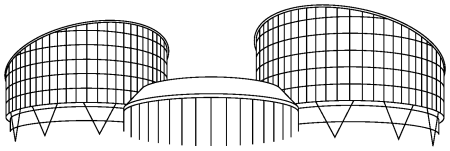

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NINA KUTSENKO v. UKRAINE

(Application no. 25114/11)

JUDGMENT

STRASBOURG

18 July 2017

FINAL

18/10/2017

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

In the case of Nina Kutsenko v. Ukraine,

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

Vincent A. De Gaetano, *President,*
Ganna Yudkivska,
Faris Vehabović,
Egidijus Kūris,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 27 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 25114/11) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms Nina Ivanivna Kutsenko ("the applicant"), on 17 April 2011.

2. The applicant, who had been granted legal aid, was represented by Mr M. Tarakhkalo and Ms O. Protsenko, lawyers practising in Kyiv. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr Ivan Lishchyna.

3. The applicant alleged that the domestic authorities had been responsible for and had failed to effectively investigate the death of her son.

4. On 26 June 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Vyshneve, the Kyiv region.

A. Background

6. The applicant's son (born in 1972), V.K., had a long history of chronic alcoholism and opium addiction. He also suffered from a number of chronic diseases (see paragraph 51 below).

7. On 13 August 2001 an officer of the Fastiv railway station police, K.M., apprehended him on suspicion of a drugs-related offence.

8. In February 2002 V.K. complained to the prosecution authorities that for more than a year he had been suffering from psychological pressure and physical ill-treatment by the Fastiv railway station police officers. It is not clear whether there was any follow-up to that complaint. The fact that V.K. had raised it was established by the domestic courts during the subsequent criminal proceedings against K.M. The trial court dealing with that case stated in its judgment that it had inspected the documents regarding the above-mentioned events on 27 February 2007 (see paragraph 78 below).

9. From 17 June to 1 July 2003 the applicant's son was treated for opium addiction in the Kyiv regional hospital. There is no information in the case file whether that treatment was successful and in what condition V.K. was discharged from the hospital.

B. V.K.'s disappearance and related events in August 2003

10. On 13 August 2003 V.K. left home and never returned.

11. On 18 August 2003 the applicant reported his disappearance to the Vyshneve town police.

12. On the same date an unidentified unconscious man was found in Vasylkiv, the Kyiv region. He was taken by ambulance to the local hospital with a preliminary diagnosis of "poisoning by unknown substance", which was not, however, confirmed by laboratory tests.

13. On 19 August 2003 the man regained consciousness and identified himself as V.K. As subsequently stated by many witnesses, he had no visible injuries at that time. The only available information about V.K.'s treatment is that his condition improved considerably.

14. On 21 August 2003 an official of the Vasylkiv town police informed his counterparts in Vyshneve that the applicant's son had been found and that he was in hospital. There was no follow-up to the message and it was not passed on to the applicant.

15. On 22 August 2003 V.K. left hospital without authorisation.

16. Shortly after midnight on 25 August 2003 he was found injured and unconscious at Fastiv railway station (further details are provided in paragraph 20 below).

17. After V.K.'s subsequent death (see paragraph 36 below), the domestic authorities tried to establish what had happened to him between

the two above-mentioned events. It took them five years to establish some of the facts (see paragraph 74 below).

18. In that regard, several people who had been detained in the police unit at Fastiv railway station on the evening of 22 August 2003 stated that they had witnessed the following events. At about 8 p.m. two police officers had brought in an apparently drunk man (subsequently recognised as V.K.) and placed him in a cell. As V.K. had protested loudly against his detention, one of the officers, who already was at the police station when V.K. had arrived (subsequently recognised as K.M. – see paragraphs 7 and 8 above), had entered his cell and hit him in the face with a rubber truncheon. V.K. had fallen down and his nose had started bleeding. K.M. had then kicked him twice, on the head and torso. The two officers who had apprehended V.K. joined K.M. From that moment the other inmates chose not to watch the beating but heard it going on. At about 6 a.m. on 23 August 2003, after the other detainees had been taken out for various procedural acts, V.K. had remained in the police unit, lying motionless on the floor. By noon that day he was no longer seen there.

19. The time and circumstances of V.K.'s departure from the police unit and his arrival at the railway station have never been established. None of the police unit's documents contained any information about his detention. The two officers who apprehended him and subsequently participated in his ill-treatment have never been identified.

20. About thirty minutes after midnight on 25 August 2003, supposedly after a telephone call from a passer-by whose identity remained unknown, K.M. called an ambulance for an unidentified, unconscious man (later identified as V.K.) found at the railway station. The incident was not mentioned in the police unit's log. When the ambulance arrived, K.M., who was waiting for it, made no mention of knowing V.K. or of having any information about him.

21. The applicant's son was taken to the State-run Fastiv Central Town Hospital ("the Fastiv Hospital"; see paragraphs 25-36 below).

22. The case file contains fragmentary and contradictory information as to whether the police showed any interest in V.K. thereafter. As stated in a letter from the chief doctor to the applicant of 25 January 2005, the nurse on duty had immediately informed the Fastiv town police by telephone about the arrival of a man with injuries. Subsequently, on 13 August 2005 there was a confrontation between that nurse and the police officer who had been on duty that day, with the police officer denying any such telephone call. It is not clear in what context the above confrontation was conducted. Furthermore, two nurses stated during questioning in February 2010 (also in an unclear context) that at about 7 a.m. on 25 August 2003 two police officers had arrived at the hospital to see "the newly arrived patient with injuries". Given the considerable lapse of time, the nurses were unable to recognise the officers or give any further details. However, none of the four

patients with whom V.K. had shared his ward remembered seeing the police.

23. On 28 August 2003 the applicant, who remained unaware of the whereabouts of her son, once again asked the police to look for him.

24. On the same day the police officer K.O., who was in charge of the search at Vyshneve police, issued a report on questioning Vasylkiv Hospital staff, which said V.K. had been discharged on 22 August 2003 in good health. As subsequently established (see paragraph 61 below), K.O. did not in fact talk to the hospital's staff and forged the report. Relying on that document, he issued a decision refusing to open a criminal case concerning V.K.'s disappearance, which was approved by his superior, A.V. (see paragraph 62 below).

C. V.K.'s treatment and death in Fastiv Hospital

25. At about 2.35 a.m. on 25 August 2003 the applicant's son was taken by ambulance to Fastiv Hospital, where he was registered as an unidentified person. He was dirty and his wounds were covered with scabs.

26. He was examined by the admissions doctor, a traumatology doctor and the anaesthesiologist on duty. They diagnosed him as having a closed craniocerebral injury and cerebral contusion and contused wounds to the head. As subsequently stated by numerous doctors in the context of the criminal proceedings against their colleague P.V. (see paragraphs 63-73 below), an X-ray examination of V.K.'s skull was carried out and did not reveal any fractures. However, there were no X-rays in his medical file and none of the hospital's staff could explain their disappearance.

27. At about 9 a.m. on 25 August 2003 V.K. recovered consciousness, but hardly responded to any attempts of contact. He did not remember who he was. For most of the time his mental state was blurred and he mumbled incomprehensibly.

28. On the same day he was examined by a neuropathologist, who carried out a lumber puncture. It indicated elevated intracranial pressure. The doctor prