those proceedings have not yet been concluded has been submitted to the Court. In this connection, due regard must be had to the domestic and international reports suggesting that the trials in the Maidan-related proceedings have been protracted and that not all necessary measures have been taken to ensure the appearance of victims, witnesses and defendants at court hearings (see, *inter alia*, paragraphs 20, 21 and 253 above).

357. The serious shortcomings outlined above in how the authorities responded to the requirement to conduct an effective official investigation and the fact that after more than six years the circumstances pertaining to the applicants' alleged ill-treatment have not been established and those who allegedly used excessive force against them have still not been identified, are sufficient for the Court to find that, so far, no effective investigation has been conducted into the applicants' complaints of ill-treatment by the police.

358. The foregoing considerations enable the Court to find that there has been a violation of the procedural limb of Article 3 of the Convention in so far as the applicants in applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 42271/14 and 19954/15 (Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy and Mr A. Sokolenko) are concerned.

(β) Substantive limb

– *General principles*

359. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita*, cited above, § 119). In respect of a person who is deprived of his or her liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid*, cited above, §§ 100-01, and *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, § 81, 30 January 2020). In respect of recourse to physical force during an arrest, Article 3 does not prohibit the use of force for effecting a lawful arrest (see *Annenkov and Others v. Russia*, no. 31475/10, § 79, 25 July 2017). However, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). The burden to prove that this was the case rests on the Government (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 53, 21 January 2016).

360. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX, and *Saribekyan and Balyan*, cited above, § 82).

361. The Court reiterates that it is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it. When assessing evidence it is not bound by formulae and adopts the conclusions supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (see *Merabishvili*, cited above, § 315, with further references). In this context, the conduct of the parties when evidence is being obtained may also be taken into account. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017). The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Giuliani and Gaggio*, cited above, § 181, with further references). The Court further reiterates in this connection that, in all cases where it is unable to establish

the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant's allegations (see *Mansuroğlu v. Turkey*, no. 43443/98, § 80, 26 February 2008, with further references). The Court has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. If the authorities then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn (see *Varnava and Others*, cited above, § 184, with further references). The Court's reliance on evidence obtained as a result of the domestic investigation and on the facts established within the domestic proceedings will largely depend on the quality of the domestic investigative process, its thoroughness and consistency (see *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 238, ECHR 2011 (extracts), with further references).

362. The Court also pointed out in the *El-Masri* judgment (cited above, § 155) that, although it recognised that it must be cautious in taking on the role of a first-instance tribunal of fact where this was not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000), it had to apply a 'particularly thorough scrutiny' where allegations were made under Article 3 of the Convention (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010), even if certain domestic proceedings and investigations had already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007). In other words, in such a context the Court is prepared to conduct a thorough examination of the findings of the national courts, where indeed there are such findings. In examining them it may take account of the quality of the domestic proceedings and any possible flaws in the decision-making process (see *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 83, 12 February 2009).

363. Ill-treatment prohibited by Article 3 of the Convention may take many different forms, ranging from torture, to inhuman or degrading treatment to treatment that humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (see, for instance, *Bouyid*, cited above, §§ 87-88). In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a

special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element, as recognised in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating (see, among other authorities, *Aktaş v. Turkey*, no. 24351/94, §§ 310-13, ECHR 2003-V (extracts), and *Saribekyan and Balyan*, cited above, § 83).

– *Application of those principles to the present case*

364. The Court reiterates that the parties did not dispute that on 30 November 2013 the police had used force against all the ten applicants listed above. Nor was it disputed that, as a result of the use of force by the police, Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr A. Rudchyk, and Mr A. Sokolenko had been injured, regarding which injuries the relevant medical evidence was collected on that date and subsequently during the investigations (see paragraphs 49, 50 and 66 above), while Ms O. Kovalska and Mr R. Ratushnyy had allegedly suffered physical pain and anxiety (see paragraphs 47-50 above). The applicants' detailed submissions as to how and in what circumstances force had been used against them by the police are partly reflected in the official indictments issued in the course of the investigations into the dispersal of protesters on 30 November 2013 (see paragraphs 47, 48 and 57 above).

365. Although the domestic proceedings have not yet been concluded and no final domestic assessment of the question of the lawfulness and proportionality of that force is available, the Court considers that the information contained in the relevant investigation files may, to a certain extent, be taken into account in its examination of those matters (see, for instance, *İzci v. Turkey*, no. 42606/05, § 57, 23 July 2013).

366. Thus, having regard to the relevant investigation files available to the Court, it would appear that at the early stage of the official investigations into the dispersal of 30 November 2013 - namely, in December 2013 - the investigators had sufficient grounds to consider that several high-ranking officials had unlawfully ordered the police to use force against the protesters, who had been taking part in the round-the-clock vigil on Maidan Nezalezhnosti, occupying a part of its pedestrian zone, on that date (see paragraphs 54-55 above).

367. The elements contained in the report of the panel of the MoI of 30 January 2014, which conducted an internal inquiry into the events on 30 November 2013 in parallel to the official investigations conducted by the PGO, suggest that on that date some of the protesters had tried to obstruct the actions of the police by throwing stones, glass and plastic bottles,

burning sticks and other objects at them, thereby injuring eleven officers. In that report it was also stated that certain unidentified police officers had used excessive force against unidentified protesters in violation of domestic regulations (see paragraphs 82-84 above).

368. In the course of the official investigations which followed, the PGO investigators found sufficient grounds to consider that the protest on 30 November 2013 had been peaceful; that most of the protesters, including the ten applicants concerned, had appeared to offer little or no resistance to the police; that the force had been used by the police against them unlawfully; and that the dispersal had been conducted on the illegal instructions of the high-ranking officials as a means of dissuading and suppressing the Maidan protests (see paragraphs 47, 48, 56 and 57 above).

369. In this connection, the Court notes that the available international material essentially corroborates the above assessment of the largely peaceful nature of the protest on 30 November 2013; that the majority of protesters offered little or no resistance to the police at that stage, unlike during the subsequent protests on other dates between December 2013 and February 2014 (see, among others, paragraphs 24-39 above); and that the police used excessive force to disperse the protesters and when apprehending some of them, despite the absence just referred to of resistance (see, in particular, paragraph 30 of the report of the CPT of 13 January 2015, reproduced at paragraph 250 above, and also other reports summarised and partly reproduced at paragraphs 259 (the report of Amnesty International of 18 February 2015) and 261 (the report of Human Rights Watch of 2 December 2013) above).

370. The fact that the police openly used force to disperse even the initial peaceful demonstrations is further demonstrated by a great deal of video and photographic material available showing scenes of the events.

371. In so far as the available material concerns specifically the ten applicants, the Court finds no evidence or information indicating that the police's recourse to physical force against them was made strictly necessary by their conduct. No charges were ever brought against them in relation to the events of 30 November 2013. Nor is there evidence or information in the available material indicating that the force was used against them in compliance with the domestic law.

372. Against this background and having regard to the fact that the ten applicants concerned were subjected to beatings, including with rubber and/or plastic batons, which was done publicly and accompanied by verbal abuse in some cases (see paragraphs 47 and 48 above), the Court finds that they were subjected to ill-treatment contrary to Article 3 of the Convention.

373. Even though the injuries of some of the applicants were serious, on the basis of the evidence available, the Court does not consider that the ill-treatment to which they were subjected was of such nature and severity as to be characterised as torture (see, *mutatis mutandis*, *Gäfgen*, cited above,

§ 108). With regard to Mr R. Ratushnyy, having regard to his injuries and all relevant circumstances, the Court does not consider that a different conclusion is called for in this regard on account of the fact that he was a minor at the time, albeit his ill-treatment may have had a considerable psychological impact on him (see *Bouyid*, cited above, § 109).

374. The Court thus finds that Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 42271/14 and 19954/15) were subjected to ill-treatment in violation of Article 3 of the Convention.

(b) Alleged ill-treatment of Mr G. Cherevko and Mr V. Zagorovka on 1 December 2013, and the alleged absence of an effective investigation (applications nos. 31174/14 and 42180/14)

375. Mr G. Cherevko and Mr V. Zagorovka complained under Article 3 of the Convention that they had been subjected to torture or inhuman or degrading treatment by the police during and after the dispersal of the demonstration in central Kyiv on 1 December 2013. They also complained that the authorities had failed to carry out an effective investigation into the relevant events. They argued that their ill-treatment had been part of the authorities' organised and planned effort to suppress the Maidan protests, and had been aimed at punishing and intimidating them on account of their actual or suspected involvement in the protests.

376. Apart from their argument that the investigations in the applicants' cases had been effective, an argument which was raised in the context of their objection as to the admissibility of the applicants' complaints (see paragraph 284 above), the Government made no submissions on the merits.

(i) Procedural limb

377. The Court notes that Mr G. Cherevko and Mr V. Zagorovka duly raised their complaints of ill-treatment by the police at domestic level (see paragraphs 109 and 134 above) and that those complaints were arguable. In particular, they were supported by the applicants' detailed account of the facts, video and photographic material, and relevant medical information (see paragraphs 87-90 and 125-126 above).

378. At the outset, the Court notes that, even though the authorities launched the official investigation into the dispersal of the protesters by the police on 1 December 2013 shortly after that event, namely the next day (see paragraph 108 above), it appears that before 2015 no meaningful action was taken in order to establish and assess all the relevant circumstances.

379. It is true that on several occasions in December 2013 the investigators questioned the applicants about the events. However, the

forensic medical examinations in respect of their injuries were not conducted until July 2015 (see paragraphs 109, 110, 112 and 134 above). The Government provided no explanation for that delay. Having regard to the copies of documents from the domestic case file which have been submitted to the Court, it appears that the delay might have been caused by the investigators' failure to provide the forensic experts with all the necessary documents (see paragraph 112 above).

380. Also, there is no information that the investigators made any attempt before 2015 to identify and question the police officers who had actually been involved in the dispersal on 1 December 2013, despite the fact that the police units involved in the events and the officers who commanded those units or controlled their actions were identified in the MoI's report of 24 April 2014 (see paragraphs 121-124 above). The very few police officers questioned in 2014 do not appear to have played an active role in the events (see paragraph 111 above).

381. Likewise, there is no information that the investigators made an attempt to obtain and examine any documents relating to the actions of the police on 1 December 2013 before January 2016, even though at least some of the relevant details could be found in the documents on which the MoI's report of 24 April 2014 had been based (see paragraphs 121-124 above).

382. In this connection, the Court notes that reports from different domestic and international sources also suggest that there were delays in the investigations for over a year from December 2013 onwards (see, for instance, the report of Amnesty International of 18 February 2015 summarised at paragraph 259 above).

383. Having regard to the available material, it appears that since 2015 the investigations have intensified and the investigators have conducted a number of important investigative actions, including actions involving the applicants' participation (see paragraphs 113 and 134 above). This has led to some noteworthy results, in particular the identification of a police officer who actually ill-treated one of the applicants, and the conviction of another police officer who negligently failed to protect the protesters from police violence (see paragraphs 115-119 above).

384. Also, the Court notes that the question of the lawfulness and proportionality of the force used against the protesters and the applicants concerned on 1 December 2013 was assessed, to a certain extent, by the investigators in the official indictments they issued in the proceedings, and more importantly by the Pecherskyy District Court in its judgment of 18 July 2016 convicting one of the police officers of negligent failure to protect the protesters from police violence. Notably, that judgment included some details about how force had been used against Mr V. Zagorovka. Nonetheless, the proceedings against the police officer who actually used force against that applicant have not yet been concluded, and no other police officers who may have ill-treated him have been identified. The specific

circumstances pertaining to Mr G. Cherevko's alleged ill-treatment, and the identity of those responsible, are yet to be established in the ongoing investigations and related court proceedings (see paragraphs 116-120 above).

385. Thus, on the whole, the investigations into the events on 1 December 2013 and the related court proceedings have so far not resulted in the circumstances pertaining to the applicants' alleged ill-treatment being established. Nor have they led to the identification of those who actually used force against the applicants.

386. Furthermore, it transpires, from the relevant investigation files and the judgment of the Pecherskyy District Court of 18 July 2016, that the former senior governmental officials, including several high-ranking officers of the MoI, were suspected of having unlawfully instructed and/or having given unlawful orders to those under their command to use force against the protesters on 1 December 2013 (see, notably, paragraphs 115, 116 and 119 above). However, the relevant proceedings have not led so far to a final determination of those matters.

387. The Court is mindful of the fact that the investigations into the events of 1 December 2013, which concerned hundreds of individuals and which formed part of a more extensive set of events, including the dispersal of the protesters on 30 November 2013 (see paragraphs 116, 119, 343 and 344 above and further references therein), were complex.

388. However, as a result of the delays and omissions noted above, by the time the investigations intensified in 2015, some suspects and possible offenders who might have been responsible for the violence during the events in question appear to have fled Ukraine and are consequently out of the authorities' reach (see, *inter alia*, paragraphs 18-21, 117 and 259 above). Also, there are indications that by that time it had become difficult for the investigators to obtain relevant internal documents of the police (see paragraphs 114 and 121 above).

389. Furthermore, as noted with regard to the investigation into the events of 30 November 2013, there are indications that the identification of the police officers who had taken part in the events was substantially impeded from within the relevant State bodies (see paragraphs 124, 347 and 355 above), which had serious negative implications for the investigations' ability to establish all the circumstances of the applicants' alleged ill-treatment.

390. The Court draws particular attention to the reported instances of the MoI's refusal to cooperate with the PGO investigators and the suspected "obstructiveness" on the part of the MoI (see paragraph 355 above, with further references therein).

391. It follows from the above that there has been a violation of the procedural limb of Article 3 of the Convention in the cases of

Mr G. Cherevko and Mr V. Zagorovka (applications nos. 31174/14 and 42180/14).

(ii) Substantive limb

392. Having regard to the applicants' detailed submissions concerning their alleged ill-treatment, which are, to a large extent, supported by relevant evidence – including medical reports, photographs and video-recordings of the event, documents from the domestic proceedings, and various domestic and international reports – and which have not been contested by the Government, the Court finds that the applicants' injuries were sustained as a result of the use of force by the police (see, *inter alia*, paragraphs 86-90, 125-126, 134 and 257 above). At the same time, the material before the Court indicates that the force used cannot be considered to have been the result of the applicants' conduct during the protest. In particular, the relevant documents in the criminal proceedings against the applicants, including the notifications of suspicion served on them for their alleged participation in unlawful acts and the applications for their continued detention, relied on alleged evidence that was not to be found in the relevant files and was in any event not corroborated in the ensuing proceedings (see paragraphs 96-103 and 127-132 above). The charges against the applicants were eventually dismissed or abandoned (see paragraphs 107 and 133 above).

393. On the basis of the material available to the Court, notably the official indictments against police officers and higher officials and related judicial findings in the applicants' cases, it would appear that there are grounds to consider that those who ordered force to be used against the applicants concerned and those who actually used force clearly went beyond what could have been considered necessary in the circumstances. Furthermore, there are indications that the force used against the protesters on 1 December 2013 was part of the authorities' deliberate strategy to put an end to and further hinder the Maidan protests (see paragraphs 116-119 above).

394. The Court notes in particular that, according to the applicants' version of the events, which is supported, to a certain extent, by information in the relevant investigation files, by the judgment of the Pecherskyy District Court of 18 July 2016 and, also, by the report of Amnesty International of 18 February 2015 (see, notably, paragraphs 116, 119 and 259 above), they were subjected to repeated beatings on account of their actual or suspected participation in the protests. As a result, both applicants suffered serious injuries and lost consciousness several times. Mr G. Cherevko suffered concussion, contusion to the chest, fractured fingers and multiple haematomas on the face, the trunk of the body and the limbs (see paragraphs 125-126 above). Mr V. Zagorovka, whose beating was accompanied by verbal abuse and humiliation, had multiple

haematomas on the face, the trunk and the limbs and traumatic erosion of the right cornea which resulted in reduced vision (see paragraphs 87-90 above).

395. Furthermore, according to Mr V. Zagorovka, despite the severities of the injuries inflicted and the level of pain endured, when in police custody he received nothing more than a patch (bandage) and a painkiller. While the Court will examine separately this complaint in relation to the adequacy of the medical treatment afforded this applicant, it cannot overlook the allegations in that regard when assessing the overall context and nature of his treatment at the hands of the police under Article 3 of the Convention (see paragraphs 91-95 above).

396. In the light of the foregoing and having regard to the available evidence and the forensic medical reports in the applicants' cases, the ill-treatment inflicted on Mr G. Cherevko and Mr V. Zagorovka by the police must have caused them severe pain and suffering and was particularly serious and cruel. It is impossible, in addition, based on that evidence, to overlook indices regarding the intentional and premeditated nature of the ill-treatment inflicted (see paragraphs 87-90, 116, 119 and 125-126 above). Accordingly, the Court finds that there has been a violation of the substantive limb of Article 3 of the Convention in that Mr G. Cherevko and Mr V. Zagorovka were tortured by the police in Kyiv on 1 December 2013 (applications nos. 31174/14 and 42180/14).

(iii) Victim status of Mr G. Cherevko and Mr V. Zagorovka

397. Turning to the Government's objections as to the applicants' victim status, which have previously been joined to the merits of their complaints under Article 3 of the Convention (see paragraphs 313, 314 and 317 above), the Court refers to the general principles of its case-law in relation to victim status (see, for example, *Gäfgen*, cited above, §§ 115-119, and the authorities cited therein). In the present case, it notes that Mr G. Cherevko received a one-off payment of financial assistance because he had been injured during the Maidan protests (see paragraphs 193 and 214-217 above).

398. To be sure, the payment in question, which was based on the seriousness of Mr G. Cherevko's injuries, was related to the damage he had suffered because of his ill-treatment by the police, and was capable of mitigating, to a certain extent, the negative consequences of that damage. Such a payment may well form part of the required domestic remedial measures as regards a breach of Article 3 of the Convention (see paragraph 336 above).

399. However, as the domestic investigations have so far not resulted in the establishment of all the circumstances pertaining to Mr G. Cherevko's ill-treatment by the police, the payment which he was given cannot be accepted as sufficient redress for his complaints under Article 3 of the Convention. The Court reiterates that in cases of wilful ill-treatment by

State agents, not least serious ill-treatment amounting in some cases to or approximating torture**,** the breach of Article 3 cannot be remedied only by an award of compensation to the victim. This is so because, if the authorities could confine their reaction to such incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see *Gäfgen*, cited above, §§ 116 and 119; *Jeronovičs*, cited above, § 116; and, for a more recent case in which these principles were reiterated, *Grecu v. the Republic of Moldova*, no. 51099/10, § 21, 30 May 2017).

400. For the same reasons, in the absence of acknowledgement, either express or in substance, of a violation of the applicant's right under Article 3 of the Convention and of an effective official investigation into the applicant's ill-treatment by the police, the fact that Mr V. Zagorovka was included on the list of those entitled to receive a similar allowance also cannot be considered capable of providing redress for his complaints under that provision.

401. In the light of the foregoing, the Court finds that the Government's objections relating to Mr G. Cherevko's and Mr V. Zagorovka's victim status as regards their complaints under Article 3 of the Convention, previously joined to the merits (see paragraphs 313, 314 and 317 above), must be rejected.

(c) Alleged ill-treatment of Mr S. Dymenko and Mr R. Ratushnyy on 11 December 2013 and the alleged absence of an effective investigation (applications nos. 33767/14 and 54315/14)

402. Mr S. Dymenko and Mr R. Ratushnyy complained under Article 3 of the Convention that they had been subjected to torture or inhuman or degrading treatment by the police during and after the dispersal of the demonstration in central Kyiv on 11 December 2013. They argued that their ill-treatment had been part of the authorities' organised and planned effort to suppress the Maidan protests, and had been aimed at punishing and intimidating them on account of their involvement in the protests.

403. They also complained that the authorities had failed to carry out an effective investigation into the relevant events. The investigations had been protracted and had led to the identification of only two suspects, even though a large number of police officers had been involved and orders to use force against the protesters on 11 December 2013 had been given by their hierarchy. In particular, no officer who had ill-treated Mr S. Dymenko had been identified, while only one of the officers who had ill-treated Mr R. Ratushnyy had been identified. No one had been convicted.

404. The Government pointed to the complexity of the investigations and stated that they had led to the identification of several Berkut officers suspected of having committed unlawful acts against the protesters on 11 December 2013. The cases concerning two of those officers had been referred for trial and the proceedings concerning another officer had been suspended, as he had absconded.

405. The Government also submitted that in the course of the investigations, the applicants' bodily injuries had been duly established, they had been provided with information regarding their procedural rights and obligations, had been questioned, and had been involved in other unspecified investigative actions. The applicants concerned had lodged no complaint with the domestic authorities concerning specific investigative actions or inactivity on the part of the investigators. Lastly, adequate information about the status of the relevant proceedings and developments in those proceedings had been regularly published on the PGO's dedicated website and during the PGO's media briefings.

406. The Government did not comment on the applicants' complaints under the substantive limb of Article 3 of the Convention.

(i) Procedural limb

407. The Court notes that Mr R. Ratushnyy and Mr S. Dymenko duly raised their complaints of ill-treatment by the police at domestic level on 25 December 2013 and 5 February 2014 respectively, which is evidenced by the copies of those documents which they submitted to the Court (see paragraph 141 above), and that those complaints were arguable. In particular, they were supported by the applicants' detailed account of the facts, video and photographic material, and relevant medical information (see paragraphs 135-139 above).

408. The Court notes that, firstly, even though the authorities launched the official investigation on the day after the events of 11 December 2013 (see paragraph 140 above), it appears that before February 2015 no meaningful action was taken in order to establish and assess all the circumstances pertinent to the applicants' alleged ill-treatment (see paragraphs 141-142 above).

409. In particular, it was only in February 2015 that the investigators questioned the applicants. The forensic medical examinations in respect of their injuries were conducted several months later, in April and July 2015 respectively (see paragraphs 143-144 above).The Government provided no explanation for those delays, and having regard to the PGO's letter of 9 June 2016 in particular, it can be inferred that prior to 26 January 2015 the applicants' alleged ill-treatment was not investigated (see paragraph 142 above).

410. Even though the internal inquiry conducted by the MoI panel between 24 February and 24 April 2014 led to the identification of several

senior MoI officers who had been in charge of the public-order operations on 11 December 2013, no attempt to identify and question the police officers who had actually been involved in the dispersal on 11 December 2013 was made at the time (see paragraphs 151-152 above). Nor is there information that there was an attempt to secure any documents or physical evidence relating to the actions of the police on 11 December 2013.

411. It is true that since February 2015 the relevant investigations have intensified and the investigators have carried out a number of important investigative actions, including those involving the applicants' participation (see paragraphs 143-144 above). This has led to noteworthy results, in particular the identification of a police officer who actually ill-treated one of the applicants, and the identification of the commander of the Berkut unit which was directly involved in the dispersal on 11 December 2013 (see paragraphs 145-147 above). Eventually, those police officers were indicted and, according to the most recent information available to the Court, their case was sent for trial (see paragraphs 146 and 148 above). The Court also notes that, according to the Government, the investigators identified another Berkut officer who had allegedly taken part in the events at issue, although it remains unclear how his actions related to the applicants' alleged ill-treatment (see paragraph 150 above).

412. However, thus far, more than six years after the events, there has been no final domestic assessment of all the circumstances pertaining to the applicants' alleged ill-treatment by the police. The relevant court proceedings initiated between February and March 2016 are still ongoing at first instance (paragraphs 146-148 above). No information as to why those proceedings have not yet been concluded has been submitted to the Court. In this connection, domestic and international reports suggested that the trials in the Maidan-related proceedings have been protracted and that not all adequate measures have been taken to ensure the attendance of victims, witnesses and defendants at court hearings (see paragraph 356 above, with further references therein).

413. As it did when examining the complaints related to the events of 30 November and 1 December 2013 (see paragraphs 343, 344 and 387 above), the Court takes into consideration the complexity of the relevant investigations and the objective difficulties faced by the authorities following the intensification of the investigations noted above (see paragraphs 18-21, 259 and 388 above, with further references therein).

414. However, as in other applicants' cases with which the Court has already dealt above, no information was provided to the Court demonstrating that the authorities – notably the PGO and the MoI – had taken adequate measures to overcome those difficulties in the cases of Mr S. Dymenko and Mr R. Ratushnyy.

415. In these circumstances, given the fact that more than six years after the events the investigations have still not led to the establishment of all the

circumstances and the identification of those responsible for the applicants' alleged ill-treatment, the Court finds that the authorities have so far failed to carry out an effective official investigation into that matter.

416. As to the Government's argument that the applicants lodged no complaint with the domestic authorities concerning specific investigative actions or inactivity on the part of the investigators, the Court finds nothing in the Government's submissions or generally in the file which would demonstrate that such a complaint might have led to any improvement in the proceedings, either by expediting them or rectifying the shortcomings of which the applicants complained.

417. Accordingly, there has been a violation of the procedural limb of Article 3 of the Convention in the cases of Mr S. Dymenko and Mr R. Ratushnyy (applications nos. 33767/14 and 54315/14).

(ii) Substantive limb

418. Having regard to the applicants' detailed submissions concerning their alleged ill-treatment, which are, to a large extent, supported by relevant evidence – including medical reports, photographs and video-recordings of the event, documents from the domestic proceedings, and relevant international reports – and which have not been contested by the Government, the Court finds that the applicants' injuries were sustained as a result of the use of force by the police on 11 December 2013. The Court also notes that it has not been shown that the force used was made necessary by the applicants' conduct (see paragraphs 135-139, 144, 145 and 147 above).

419. Having regard to the material available to the Court, it would appear that in the applicants' cases the investigators had sufficient grounds to consider that those who had ordered force to be used against them and those who had actually used force had risked going or had gone beyond the limits of what could be considered necessary in the circumstances (see paragraphs 145-147 above, which contain information from the domestic investigation file).

420. Furthermore, according to that information, there are indications that considerable force was used against the protesters on 11 December 2013 as part of the authorities' deliberate strategy to put an end to and further hinder the Maidan protests (ibid.).

421. The Court also notes that, according to the applicants' version of the events and the indictment issued against police officers, Mr S. Dymenko and Mr R. Ratushnyy were subjected to repeated beatings, despite the fact that they appeared to offer no resistance to the police. Also, the indictment at issue contains indications that the aim of their ill-treatment may have been to punish and intimidate them on account of their participation in the protests (see paragraphs 135-138 and 147 above).

422. In the light of the foregoing, the Court finds that there has been a violation of the substantive limb of Article 3 of the Convention on account of the ill-treatment of Mr S. Dymenko and Mr R. Ratushnyy by the police in Kyiv on 11 December 2013 (applications nos. 33767/14 and 54315/14).

(d) Alleged ill-treatment of Mr D. Poltavets on 23 January 2014 and the alleged absence of an effective investigation (application no. 36299/14)

423. Mr D. Poltavets complained under Article 3 of the Convention that he had been subjected to torture or inhuman or degrading treatment by the police on 23 January 2014 on account of his suspected involvement in the protests. He further argued that no effective official investigation had taken place.

424. Apart from their argument that the investigations in the applicant's case had been effective (see paragraph 284 above), the Government made no submissions on the merits.

(i) Procedural limb

425. As to the procedural aspect of the applicant's complaints under Article 3 of the Convention, the Court observes that Mr D. Poltavets duly raised his complaints of ill-treatment by the police at domestic level (see paragraph 164 above), and that those complaints were arguable. In particular, they were supported by his detailed account of the facts and by relevant medical information (see paragraphs 153-157 above).

426. The Court is mindful, as it has previously stated, of the fact that the relevant events involved hundreds of individuals and, like other matters which the Court has addressed in this case, formed part of a more extensive set of events (see paragraphs 343, 344, 387 and 413 above, with further references therein). There is no doubt that the investigations at issue were essentially complex.

427. Nonetheless, in so far as Mr D. Poltavets is concerned, there is nothing before the Court to suggest that any meaningful action has been taken at domestic level in more than six years to establish the circumstances relating to his alleged ill-treatment and identify those who allegedly used force against him.

428. Accordingly, there has been a violation of the procedural limb of Article 3 of the Convention in the case of Mr D. Poltavets (application no. 36299/14).

(ii) Substantive limb

429. As to the substantive aspect of the applicant's complaints under Article 3 of the Convention, the Court notes that the Government did not contest the applicant's allegation that he had been beaten by the police on 23 January 2014. Nor did they contest that the applicant's injuries had been

caused in the manner he had described in his submissions before the Court (see paragraph 153 above). Furthermore, his allegation is supported by medical evidence that he sustained various injuries on that date (see paragraph 157 above).

430. Therefore, on the whole, the Court accepts the applicant's version of the relevant events, and finds that his injuries were sustained as a result of the deliberate use of force by the police in connection with his suspected participation in the protests. The Court also notes that it has not been shown that the force used was made necessary by the applicant's conduct (see paragraphs 153-157 above).

431. Furthermore, having regard to the material available to the Court, it appears that there are grounds to consider that those who ordered force to be used against the applicant and those who actually used force risked going or went beyond the limits of what could be considered necessary in the circumstances. Notably, the Court refers to the information contained in the CPT's report to the Ukrainian Government on its visit to Ukraine from 18 to 24 February 2014, published on 13 January 2015, that "there were numerous reports of ill-treatment of 'Maidan' protesters by members of Internal Affairs special forces, and unidentified individuals assisting them, in the course of the public order operations of 19-23 January 2014 on Hrushevskoho Street in Kyiv", and that the related allegations of ill-treatment by the police "had a high degree of credibility" (see, *inter alia*, paragraphs 4, 11, 24, 25 and 31 of the report reproduced at paragraph 250 above).

432. The Court also draws particular attention to the CPT's findings to the effect that "the deliberate ill-treatment of 'Maidan' protesters by or with the authorisation, support or acquiescence of members of the 'Berkut' special police unit/Interior Troops and other uniformed law-enforcement officials during and after apprehension was an accepted means of enforcing law and order in the context of the public order operations at issue" (see paragraph 24 of the above-mentioned report reproduced at paragraph 250 above).

433. In sum, the Court finds that there has been a violation of the substantive limb of Article 3 of the Convention on account of the applicant having been ill-treated by the police in Kyiv on 23 January 2014.

B. Alleged failure to provide Mr V. Zagorovka with adequate medical treatment in the days following his arrest (application no. 42180/14)

434. Mr V. Zagorovka (application no. 42180/14) complained under Article 3 of the Convention that he had not been provided with adequate medical assistance while in detention.

435. In particular, while he had been in the hands of the police between 1 and 5 December 2013 no thorough and comprehensive assessment of his

medical condition had been made, and no adequate medical assistance had been provided to him in a timely manner and in accordance with the instructions of the hospital doctors who had treated him. Because of this, his medical condition had substantially worsened and eventually the vision in his right eye had deteriorated. He continued to suffer from regular headaches, a sleep disorder and hypertension (see paragraphs 91-92 above).

436. The Government argued that while in detention Mr V. Zagorovka had been provided with medical assistance, and he had failed to demonstrate that such assistance had been insufficient or inferior to the assistance he could have received if at liberty. In particular, the applicant had been medically examined immediately after his arrest on 1 December 2013 and subsequently had been provided with appropriate medication. While in detention he had been under the constant supervision of the medical staff of the Kyiv ITT and later the Kyiv SIZO, and he had also been examined by ambulance doctors and doctors from Oleksandriyivska Hospital. As to the period of his hospitalisation at that hospital between 5 and 11 December 2013, the applicant had undergone the necessary treatment while he had been there.

1. Admissibility

437. The Court notes that this part of the applicant's complaints under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a), and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

438. The Court reiterates that a lack of appropriate medical care for detainees may amount to treatment contrary to Article 3 of the Convention (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, and *Sarban v. Moldova*, no. 3456/05, § 90, 4 October 2005).

439. In previous cases concerning the adequacy of medical care in Ukrainian detention facilities, the Court has stressed that it is for the Government to provide credible and convincing evidence showing, in the face of prima facie evidence provided by an applicant, that the latter received comprehensive and adequate medical care while in detention (see, among other authorities, *Sergey Antonov v. Ukraine*, no. 40512/13, § 86, 22 October 2015).

440. In the present case, the Court notes that the applicant concerned sustained serious injuries in the hands of the police, including concussion and an injury to his right eye (see paragraph 90 above). It is true that the applicant was examined by medical personnel without delay, within hours. However, for about four days the police refused to let him stay in a hospital and receive the treatment recommended by doctors as urgently necessary

although he complained repeatedly of acute pain and his generally poor medical condition (see paragraphs 91-95 above). It appears that between 1 and 5 December 2013 he received nothing more than a patch (bandage) and a painkiller. The Government's explanation for this four-day delay is unconvincing. While apparently there were no special wards for detainees at the hospital to which the applicant was initially taken, it has not been shown that it was impossible to hospitalise him elsewhere or find an appropriate solution so as to provide him with adequate health care without delay (see paragraphs 91-94 above).

441. The Court therefore finds that, following ill-treatment amounting to torture at the hands of the police, the authorities failed to react adequately to the applicant's resulting medical problems while he was in detention between 1 and 5 December 2013 (see paragraphs 393-396 above). It considers that the authorities' actions and omissions in this regard constituted ill-treatment beyond the threshold of severity under Article 3.

442. There has accordingly been a violation of Article 3 of the Convention on that account. In these circumstances, the Court finds it unnecessary to deal with Mr V. Zagorovka's other arguments in that regard.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

443. Relying expressly or in substance on Article 5 §§ 1, 3 and 5 of the Convention, Mr G. Cherevko, Mr D. Poltavets, Mr O. Zadoyanchuk and Mr V. Zagorovka (applications nos. 31174/14, 36299/14, 36845/14 and 42180/14) raised complaints in relation to their allegedly unlawful and arbitrary detention (see paragraphs 455 and 456 below).

444. The relevant paragraphs of Article 5 of the Convention read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> ...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

1. Alleged failure by the four applicants concerned to lodge a civil compensation claim

445. The Government argued that the applicants concerned had failed to exhaust domestic remedies as they should have lodged compensation claims under Article 1176 of the Civil Code of 2003 and/or under the Compensation Act of 1994. Relying on the domestic decisions referred to above (paragraph 231 above), including, among others, the judgments of the Babushkinskyy District Court in Dnipro, delivered during the period between November and December 2014, by which some of the applicants in other cases relating to the Maidan protests were awarded compensation in connection with the criminal proceedings against them (see *Dubovtsev and Others*, cited above, §§ 23-25), the Government argued that this would have resulted in an award in respect of the alleged violations of their Convention rights, having regard to the fact that the criminal proceedings against them had been terminated on "exonerating" grounds.

446. The applicants concerned contended, essentially, that bringing a civil action under either the Compensation Act of 1994 or the Civil Code of 2003 was not an effective remedy.

447. The Court reiterates that the rule of exhaustion of domestic remedies is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that the domestic legal system provides an effective remedy which can deal with the substance of an arguable complaint under the Convention and grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see, for a recent authority, *Voykin and Others v. Ukraine*, no. 47889/08, § 123, 27 March 2018, with further references).

448. Where a violation of Article 5 § 1 and/or Article 5 § 3 is in issue, Article 5 §§ 4 and 5 of the Convention constitute *leges speciales* in relation to the more general requirements of Article 13, with Article 5 § 4 providing for a "preventive" remedy and Article 5 § 5 providing for a compensatory remedy. As regards the remedy under Article 5 § 4, an arrested or detained person is entitled to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty. Such proceedings should be capable of leading to a judicial decision declaring that the detention was unlawful and ordering his or her release (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 128-131,

15 December 2016, with further references). Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012, with further references). Accordingly, in order to decide whether an applicant was required to make use of a particular domestic remedy in respect of his or her complaint under Article 5 § 1 and/or Article 5 § 3 of the Convention, the Court must evaluate the effectiveness of that remedy from the standpoint of the above-mentioned provisions (see *Voykin and Others*, cited above, § 124, and *Lelyuk v. Ukraine*, no. 24037/08, § 35, 17 November 2016).

449. In so far as the Government's objection is based on the judgments of the Babushkinskyy District Court in Dnipro, the Court reiterates its findings in *Dubovtsev and Others* (cited above, § 71) that, in the particular circumstances of the cases relating to the Maidan protests, other applicants detained in the framework of criminal proceedings cannot be reproached for not lodging similar compensation claims with civil courts under Article 1176 of the Civil Code of 2003 and/or the Compensation Act of 1994 for the purpose of exhausting domestic remedies as required by Article 35 § 1 of the Convention. The Court considers that those findings are equally pertinent for the applicants' complaints under Article 5 of the Convention in the present case.

450. As to other judicial decisions on which the Government relied in support of their objection of non-exhaustion, the Court notes that almost all of those concern situations where compensation proceedings were brought against the authorities on account of State agents having been convicted of having ill-treated or used excessive force against the claimants, whereas one decision concerns an award of compensation for the arrest which was held to be unlawful by another judicial decision (see paragraph 230 above). Thus, those decisions do not appear to be relevant to the specific situation relating to the applicants' complaints under Article 5 of unlawfulness and arbitrariness of their detention. In the present case no person was convicted in relation to the applicants' detention and the respondent State has been unable to point to a judicial decision acknowledging sufficiently that it was unlawful.

451. Accordingly, the Court finds that, in the circumstances of the present case, the applicants in applications nos. 31174/14, 36299/14, 36845/14 and 42180/14 (Mr G. Cherevko, Mr D. Poltavets, Mr O. Zadoyanchuk and Mr V. Zagorovka) cannot be reproached for not having lodged compensation claims with civil courts under Article 1176 of the Civil Code of 2003 and/or the Compensation Act of 1994 in order to

exhaust effective domestic remedies as required by Article 35 § 1 of the Convention.

2. Allegedly premature complaints of Mr G. Cherevko (application no. 31174/14)

452. The Government argued that Mr G. Cherevko's complaints under Article 5 §§ 1 and 3 of the Convention were premature (application no. 31174/14), stating that the criminal investigation into his alleged ill-treatment also concerned his allegedly unlawful detention, and was still ongoing (see paragraph 134 above). Mr G. Cherevko replied that the investigations into his unlawful prosecution and detention had been protracted and their outcome could not be predicted.

453. The Court has found, under Article 3 of the Convention, that the relevant investigations in Mr G. Cherevko's case were ineffective (see paragraph 391 above) and sees no reason to reach a different conclusion regarding the capacity of those same investigations to redress, in a timely and adequate manner, the alleged violations of Article 5 of the Convention (see *Belousov v. Ukraine*, no. 4494/07, § 73, 7 November 2013). Accordingly, the Court finds that the fact that those investigations have not yet been completed does not preclude it from examining Mr. G. Cherevko's complaints in relation to Article 5.

3. Conclusion as to the admissibility

454. In the light of the foregoing considerations, the Court rejects the Government's objections of non-exhaustion of domestic remedies. It further finds that the complaints of the four applicants concerned under Article 5 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds.

Therefore, the Court declares these complaints admissible.

B. Merits

1. The parties' submissions

455. All four applicants, Mr G. Cherevko, Mr D. Poltavets, Mr O. Zadoyanchuk and Mr V. Zagorovka (applications nos. 31174/14, 36299/14, 36845/14 and 42180/14), complained that they had been detained in violation of Article 5 § 1. They argued in particular that their detention had not been based on a reasonable suspicion that they had committed a crime. It had, in their view, been politically motivated, as it had been aimed at punishing and intimidating them for their actual or suspected participation in the Maidan protests. In this regard, some of the applicants referred to various international reports on the Maidan protests, including

the reports of Amnesty International of 23 December 2013 and 18 February 2015 (see paragraphs 257 and 259 above).

456. Mr G. Cherevko and Mr V. Zagorovka (applications nos. 31174/14 and 42180/14) further complained, essentially under Article 5 § 3, of various irregularities in the way in which the domestic courts had reviewed the lawfulness of their detention. In particular, the judges had not been independent and impartial, and had failed to examine whether the applicants' detention was based on a reasonable suspicion, whether the risks required for keeping them in detention existed, and whether alternative preventive measures could be applied. No assessment of individual circumstances had been carried out, and the applicants' arguments against detention had been ignored. Nor had the courts questioned the relevant witnesses or checked whether there was documentary evidence in support of the applications for the applicants' detention. Mr V. Zagorovka (application no. 42180/14) further complained that he had had no effective and enforceable right to compensation for the violations of his right to liberty.

457. The Government submitted no observations on the merits of the applicants' complaints under Article 5.

458. Commenting on the admissibility of Mr V. Zagorovka's complaints under Article 5 § 3 of the Convention (application no. 42180/14), the Government argued, *inter alia*, that the domestic courts' decisions justifying the applicant's continued detention had been based on a reasonable suspicion that he had committed a crime (mass disorder), and the seven-day period of detention (a ten-day period in total) had therefore been justified.

2. The Court's assessment

(a) General principles

459. The Court reiterates that Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of an individual, and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty. Three strands in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly and which do not allow for the broad range of justifications under other provisions, Articles 8-11 of the Convention in particular; the repeated emphasis on the lawfulness of the detention, procedurally and substantively, requiring scrupulous adherence to the rule of law; and the importance of the promptness or speediness of the requisite judicial controls under Article 5 §§ 3 and 4 (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X, with further references).

460. Where a person is being deprived of his or her liberty on suspicion of having committed a criminal offence, the "reasonableness" of the

suspicion on which an arrest or detention must be based forms an essential part of the safeguard laid down in Article 5 § 1 (c) (see, among many other authorities, *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 124, 20 March 2018).

461. The Court further reiterates that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see, for example, *Saadi v. the United Kingdom* [GC], no. 13329/03, § 68, ECHR 2008). One general principle established in the case-law is that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, §§ 75-76, 22 October 2018, with further references).

462. According to the Court's established case-law, under Article 5 § 3, the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of any continuation of detention; however, after a certain lapse of time, it no longer suffices: the Court must then establish (i) whether other grounds cited by the judicial authorities continued to justify the deprivation of liberty and (ii), where such grounds were "relevant" and "sufficient", whether the national authorities displayed "special diligence" in the conduct of the proceedings. The requirement for a judicial officer to give relevant and sufficient reasons for detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand – that is to say "promptly" after the arrest. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. When deciding whether a person should be released or detained, the authorities are obliged to consider alternative means of ensuring his or her appearance at trial (see *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012, and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87, 88 and 102, ECHR 2016 (extracts)).

(b) Application of those principles to the present case

463. Turning to the present case, the Court notes that the four applicants concerned were in detention, allegedly in violation of Article 5 § 1 (c) of the Convention, on various dates between 1 December 2013 and 22 February 2014 as set out in the following table:

Application no.	Applicant's name	Date of arrest	Date of release from detention
31174/14	**Gennadiy Anatoliyovych CHEREVKO**	01/12/2013	11/12/2013
36299/14	**Dmytro Mykhaylovych POLTAVETS**	23/01/2014	14/02/2014
36845/14	**Oleg Leonidovych ZADOYANCHUK**	18/02/2014	22/02/2014

Application no.	Applicant's name	Date of arrest	Date of release from detention
42180/14	**Vladyslav Mykolayovych ZAGOROVKA**	01/12/2013	11/12/2013

464. According to their domestic case files, those applicants were suspected of having committed the crime of mass disorder during the Maidan protests.

465. As regards the evidential basis for a "reasonable suspicion" that they had committed such crimes, the Court notes, firstly, that the investigators relied on the written statements of police officers and/or reports prepared by the police. However, no copies of the relevant statements or reports were provided to the Court, nor were any details of those statements or reports contained in the related investigative or court decisions or the parties' submissions before the Court (see paragraphs 99, 129, 160 and 172 above). It therefore remains unclear what information was contained in the written statements of police officers and/or reports prepared by the police on which the investigators relied.

466. It must also be noted that the police searched the four applicants in the course of their arrest and found no dangerous objects which, according to the authorities, had been used during the Maidan protests (see paragraphs 97, 128, 155 and 170 above). While the material before the Court points to incidents of violence against the police by individual protesters during the Maidan events, the Court's task is to examine concretely the cases of the applicants.

467. The Court is mindful of the fact that about ten days after his arrest Mr V. Zagorovka (application no. 42180/14) acknowledged that he was guilty of a serious disturbance of public order and concluded a plea-bargain agreement with the prosecution. However, this development does not provide a sufficient basis demonstrating that there was a reasonable suspicion against him at the time of his arrest on 1 December 2013. Moreover, the applicant provided a prima facie acceptable explanation for his acknowledgment of guilt which was not contested by the Government – he had been compelled to make such an acknowledgement in order to be released from detention, because, *inter alia*, the authorities had failed to provide him with the necessary medical treatment (see paragraphs 104-106 and 441 above). The Court also notes that eventually the criminal proceedings against all the four applicants were terminated for absence of the elements of a crime in their actions (see paragraphs 107, 133, 163 and 176 above).

468. As regards the reasons given by the domestic courts to justify the applicants' detention, the Court observes that they simply reproduced or referred to the investigators' submissions. Even though the applicants denied committing any crime and pointed to the absence of any relevant

evidence in that regard, the courts provided no reasons as to why the suspicion was considered reasonable (see paragraphs 102-103, 130-132, 158-161 and 173-174 above). Normally, it is not for the Court to substitute its own assessment of the facts for that of the domestic courts, which are better placed to assess the evidence adduced before them. However, the Court observes that in the disciplinary decisions regarding the judges who had authorised the applicants' detention, it was noted that the pieces of evidence on which the suspicions against the applicants had been based were either missing from the case files or could not form a basis for a "reasonable suspicion" that the applicants had committed the crime of mass disorder. Those decisions also contain findings regarding the apparent failure of the judges concerned to verify evidence relied upon by the investigators and mention serious procedural violations (see paragraphs 180-187 above). While the Court is not prepared to attach decisive weight to the latter findings which were made in the different context of disciplinary proceedings, it cannot either disregard the concerns that were expressed about the judges in question not having fulfilled their role in the control of the applicants' detention and having essentially deferred to the investigators' assessment.

469. Secondly, the Court notes that the examination of other important aspects of the applicants' cases was perfunctory. In particular, in the cases of Mr G. Cherevko and Mr V. Zagorovka (applications nos. 31174/14 and 42180/14) the domestic courts relied essentially on the seriousness of the charges against the applicants and used formulaic reasoning without addressing specific facts or considering alternative preventive measures. The courts did not give any further details or address any of the specific arguments advanced by the applicants challenging their detention, despite those arguments not appearing irrelevant or frivolous (see paragraphs 102-103 and 130-132 above).

470. While the decision concerning Mr O. Zadoyanchuk's detention contained certain details regarding his personal situation and connections – his lack of a permanent residence in Kyiv, his residence at a friend's flat in Ivano-Frankivsk, and his lack of social links and employment (application no. 36845/14, see paragraph 174 above) – the Court considers that, in the light of the lack of examination of the existence of reasonable suspicion against that applicant, it is difficult to accept the reference to these otherwise relevant facts as justification for his detention.

471. Thirdly, the Court notes that in the present case the applicants alleged that they had been detained as part of an arbitrary and abusive strategy by the authorities to resort to all possible means, including unlawful detentions and repressions, to achieve their aim to put an end to the protests against the policy of the Government then in place. The applicants essentially considered that there was an element of bad faith or deception on

the part of the authorities (see *S., V. and A.*, cited above, §§ 75-76, with further references).

472. In this connection, the Court notes that there is no information demonstrating that the authorities took any action aimed at furthering the relevant investigations against the applicants during their detention.

473. Furthermore, the Court has already referred to the indications in the domestic and international material available that the abuses to which Mr G. Cherevko, Mr D. Poltavets and Mr V. Zagorovka (applications nos. 31174/14, 36299/14 and 42180/14) had been subjected in violation of Article 3 of the Convention appeared to form part of the authorities' deliberate strategy to put an end to and further hinder the Maidan protests (see paragraphs 393 and 432 above and further paragraph 475 below). Indications that the same strategy could explain their prosecution and detention can be found in the files concerning investigations against police officers and high-ranking State officials on, *inter alia*, charges of abuse of power, falsification of official documents, knowingly unlawful arrest and detention, knowingly unlawful criminal prosecution, and knowingly unlawful judicial decisions (see paragraphs 108, 134 and 165 above).

474. The official investigation into the events on 18 February 2014 in Kyiv, in so far as it related to Mr O. Zadoyanchuk (application no. 36845/14), also concerned similar charges against State agents who took action aiming to suppress the protests on that day (see paragraph 179 above).

475. Also, various domestic and international reports indicate that many of those who took part or were suspected of having taken part in the Maidan protests risked being or were actually intimidated and subjected to abusive prosecution by the authorities. Notably, in her report of 28 February 2014, the Ukrainian Parliament Commissioner for Human Rights pointed to "the violation of applicable procedures relating to arrest, questioning and detention" being one of the "systemic problems" as regards the human rights situation during the protests (see paragraph 233 above); in its report of 23 December 2013, referring, *inter alia*, to the cases of Mr G. Cherevko and Mr V. Zagorovka (applications nos. 31174/14 and 42180/14), Amnesty International noted that dozens of protesters had been arrested and subjected to unfair proceedings solely because they had exercised their right to peaceful assembly (see paragraph 257 above); the Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 18 to 24 February 2014, published on 13 January 2015, contains information indicating that, when dealing with cases concerning remand in custody during the Maidan protests, judges took no action regarding protesters' complaints of ill-treatment by the police and "contented themselves with reading out decisions apparently prepared [before the court hearings]" (see paragraph 46 of that report reproduced at paragraph 250 above); the Council of Europe Commissioner for Human Rights, after visiting Ukraine

from 4 to 10 February 2014, pointed to "widespread perceptions that the judiciary [did] not serve the cause of justice or perform its function in an independent and impartial manner" (see paragraph 50 of his report of 4 March 2014 reproduced at paragraph 236 above), and, when assessing the domestic investigations into the violent incidents during the Maidan protests, the IAP noted, *inter alia*, that during that time "the MoI [had] sought to disperse the demonstrations through violence, intimidation, abusive prosecution and detention of protesters" (see paragraph 419 of its report of 31 March 2015 reproduced at paragraph 248 above).

476. In the Court's view, the facts concerning concretely the four applicants and the indications that can be drawn from the above-mentioned material point to a significant probability that the applicants' arrest and detention were at least partly the result of acts and decisions which formed part of a larger strategy in relation to protests which had started peacefully and which, albeit characterized by pockets of violence, involved a vast majority of peaceful protesters.

477. In sum, on the basis of all material at its disposal, the Court finds that in the four applicants' cases the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion was not met and that there was an element of arbitrariness.

478. It follows that there has been a violation of Article 5 § 1 in respect of all four applicants.

479. Having regard to the above finding, the Court does not consider it necessary to examine separately under Article 5 § 3 of the Convention whether the domestic authorities provided relevant and sufficient reasons justifying the need for the continued detention of Mr G. Cherevko and Mr V. Zagorovka (see *Lukanov v. Bulgaria*, 20 March 1997, § 45, *Reports of Judgments and Decisions* 1997-II; and, for a more recent authority, *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, § 102, 22 May 2014).

480. In the circumstances of the present case and having regard to the Court's finding regarding exhaustion of domestic remedies in respect of the complaints under Article 5 of the applicants concerned (see paragraphs 449-451 above), the Court finds that it is not necessary to decide whether there has been a violation of Article 5 § 5 of the Convention in so far as Mr. V. Zagorovka (application no. 42180/14) is concerned.

481. Finally, having regard to the nature and scope of the Court's findings under Article 5 § 1 of the Convention, there is no need to examine any other arguments under Article 5 advanced by the applicants concerned.

V. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

482. Relying mainly on Article 11 of the Convention, but in some applications also on Articles 7 and 10, fifteen of the sixteen applicants complained of the allegedly unlawful and brutal dispersal by the police of

the demonstrations on 30 November, 1 and 11 December 2013, 23 January and 18 February 2014. They claimed that they had been arbitrarily deprived of their right to freely express their political views through taking part in the Maidan protests. Only Mr. V. Zagorovka did not raise a complaint of this nature. Mr I. Sirenko's complaints were declared inadmissible (see paragraph 280 above).

483. In the circumstances of the case, the Court considers that the above complaints of the remaining fourteen applicants should be examined solely under Article 11 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

1. The parties' submissions

484. As regards most of the applications, the Government contended that the complaints under Article 11 of the Convention were premature, referring to similar arguments as those submitted in relation to Article 3 of the Convention (see paragraph 284 above).

485. With regard to the complaint of Mr. O. Zadoyanchuk (application no. 36845/14), the Government stated that the applicant's complaints under Article 11 of the Convention were essentially the same as his complaints under Article 5 of the Convention, and should therefore be rejected for non-exhaustion of domestic remedies for the reasons outlined above (see paragraph 445 above).

486. The applicants concerned disagreed, relying essentially on their arguments concerning the admissibility of their related complaints under Article 3 and/or Article 5 of the Convention (see paragraphs 288, 289 and 446 above).

2. The Court's assessment

(a) Article 11 complaint of Mr. G. Cherevko (application no. 31174/14)

487. Before examining the parties' submissions as to the admissibility of this part of the case, the Court notes that, in so far as it concerns Mr G. Cherevko, the complaint of a violation of his right to freedom of peaceful assembly should be rejected as unsubstantiated, as he stated that he

had just been observing the protests, not taking part in them (see paragraph 125 above). Although the Court recalls that Article 11 of the Convention can also be found to be applicable to persons merely observing a demonstration (see, for example, *Galstyan v. Armenia*, no. 26986/03, § 100, 15 November 2007), the applicant had submitted no persuasive argument that his mere presence at the rally in question for the purpose of observing events could be considered an exercise of his right to peaceful assembly (see, for comparable circumstances, *Kasparov and Others v. Russia*, no. 21613/07, §§ 72-73, 3 October 2013). Furthermore, this complaint under Article 11 appears to be couched in general terms and the applicant did not elaborate on it. Accordingly, this part of the applicant's complaints should be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(b) Article 11 complaints of the following thirteen applicants: Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr D. Poltavets, Mr O. Zadoyanchuk, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 36299/14, 36845/14, 42271/14, 54315/14 and 19954/15)

488. As to these thirteen applicants, the Court notes that it has already dismissed similar objections of the Government regarding non-exhaustion in relation to Articles 3 and/or 5 of the Convention (see paragraphs 307 and 454 above). It finds no reason to proceed differently as regards the same objections concerning the admissibility of the applicants' complaints under Article 11. In any event, those complaints are closely linked to the applicants' complaints examined above under Article 3 and/or Article 5 of the Convention, and they must therefore likewise be declared admissible.

B. Merits

489. The applicants complained that the authorities had violated their right to freedom of peaceful assembly. The Government did not submit observations on the merits of those complaints.

1. General principles

490. The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. As such, it should not be interpreted restrictively. The general principles concerning the right to freedom of assembly have been summarised in the case of *Kudrevičius and Others v. Lithuania* ([GC], no. 37553/05, §§ 92, 94, 100, 102, 108-110 and 142-60, ECHR 2015) and reiterated more recently in *Navalnyy v. Russia* ([GC],

nos. 29580/12 and 4 others, §§ 98-103, 114 and 128, 15 November 2018). The relevant extracts read as follows:

> "92. ... The guarantees of Article 11 ... apply to all gatherings except those where the organisers and participants have [violent] intentions, incite violence or otherwise reject the foundations of a democratic society (see *Sergey Kuznetsov v. Russia*, no. 10877/04, § 45, 23 October 2008; *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 80, 21 October 2010; *Fáber*, cited above, § 37; *Gün and Others v. Turkey*, no. 8029/07, § 49, 18 June 2013; and *Taranenko*, cited above, § 66).
>
> ...
>
> 94. ... [A]n individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (see *Ziliberberg*, decision cited above). The possibility of persons with violent intentions, not members of the organising association, joining the demonstration cannot as such take away that right (see *Primov and Others*, cited above, § 155). Even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of Article 11 § 1, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision (see *Schwabe and M.G.*, cited above, § 103, and *Taranenko*, cited above, § 66).
>
> ...
>
> 100. ... [T]he Court will establish whether the applicants' right to freedom of assembly has been interfered with. It reiterates that the interference does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities ... both measures taken before or during a gathering and those, such as punitive measures, taken afterwards ... [including] dispersal of the rally or the arrest of participants, and penalties imposed for having taken part in a rally (see *Kasparov and Others*, cited above, § 84, with further references).
>
> ...
>
> 102. Such interference will constitute a breach of Article 11 unless it is 'prescribed by law', pursues one or more legitimate aims under paragraph 2 and is 'necessary in a democratic society' for the achievement of the aim or aims in question (see, among many other authorities, *Vyerentsov v. Ukraine*, no. 20372/11, § 51, 11 April 2013, and *Nemtsov*, cited above, § 72).
>
> ...
>
> 150. An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person's right to freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III; *Oya Ataman*, cited above, § 39; *Barraco*, cited above, § 45; and *Skiba*, decision cited above). While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public demonstrations, since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself (see *Primov and Others*, cited above, § 118). In particular, where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Oya Ataman*, cited above,

§ 42; *Bukta and Others*, cited above, § 37; *Nurettin Aldemir and Others*, cited above, § 46; *Ashughyan*, cited above, § 90; *Éva Molnár*, cited above, § 36; *Barraco*, cited above, § 43; *Berladir and Others*, cited above, § 38; *Fáber*, cited above, § 47; *İzci v. Turkey*, no. 42606/05, § 89, 23 July 2013; and *Kasparov and Others*, cited above, § 91).

...

155. Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic (see *Barraco*, cited above, § 43; *Disk and Kesk v. Turkey*, no. 38676/08, § 29, 27 November 2012; and *İzci*, cited above, § 89). This fact in itself does not justify an interference with the right to freedom of assembly (see *Berladir and Others*, cited above, § 38, and *Gün and Others*, cited above, § 74), as it is important for the public authorities to show a certain degree of tolerance (see *Ashughyan*, cited above, § 90). The appropriate 'degree of tolerance' cannot be defined *in abstracto*: the Court must look at the particular circumstances of the case and particularly at the extent of the 'disruption to ordinary life' (see *Primov and Others*, cited above, § 145). This being so, it is important for associations and others organising demonstrations, as actors in the democratic process, to abide by the rules governing that process by complying with the regulations in force (see *Oya Ataman*, cited above, § 38; *Balçık and Others*, cited above, § 49; *Éva Molnár*, cited above, § 41; *Barraco*, cited above, § 44; and *Skiba*, decision cited above).

...

173. ... [T]he intentional serious disruption, by demonstrators, to ordinary life and to the activities lawfully carried out by others, which disruption was more significant than that caused by the normal exercise of the right of peaceful assembly in a public place, might be considered a "reprehensible act" ... [and] might therefore justify the imposition of penalties, even of a criminal nature.

..."

491. The Court also reiterates that in order to establish whether an applicant may claim the protection of Article 11, it takes into account (i) whether the assembly intended to be peaceful or whether the organisers had violent intentions; (ii) whether the applicant had demonstrated violent intentions when joining the assembly; and (iii) whether the applicant had inflicted bodily harm on anyone (see *Gülcü v. Turkey*, no. 17526/10, § 97, 19 January 2016).

492. If on the basis of the foregoing criteria the Court accepts that the applicant enjoyed the protection of Article 11, it focuses the analysis of the interference on the proportionality of the sanction imposed. In this latter context, the Court recognises that when individuals are involved in acts of violence the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of assembly, and the imposition of a sanction for such reprehensible acts may be considered to be compatible with the guarantees of Article 11 of the Convention (*Gülcü*, cited above, § 116). Even so, the imposition of lengthy prison terms for unarmed confrontation with the police, or throwing stones or other missiles at them without causing grave injuries, were considered in a number of cases disproportionate (see *Gülcü*, cited above, § 115; *Yaroslav Belousov*

v. Russia, nos. 2653/13 and 60980/14, § 180, 4 October 2016; and *Barabanov v. Russia*, nos. 4966/13 and 5550/15, §§ 74-75, 30 January 2018).

493. It must be also reiterated that the application of enforcement measures, such as the use of force to disperse the assembly, the participants' arrests, detention and/or ensuing convictions may have the effect of discouraging them and others from participating in similar assemblies in future, and more generally in open political debate (see *Balçık and Others*, cited above, § 41, and *Navalnyy and Yashin v. Russia*, no. 76204/11, § 74, 4 December 2014).

494. Finally, the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected (see *Kudrevičius and Others*, cited above, § 158, and *Nemtsov v. Russia*, no. 1774/11, § 72, 31 July 2014).

2. Application of the general principles to the present case

495. The Court notes that the complaints under Article 11 of the thirteen applicants concerned relate to the events which took place in Kyiv on 30 November and 11 December 2013, and 23 January and 18 February 2014, and were related to their participation in the Maidan protests. The Court considers it appropriate to examine these complaints together, while taking due account of the relevant factual differences regarding each applicant and event. It also notes that the dispersal of protesters by the Berkut special police force in central Kyiv on 30 November 2013 (see paragraphs 10 and 24 above) was a major event in the timeline of the Maidan protests, a kind of turning point, after which the number of people involved rose considerably and the scale of the protests became larger. Indeed the Court observes that, on the basis of the material before it, there are ample indications that the rapid recourse by the authorities to excessive and at times brutal force against the protesters on 30 November 2013 in particular and instances of unjustified detention (see above the findings in relation to Articles 3 and 5 of the Convention), appeared to have disrupted the initially peaceful conduct of the protest and resulted in, if not contributed to, an escalation of violence.

(a) Whether the applicants enjoyed the protection of Article 11 of the Convention

496. The Court observes that ten of the applicants, Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr F. Lapiy, Mr A. Rudchyk, Ms O. Kovalska, Mr R. Ratushnyy and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 42271/14 and 19954/15), were among the protesters who were dispersed by the police in central Kyiv on 30 November 2013. This was one of the very early stages of the Maidan protests when a

round-the-clock vigil was in place and those present were mostly students (see, *inter alia*, paragraph 9 of the 2015 report of the IAP which is partly summarised and partly reproduced in this judgment at paragraphs 237-249 above).

497. On the basis of the material before the Court, it appears that the protesters intended the round-the-clock vigil on Maidan Nezalezhnosti to be an obstructive but peaceful gathering occupying a space in the capital's central square (a part of its pedestrian zone) and thus drawing the attention of the authorities and the public at large to the reasons for the protest (see paragraphs 9, 24 and 46 above). According to the Court's settled case-law, such obstructive actions in principle enjoy the protection of Articles 10 and 11 (see *Karpyuk and Others v. Ukraine*, nos. 30582/04 and 32152/04, § 207, 6 October 2015, with further references).

498. Furthermore, when examining the related complaints under Article 3 of the same applicants, the Court has noted there was no evidence or information indicating that the police's recourse to physical force against these applicants during the dispersal at issue was made strictly necessary by their conduct (see paragraph 371 above). In this connection, the Court has had regard to the relevant domestic and international material attesting to the fact that most of the protesters, including the ten applicants concerned, had appeared to offer little or no resistance to the police during the dispersal on 30 November 2013 (see paragraphs 368-369 above and references contained therein to, among others, the official indictment issued by the PGO on 26 June 2015 regarding four Berkut commanding officers, suspected of having illegally dispersed the protesters on that date, and the report of Amnesty International of 18 February 2015, which documents are summarised at, respectively, paragraphs 57 and 259 above).

499. Mr S. Dymenko and Mr R. Ratushnyy (applications nos. 33767/14 and 54315/14) took part in the protests in central Kyiv and were there in the early hours of 11 December 2013, when the police attempted to disperse the protesters by force. Even though by that time the protesters had erected barricades, set up tents and platforms and occupied several administrative buildings (see paragraphs 13 and 24-31 above), there is no information indicating that the protesters' original goal or approach – which was obstructive, but peaceful – had changed at that point, that is on 10 or 11 December 2013 (see paragraphs 135-136 above).

500. In the course of the dispersal on 11 December 2013, some of the protesters appeared to offer resistance to the police. However, when examining the related complaints under Article 3 of the same applicants, the Court has noted that the material before it, including the domestic investigation files concerning the events on 11 December 2013, indicated that Mr S. Dymenko and Mr R. Ratushnyy offered no resistance to the police (see paragraphs 135-138, 147 and 421 above).

501. In this connection, the Court reiterates that the mere fact that acts of violence occur in the course of a gathering cannot, of itself, be sufficient for finding that the organisers of the gathering had violent intentions (see *Karpyuk and Others*, cited above, § 202). Moreover, an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of a demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (see *Kudrevičius and Others*, cited above, § 94, with further references).

502. Also, the Court reiterates that the possibility of persons with violent intentions – not members of the relevant organising association – joining a demonstration cannot, of itself, take away the right to freedom of peaceful assembly (see *Primov and Others*, cited above, § 155). The Court has held that demonstrations involving violent clashes between the protesters and the police can fall within the scope of Article 11 of the Convention, the Court's analysis thereafter concentrating on whether interferences with Article 11 rights were justified by the prevention of disorder or crime and/or for the protection of the rights and freedoms of others (see, for instance, *Primov and Others*, cited above, § 156; *Karpyuk and Others*, cited above, § 211; and *Gülcü*, cited above, §§ 93-97).

503. Turning to the cases of Mr D. Poltavets and Mr O. Zadoyanchuk (applications nos. 36299/14 and 36845/14), the Court notes that the protests in which they took part on 23 January and 18 February 2014 respectively involved substantially more violent clashes between the police and the protesters, leading to numerous persons being wounded and several people dying (see, notably, paragraphs 33-39 above). Details of the violence, the seizing of official buildings and the deaths and injuries which occurred are provided in paragraphs 50-86 of the of the 2015 report of the IAP which is partly summarised and partly reproduced in this judgment at paragraphs 237-249 above.

504. While the material before the Court thus contains references to incidents of violence against the police by individual protesters during those later events, the Court reiterates that its task is to examine concretely the cases of the applicants concerned. As indicated in preceding paragraphs, the involvement of violent protesters in a demonstration does not determine whether Article 11 of the Convention applies in the applicants' cases, but can be relevant to the examination of whether interferences with their rights under that provision can be considered justified. At this stage, as regards the applicability of Article 11, it thus notes that the case material concerning specifically Mr D. Poltavets and Mr O. Zadoyanchuk (applications nos. 36299/14 and 36845/14) contains no evidence demonstrating that during their participation in the protests those applicants intended to commit or engaged in acts of violence or offered any resistance to the police

(see paragraphs 153-157 and 167 and also paragraphs 465-468 and 477-478 above).

505. In the light of the foregoing, the Court finds that all the thirteen applicants concerned enjoyed the protection of Article 11 of the Convention during their participation in the protests under consideration.

(b) Interference with the applicants' right to freedom of peaceful assembly and its justification

506. The Court notes that the authorities detained two of the thirteen applicants concerned (Mr D. Poltavets and Mr O. Zadoyanchuk) and also used force against twelve of them in connection with their participation in the protests on 30 November and 11 December 2013, and 23 January and 18 February 2014. Those measures led to the termination of their participation in the protests on those dates (see paragraphs 47-50, 135-139, 153-157 and 167-168 above).

507. There were therefore interferences with all the thirteen applicants' freedom of peaceful assembly on that account (see, *Kudrevičius and Others*, cited above, § 100, with further references; *İzci*, cited above, § 82; and *Nemtsov v. Russia*, no. 1774/11, § 74, 31 July 2014). Such interferences will constitute a breach of Article 11 unless they are "prescribed by law", pursue one or more legitimate aims under paragraph 2, and are "necessary in a democratic society" for the achievement of those aims (see, among other authorities, *Kudrevičius and Others*, cited above, § 102).

(i) "Prescribed by law"

508. The Court notes that in *Shmushkovych* (cited above, § 40) and *Vyerentsov* (cited above, § 55), having analysed the regulatory acts in force at the time of the events giving rise to those two cases, in 2009 and 2010 respectively, it found that Ukraine had lacked clear and foreseeable legislation laying down the rules for holding peaceful demonstrations. In particular, at the material time no law had yet been enacted by the Ukrainian Parliament regulating the procedure for holding peaceful demonstrations, although Articles 39 and 92 of the Constitution clearly required that such a procedure be established by law, that is, by an Act of the Ukrainian Parliament (ibid. and also see paragraphs 195-196 above).

509. In *Chumak v. Ukraine* (no. 44529/09, §§ 41-44, 6 March 2018), the Court noted, *inter alia*, that, where a demonstration had been dispersed on the basis of a domestic court order, which had found that the demonstrators had breached particular requirements of substantive law and had encroached upon important legally protected rights and interests of others, the imposition of restrictions on such a gathering might not necessarily be, as such, unforeseeable. Further, in *Chernega and Others* the Court made the following findings:

> "238. ... [T]he constitutional provision [relating to the exercise of the right to freedom of peaceful assembly] appears to provide for a regulatory scheme under which the procedure of judicial restrictions of assemblies is linked with a procedure for their advance notification ... which allows the authorities to apply to a court with a request to impose certain restrictions on the planned assembly. This follows from a decision of the Constitutional Court, which provides the authoritative interpretation of the relevant constitutional provision ... It is well illustrated by the provision in the Code of Administrative Justice, which requires the court to reject an action for a judicial order restricting an assembly if it has been lodged belatedly, that is on the planned date of the event or thereafter ... This latter provision was subject to the Court's examination in *Chumak,* where the Court, for precisely that reason, expressed a doubt as to whether the judicial procedure in question could properly be used to disband an ongoing assembly (cited above, § 42)."

510. In the present case, the material available to the Court indicates that between November and December 2013 several political parties and politicians submitted written notices to the Kyiv City Council and/or the Kyiv State Administration informing those authorities of their intention to organise rallies in central Kyiv, including the round-the-clock vigil on Maidan Nezalezhnosti on 30 November 2013 and the gatherings on later dates in December 2013 (see, notably, paragraphs 12 and 147 above).

511. That material also indicates that in the early hours of 30 November 2013 there had been no judicial decision restricting the protesters' right of assembly (see paragraph 57 above). It transpires that the dispersal of the protesters by the police on that date was ordered by senior police officers who, in turn, acted on the instructions of other government officials (see, *inter alia*, paragraphs 57 and 83 above). As no copies of the relevant orders or related documents were provided to it and the Government remained silent on that aspect of the case, the Court is unable to assess on which specific legal grounds those orders or the consequent actions of the police were based. At the same time, the Court must have due regard to the relevant Ukrainian constitutional framework and, furthermore, to the fact that under Ukrainian law then in force police officers had power to interfere with public gatherings, including by using proportionate force, where it was necessary to stop the commission of offences, to overcome resistance to their lawful orders, maintain public order, and when there arose a threat to the life or health of citizens, material damage to the state, collective or private property, or a breach of the traffic or sanitary rules (see paragraphs 195 and 208 above). In the circumstances of the present case, notwithstanding the existence of clear problems of Convention-conformity of Ukrainian law regulating the organisation and holding of peaceful demonstrations (see paragraphs 196 and 233 above), the Court does not consider it necessary to take a position on the lawfulness of the interference. Given the exceptional nature of the Maidan protests and the manner in which the authorities intervened, the central question in the instant case concerns the necessity of the interferences under Article 11 of the Convention. In relation to the protests generally, as well as to the protest

which took place on 30 November 2013, the Court will thus proceed on the assumption that there was a basis in domestic law for the police intervention at issue (see, in a similar vein, *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 53, ECHR 2006 II, and *Chumak*, cited above, §§ 43 and 48). The Court emphasises, however, that what is very clear is that in relation to that and all subsequent protests there was no legal basis in domestic law for the authorities to engage the services of titushky in any law-enforcement operations for the purposes of dispersing, apprehending and dealing with protesters, nor did the respondent State seek to rely on one (see paragraph 15 above with further references).

512. As to the protest on 11 December 2013, the Court observes that the formal basis of the attempted dispersal of the protesters on that date was the injunction decision issued by the Pecherskyy District Court on 9 December 2013 restraining any person from obstructing pedestrians' and vehicles' use of the streets in central Kyiv (see paragraph 29 above). The Court is mindful of the fact that the submissions of the applicants concerned - Mr S. Dymenko and Mr R. Ratushnyy (applications nos. 33767/14 and 54315/14) - and the material present in their cases contain indications that the domestic court might not have had jurisdiction to decide on the matter (see paragraph 30 above) and that, more generally, the civil procedure regulations – in particular those pertaining to interim measures – might not have been tailored to address claims which were essentially aimed at interfering with ongoing assemblies (see paragraph 29 above and also *Chumak*, cited above, § 44). Nonetheless, having regard to the considerations set out in the preceding paragraphs regarding the intervention of the police on 30 November 2013, the Court is prepared to proceed on the assumption that there was a basis in domestic law for the interference with the protest on 11 December 2013, in so far as Mr S. Dymenko and Mr R. Ratushnyy are concerned.

513. The same considerations are equally pertinent to the events in central Kyiv on 23 January and 18 February 2014, in so far as they concern specifically Mr D. Poltavets and Mr O. Zadoyanchuk (applications nos. 36299/14 and 36845/14). Even though the material submitted to the Court by the parties contains no documents or information as to the specific legal grounds on the basis of which the police intervened on those dates, the Court is not in a position to question, on the basis of the material available, that the relevant provisions of the Police Act at the material time could also have served as a legal basis for the police to interfere with the ongoing protests, if necessary with recourse to physical force and other coercive measures, in order to respond to acts of violence or to other dangers to the public order, regard being had to the considerable deterioration of the security situation in central Kyiv at that time.

514. In the light of the foregoing considerations and having regard to the particular circumstances of the present case, the Court does not find it

necessary to determine issues relating to the quality of the domestic legal framework in question. It proceeds in the present case on the assumption that the interferences at issue had a basis in domestic law, while reiterating the problems concerning the quality of the applicable domestic legislation which the Court identified in previous Ukrainian cases in relation to Article 11 of the Convention and which were also addressed by the Ukrainian Parliament Commissioner for Human Rights and the United Nations Human Rights Council (see paragraphs 196 and 233 above).

(ii) Legitimate aim

515. It is clear that the size and nature of the protests obstructed in a significant way initially the passage of pedestrians on a part of the main square in Kyiv and any works which the authorities intended to carry out there, and eventually the flow of traffic on several adjacent streets. Since at some point in time the protesters occupied several administrative buildings in that area, the ordinary activities of the relevant authorities were clearly disrupted too. Furthermore, increasingly, the clashes between the police and the protesters became more violent and generally the security situation in central Kyiv deteriorated considerably (see paragraphs 24-39 above).

516. In these circumstances, certain intervention by the authorities might have been required with a view to maintaining an orderly passage of pedestrians and the flow of traffic and, overall, preventing disorder, as well as protecting the rights of others, which could have been and were restricted due to the implications of the large-scale Maidan protests for the ordinary course of life in central Kyiv. Having regard to the material available to it, the cited legitimate aims might have been relevant in the specific circumstances of the thirteen applicants concerned. The Court is thus willing to proceed with its review of the necessity of the impugned measures on the basis of such limited legitimate aims. However, the Court does not consider it necessary to decide this issue (see *Christian Democratic People's Party*, cited above, § 54; *Frumkin v. Russia*, no. 74568/12, § 140, 5 January 2016; and *Navalnyy*, cited above, § 127). As stated previously, it will focus in this case on the necessity of the impugned interferences.

517. As to the applicants' argument that there had been an element of bad faith or deception on the part of the authorities, the Court is mindful of the fact that there are indications that, as early as on 30 November 2013, the authorities pursued a deliberate strategy to put an end to and further hinder what were largely intended to be peaceful protests (see paragraph 520 below, with further references). However, any strategy on the part of the authorities, or parts thereof, and the concrete approach adopted in relation to the protesters will be examined below, in the context of the assessment of the proportionality of the interferences.

(iii) "Necessary in a democratic society"

518. The Court reiterates that irrespective of whether the police intervenes in response to the disruption of ordinary life caused by an assembly, such as the obstruction of traffic, or to curtail violent acts of its participants, the use of force must remain proportionate to the legitimate aims of prevention of disorder and protection of the rights of others (*Oya Ataman*, cited above, §§ 41-43).

519. In the present case, the Court has already found that twelve of the thirteen applicants concerned were ill-treated in connection with their participation in the protests in Kyiv on 30 November and 11 December 2013, and 23 January 2014 (see paragraphs 371-372, 421-422 and 430-433 above with further references). As to Mr O. Zadoyanchuk (application no. 36845/14), when examining his complaints under Article 5 of the Convention, the Court has found that his detention in connection with his participation in the protest was not justified and that it involved an element of arbitrariness (see paragraphs 477-478 above). It follows that the applicant's participation in the protest on 18 February 2014 was terminated in an unjustified manner. While these findings may suffice for the Court to conclude that there was a disproportionate "interference" under Article 11 of the Convention on account of the unjustified use of force against them by the police, which entailed termination of their participation in the protests on those dates (for a recent authority, see *Annenkov and Others*, cited above, §§ 132 and 141), the Court considers that in the present case it is necessary to deal, in addition, with other aspects of those applicants' complaints under Article 11.

520. The Court observes that, in relation to the complaints under Article 3 and/or Article 5 of the thirteen applicants concerned, it noted that there were indications that the actions of the authorities in relation to the protesters generally appeared to have formed part of a deliberate strategy to put an end to and further hinder the Maidan protests in which the applicants took part (see paragraphs 368-369 above in so far as this concerns the ten applicants who took part in the protest on 30 November 2013, paragraph 420 regarding the protests on 11 December 2013 (applications nos. 33767/14 and 54315/14), and paragraphs 432 and 473-474 above, in so far as the protests on 23 January and 18 February 2014 are concerned (applications nos. 36299/14 and 36845/14)). A particularly clear sense of the effects of the force used is provided in the relevant extracts of the IAP report. Viewing the fourteen applications and the complaints raised thereunder as a whole the Court cannot but conclude that the increasingly violent dispersal of the series of protests at issue and the adoption of the repressive measures examined in this and the other Maidan cases clearly had the serious potential, if not as regards some parts of law enforcement, the aim, to deter the protesters and the public at large from taking part in the protests and more generally from participating in open political debate (see,

in this regard, *Musegh Saghatelyan v. Armenia*, no. 23086/08, § 254, 20 September 2018, and *Navalnyy and Gunko v. Russia*, no. 75186/12, § 92, 10 November 2020, not final).

521. In the light of the foregoing considerations, the Court finds that the interferences with the freedom of peaceful assembly of all the thirteen applicants concerned - Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr D. Poltavets, Mr O. Zadoyanchuk, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 36299/14, 36845/14, 42271/14, 54315/14 and 19954/15) - were disproportionate to any legitimate aims which may have been pursued and thus were not "necessary in a democratic society". Accordingly, there has been a violation of Article 11 of the Convention on that account.

VI. THE APPLICANTS' OTHER COMPLAINTS

A. Complaints not requiring a separate examination

522. A number of applicants also complained of a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for their complaints under Article 3 and/or Article 11 of ill-treatment and arbitrary dispersal by the police on 30 November 2013 (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 42180/14, 42271/14, 54315/14 and 19954/15).

523. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 3 and Article 11 of the Convention (see paragraphs 342-358, 372, 391, 396, 417, 422 and 521 above), the Court considers that it has examined the main legal questions raised in the present case, and that there is no need to give a separate ruling on the admissibility and merits of the other complaints mentioned in the preceding paragraph (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

B. Other inadmissible complaints

524. Mr V. Zagorovka (application no. 42180/14) complained under Article 5 of the Convention that he had not been brought promptly before a judge and that his appeal against the court's decision justifying his continued detention had not been examined.

525. In his submissions of January 2017, the same applicant raised new complaints under Article 3 of the Convention. In particular, he complained: (i) that he had been kept in a cage during the court hearing between 3 and 4 December 2013; (ii) that he had been handcuffed while being taken to the

ambulance and hospital and handcuffed to his bed while he had been at Oleksandrivska Hospital, without specifying the relevant dates; and (iii) that the police and prosecutors had exerted pressure on him in order to make him sign a confession stating that he had violated public order, on the basis of which he had been sentenced to a fine.

526. Having regard to all the material in its possession, and in so far as these complaints are within its jurisdiction having been raised only in January 2017, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto. It follows that these complaints must be rejected pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

VII. CONCLUDING REMARKS

527. The Court observes, in conclusion, that it has found multiple violations of Articles 3, 5 § 1 and 11 of the Convention as a result of the manner in which the law-enforcement authorities engaged in the public order operations undertaken to deal with the Maidan protests in 2013 and 2014, the excessive force and, in certain cases, deliberate ill-treatment used in relation to some protesters, amounting in relation to two applicants to torture, and the absence to date of an independent and effective mechanism within Ukraine for the investigation of crimes committed by law-enforcement officers and other non-State agents who were allowed to act with the acquiescence if not the approval of the latter. It refers also to the conclusions reached in the four other judgments delivered by the Court on the same day in relation to the remaining Maidan applications, which examine complaints concerning, in the main, these articles of the Convention and in one case also in relation to Article 2 (see *Lutsenko and Verbytskyy*, cited above, §§ 90-93, 115 and 121; *Kadura and Smaliy*, cited above, § 153; *Dubovtsev and Others*, cited above, §§ 81 and 83; and *Vorontsov and Others*, cited above, §§ 48 and 51). These judgments point to a deliberate strategy on the part of the authorities, or parts thereof, to hinder and put an end to a protest, the conduct of which was initially peaceful, with rapid recourse to excessive force which resulted in, if not contributed to, an escalation of violence.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

528. 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. Applications, in which applicants submitted no claim for just satisfaction

529. Mr D. Poltavets and Mr O. Zadoyanchuk (applications nos. 36299/14 and 36845/14) did not submit claims for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

B. Applications, in which applicants submitted claims for just satisfaction

1. Damage

530. Some of the applicants claimed various amounts as regards non-pecuniary damage in connection with the alleged violations of the Convention in their cases. In particular, Mr V. Zagorovka (application no. 42180/14) claimed 200,000 euros (EUR); Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr G. Cherevko and Mr S. Dymenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 31174/14 and 33767/14) claimed EUR 100,000 each; Mr A. Sokolenko (application no. 19954/15) claimed EUR 40,000; Mr F. Lapiy (application no. 42271/14) claimed EUR 15,000; Mr R. Ratushnyy claimed EUR 20,000 and EUR 25,000 as regards applications nos. 54315/14 and 19954/15 respectively; and Mr A. Rudchyk and Ms O. Kovalska (application no. 19954/15) claimed EUR 20,000 each.

531. The Government contested those claims as excessive, with the exception of the claims raised in applications nos. 33767/14 and 42180/14 (Mr S. Dymenko and Mr V. Zagorovka). The Government further argued that compensation for non-pecuniary damage had been paid to Mr G. Cherevko (application no. 31174/14) and that, in accordance with the decision of the Cabinet of Ministers of 19 October 2016, UAH 14,500 – the equivalent of about EUR 500 at the material time – had been allocated to each of the 505 protesters who had sustained minor bodily injuries (see paragraph 218 above), including Mr F. Lapiy (application no. 42271/14), Mr A. Rudchyk (application no. 19954/15) and Mr R. Ratushnyy (applications nos. 54315/14 and 19954/15).

532. Having regard to its findings concerning the admissibility and/or merits of those complaints (see, notably, paragraphs 307, 397-401, 451 and 488 above), the Court considers that the Government did not demonstrate that the applicants were able in practice to obtain reparation for the consequences of the violation of their Convention rights found in this case.

533. Judging on an equitable basis and having regard to the fact that it has declared some of the complaints of the applicants concerned inadmissible, the Court awards them the sums set out in the operative part below.

2. Costs and expenses

534. Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr V. Zagorovka, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 42180/14, 42271/14, 54315/14 and 19954/15) also claimed various sums for the costs and expenses incurred before the domestic courts and/or for those incurred before the Court, which included postal expenses and legal costs.

535. In support of their claims, Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr V. Zagorovka and Mr F. Lapiy (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 42180/14 and 42271/14) submitted copies of contracts with lawyers and related bills and/or copies of postal receipts.

536. In particular, according to those documents, Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko and Mr V. Zagorovka (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14 and 42180/14) had to pay between EUR 7,500 and EUR 10,350 to their lawyer, Mr M. Tarakhkalo, for the preparation of their submissions to the Court, sums which were based on an hourly rate of EUR 150. The applicants concerned requested that those sums be paid directly into the lawyer's bank account.

537. Mr P. Shmorgunov (application no. 15367/14) also had to pay 1,650 American dollars (USD – the equivalent of about EUR 1,500 at the material time) to another lawyer, Mr P. Dykan, for his legal services in the domestic proceedings and the proceedings before the Court, a sum based on an hourly rate of USD 30, the equivalent of about EUR 27.

538. Mr F. Lapiy (application no. 42271/14) had to pay the same amount to Mr P. Dykan for his legal services in the domestic proceedings and the proceedings before the Court.

539. Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko (applications nos. 54315/14 and 19954/15), who were represented by Ms Y. Zakrevska, claimed EUR 1,000 for legal costs in the proceedings before the Court, but provided no documents in that regard. They requested that the claimed amounts be paid directly into their lawyer's bank account.

540. With the exception of applications nos. 33767/14 and 42180/14 (Mr S. Dymenko and Mr V. Zagorovka), the Government contested the applicants' claims for costs and expenses, stating that some of them had not been duly substantiated, and those which concerned costs and expenses incurred in the domestic proceedings could not be awarded in the proceedings before the Court or were excessive.

541. The Court reiterates that, according to its established case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 192, ECHR 2016).

542. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award:

(i) Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko and Mr V. Zagorovka (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14 and 42180/14) the sums set out in the operative part below for the proceedings before the Court, sums which are to be paid directly into the bank account indicated by Mr M. Tarakhkalo;

(ii) Mr P. Shmorgunov (application no. 15367/14) additionally EUR 1,500 for legal costs in the domestic proceedings and the proceedings before the Court, a sum which is to be paid directly into the bank account indicated by Mr P. Dykan; and

(iii) Mr F. Lapiy (application no. 42271/14) EUR 1,500 for legal costs in the domestic proceedings and the proceedings before the Court, a sum which is to be paid directly into the bank account indicated by Mr P. Dykan.

The Court makes no award as regards the claims for the costs and expenses of Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko (applications nos. 54315/14 and 19954/15).

3. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Joins to the merits* the Government's objections as to the victim status of Mr G. Cherevko and Mr V. Zagorovka regarding their complaints under Article 3 of the Convention (applications nos. 31174/14 and 42180/14) and dismisses those objections;

3. *Declares* the following complaints admissible:
   (a) the complaints under Article 3 of the Convention about the ill-treatment of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr G. Cherevko, Mr S. Dymenko, Mr D. Poltavets, Mr V. Zagorovka, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko and the lack of an effective investigation in that regard (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 31174/14, 33767/14, 36299/14, 42180/14, 42271/14, 54315/14 and 19954/15);
   (b) Mr V. Zagorovka's complaint under Article 3 of the Convention of inadequate medical assistance in detention (application no. 42180/14);
   (c) the complaints under Article 5 § 1 of the Convention of the unlawfulness and arbitrariness of the detention of Mr G. Cherevko, Mr D. Poltavets, Mr O. Zadoyanchuk and Mr V. Zagorovka during the periods set out in paragraph 463 above (applications nos. 31174/14, 36299/14, 36845/14 and 42180/14);
   (d) Mr G. Cherevko's and Mr V. Zagorovka's complaints under Article 5 § 3 of the Convention that they had no procedural protection against their arbitrary and unlawful deprivation of liberty (applications nos. 31174/14 and 42180/14);
   (e) Mr V. Zagorovka's complaint under Article 5 § 5 of the Convention that he had no effective and enforceable right to compensation for his detention in violation of Article 5 §§ 1 and 3 of the Convention (application no. 42180/14);
   (f) the complaints under Article 11 of the Convention of the arbitrary and unlawful interferences with the right of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr D. Poltavets, Mr O. Zadoyanchuk, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko to freedom of peaceful assembly (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 36299/14, 36845/14, 42271/14, 54315/14 and 19954/15);

4. *Holds* that it is not necessary to examine the admissibility and merits of the complaints of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr V. Zagorovka, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko under Article 13 about the lack of an effective remedy for their complaints under Article 3 and/or Article 11 in applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 42180/14, 42271/14, 54315/14 and 19954/15;

5. *Declares* the remaining complaints inadmissible;

6. *Holds* that there has been a violation of Article 3 of the Convention, in that Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr D. Poltavets, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 36299/14, 42271/14, 54315/14 and 19954/15) were ill-treated, and the authorities failed to conduct an effective investigation into those matters;

7. *Holds* that there has been a violation of Article 3 of the Convention, in that Mr G. Cherevko and Mr V. Zagorovka (applications nos. 31174/14 and 42180/14) were tortured, and the authorities failed to conduct an effective investigation into those matters;

8. *Holds* that there has been a violation of Article 3 of the Convention, in that Mr V. Zagorovka was not provided with adequate medical assistance while in detention (application no. 42180/14);

9. *Holds* that Mr G. Cherevko, Mr D. Poltavets, Mr O. Zadoyanchuk and Mr V. Zagorovka were detained during the periods set out in paragraph 463 above in violation of Article 5 § 1 of the Convention (applications nos. 31174/14, 36299/14, 36845/14 and 42180/14);

10. *Holds* that there is no need to examine the complaints under Article 5 § 3 of the Convention of Mr G. Cherevko and Mr V. Zagorovka (applications nos. 31174/14 and 42180/14);

11. *Holds* that there is no need to examine the complaint under Article 5 § 5 of the Convention of Mr V. Zagorovka (application no. 42180/14);

12. *Holds* that there has been a violation of Article 11 of the Convention in relation to the right of Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr D. Poltavets, Mr O. Zadoyanchuk, Mr F. Lapiy, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko to freedom of peaceful assembly (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 36299/14, 36845/14, 42271/14, 54315/14 and 19954/15);

13. *Holds*

(a) that the respondent State is to pay the following applicants, within three months from the date on which the judgment becomes final in

accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, each to Mr G. Cherevko and Mr V. Zagorovka (applications nos. 31174/14 and 42180/14) in respect of non-pecuniary damage;

(ii) EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable, each to Mr P. Shmorgunov, Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets, Mr O. Bala, Mr S. Dymenko, Mr R. Ratushnyy, Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko (applications nos. 15367/14, 16280/14, 18118/14, 20546/14, 24405/14, 33767/14, 54315/14 and 19954/15) in respect of non-pecuniary damage;

(iii) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, to Mr F. Lapiy (application no. 42271/14) in respect of non-pecuniary damage;

(iv) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant concerned, to Mr P. Shmorgunov (application no. 15367/14) in respect of costs and expenses incurred in the proceedings before the Court, the latter amount to be paid directly into the bank account indicated by Mr M. Tarakhkalo, and EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant concerned, in respect of costs and expenses incurred in the domestic proceedings and before the Court, the latter amount to be paid directly into the bank account indicated by Mr P. Dykan;

(v) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicants concerned, each to Mr B. Yegiazaryan, Mr Y. Lepyavko, Mr O. Grabets and Mr O. Bala (applications nos. 16280/14, 18118/14, 20546/14 and 24405/14) in respect of costs and expenses incurred in the proceedings before the Court, the latter amount to be paid directly into the bank account indicated by Mr M. Tarakhkalo;

(vi) EUR 8,100 (eight thousand one hundred euros), plus any tax that may be chargeable to the applicant concerned, to Mr S. Dymenko (application no. 33767/14) in respect of costs and expenses incurred in the proceedings before the Court, the latter amount to be paid directly into the bank account indicated by Mr M. Tarakhkalo;

(vii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant concerned, to Mr V. Zagorovka (application no. 42180/14) in respect of costs and expenses incurred in the proceedings before the Court, the latter amount to

be paid directly into the bank account indicated by Mr M. Tarakhkalo; and

(viii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant concerned, to Mr F. Lapiy (application no. 42271/14) in respect of costs and expenses, the latter amount to be paid directly into the bank account indicated by Mr P. Dykan;

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

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

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

Victor Soloveytchik
Registrar

Síofra O'Leary
President

APPENDIX

No.	Application no. and date application was lodged	Applicant's name year of birth place of residence	Representatives (in alphabetical order)	Principal event	Principle outcome / Convention violations	Amount(s) awarded under Article 41, if applicable
1.	15367/14 11/02/2014	**Pavlo Sergiyovych SHMORGUNOV** 1996 Kyiv	Arkadiy Petrovych BUSHCHENKO, Ievgeniia Olegivna KAPALKINA, Vitaliia Pavlivna LEBID, Anastasiia Romanivna MARTYNOVSKA, Olena Oleksiivna PROTSENKO, Mykhaylo Oleksandrovych TARAKHKALO	Dispersal of protesters in Kyiv on 30/11/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	(i) EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage; and (ii) EUR 4,000 (four thousand euros) in respect of costs and expenses in the proceedings before the Court, to be paid directly into the bank account indicated by Mr M. Tarakhkalo; and (iii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses in the domestic proceedings and before the Court, to be paid directly into the bank account indicated by Mr P. Dykan.
2.	16280/14 14/02/2014	**Borys Zavenovych YEGIAZARYAN** 1956 Kyiv	Arkadiy Petrovych BUSHCHENKO, Ievgeniia Olegivna KAPALKINA, Vitaliia Pavlivna LEBID, Anastasiia Romanivna MARTYNOVSKA, Olena Oleksiivna PROTSENKO, Mykhaylo Oleksandrovych TARAKHKALO	Dispersal of protesters in Kyiv on 30/11/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	(i) EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage; and (ii) EUR 4,000 (four thousand euros) in respect of costs and expenses in the proceedings before the Court, to be paid directly into the bank account indicated by Mr M. Tarakhkalo.

No.	Application no. and date application was lodged	Applicant's name year of birth place of residence	Representatives (in alphabetical order)	Principal event	Principle outcome / Convention violations	Amount(s) awarded under Article 41, if applicable
3.	18118/14 05/02/2014	**Yaroslav Sergiyovych LEPYAVKO** 1990 Chernigiv	Arkadiy Petrovych BUSHCHENKO, Ievgeniia Olegivna KAPALKINA, Vitaliia Pavlivna LEBID, Anastasiia Romanivna MARTYNOVSKA, Olena Oleksiivna PROTSENKO, Mykhaylo Oleksandrovych TARAKHKALO	Dispersal of protesters in Kyiv on 30/11/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	(i) EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage; and (ii) EUR 4,000 (four thousand euros) in respect of costs and expenses in the proceedings before the Court, to be paid directly into the bank account indicated by Mr M. Tarakhkalo.
4.	20546/14 26/02/2014	**Oleg Ivanovych GRABETS** 1978 Lviv	Arkadiy Petrovych BUSHCHENKO, Ievgeniia Olegivna KAPALKINA, Vitaliia Pavlivna LEBID, Anastasiia Romanivna MARTYNOVSKA, Olena Oleksiivna PROTSENKO, Mykhaylo Oleksandrovych TARAKHKALO	Dispersal of protesters in Kyiv on 30/11/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	(i) EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage; and (ii) EUR 4,000 (four thousand euros) in respect of costs and expenses in the proceedings before the Court, to be paid directly into the bank account indicated by Mr M. Tarakhkalo.
5.	24405/14 20/03/2014	**Oleg Igorovych BALA** 1982 Lviv Rudne	Arkadiy Petrovych BUSHCHENKO, Ievgeniia Olegivna KAPALKINA, Vitaliia Pavlivna LEBID, Anastasiia Romanivna MARTYNOVSKA, Olena Oleksiivna PROTSENKO, Mykhaylo Oleksandrovych TARAKHKALO	Dispersal of protesters in Kyiv on 30/11/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	(i) EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage; and (ii) EUR 4,000 (four thousand euros) in respect of costs and expenses in the proceedings before the Court, to be paid directly into the bank account indicated by Mr M. Tarakhkalo.

No.	Application no. and date application was lodged	Applicant's name year of birth place of residence	Representatives (in alphabetical order)	Principal event	Principle outcome / Convention violations	Amount(s) awarded under Article 41, if applicable
6.	31174/14 01/04/2014	**Gennadiy Anatoliyovych CHEREVKO** 1972 Lubny	Denys Petrovych STEPANOV	Dispersal of protesters in Kyiv on 01/12/2013	Violations of Article 3 (torture and ineffective investigation) Article 5 § 1 (unjustified detention)	EUR 30,000 (thirty thousand euros) in respect of non-pecuniary damage.
7.	33767/14 18/04/2014	**Sergiy Sergiyovych DYMENKO** 1981 Kharkiv	Arkadiy Petrovych BUSHCHENKO, Anastasiia Romanivna MARTYNOVSKA, Anastasiia Igorivna SALIUK, Mykhaylo Oleksandrovych TARAKHKALO	Dispersal of protesters in Kyiv on 11/12/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	(i) EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage; and (ii) EUR 8,100 (eight thousand one hundred euros) in respect of costs and expenses in the proceedings before the Court, to be paid directly into the bank account indicated by Mr M. Tarakhkalo.
8.	36299/14 28/04/2014	**Dmytro Mykhaylovych POLTAVETS** 1972 Dnipro	Oleksandr Anatoliyovych BAYDYK	Arrest in connection with protests in Kyiv on 23/01/2014	Violations of Article 3 (ill-treatment and ineffective investigation) Article 5 § 1 (unjustified detention) Article 11 (disproportionate interference with the right to peaceful assembly)	N/A
9.	36845/14 28/04/2014	**Oleg Leonidovych ZADOYANCHUK** 1966 Ivano-Frankivsk	Oleksandr Anatoliyovych BAYDYK	Dispersal of protesters in Kyiv on 18/02/2014	Violations of Article 5 § 1 (unjustified detention) Article 11 (disproportionate interference with the right to peaceful assembly)	N/A

No.	Application no. and date application was lodged	Applicant's name year of birth place of residence	Representatives (in alphabetical order)	Principal event	Principle outcome / Convention violations	Amount(s) awarded under Article 41, if applicable
10.	42180/14 30/05/2014	**Vladyslav Mykolayovych ZAGOROVKA** 1975 Brovary	Arkadiy Petrovych BUSHCHENKO, Ievgeniia Olegivna KAPALKINA, Vitaliia Pavlivna LEBID, Anastasiia Romanivna MARTYNOVSKA, Olena Oleksiivna PROTSENKO, Anastasiia Igorivna SALIUK, Mykhaylo Oleksandrovych TARAKHKALO	Dispersal of protesters in Kyiv on 01/12/2013	Violations of Article 3 (torture and ineffective investigation) Article 3 (inadequate medical assistance in detention) Article 5 § 1 (unjustified detention)	(i) EUR 30,000 (thirty thousand euros) in respect of non-pecuniary damage; and (ii) EUR 10,000 (ten thousand euros) in respect of costs and expenses in the proceedings before the Court, to be paid directly into the bank account indicated by Mr M. Tarakhkalo.
11.	42271/14 30/05/2014	**Fedir Ivanovych LAPIY** 1973 Kyiv	Pavlo Olegovych DYKAN	Dispersal of protesters in Kyiv on 30/11/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	(i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage; and (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, to be paid directly into the bank account indicated by Mr P. Dykan.
12.	54315/14 10/07/2014	**Roman Tarasovych RATUSHNYY** 1997 Kyiv	Yevgeniya Oleksandrivna ZAKREVSKA	Dispersal of protesters in Kyiv on 11/12/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage

No.	Application no. and date application was lodged	Applicant's name year of birth place of residence	Representatives (in alphabetical order)	Principal event	Principle outcome / Convention violations	Amount(s) awarded under Article 41, if applicable
13.	19954/15 16/04/2015	**Andriy Volodymyrovych RUDCHYK** 1986 Gorbovychi **Oleksandra Yevgenivna KOVALSKA** 1964 Zolochiv **Roman Tarasovych RATUSHNYY** 1997 Kyiv **Andriy Olegovych SOKOLENKO** 1982 Kyiv	Yevgeniya Oleksandrivna ZAKREVSKA	Dispersal of protesters in Kyiv on 30/11/2013	Violations of Article 3 (ill-treatment and ineffective investigation) Article 11 (disproportionate interference with the right to peaceful assembly)	EUR 16,000 (sixteen thousand euros) to Mr A. Rudchyk, Ms O. Kovalska and Mr A. Sokolenko, each, in respect of non-pecuniary damage
14.	9078/14 28/01/2014	**Igor Pavlovych SIRENKO** 1956 Kyiv	Andriy Vasylyovych STELMASHCHUK	Dispersal of protesters in Kyiv on 30/11/2013	Inadmissible	N/A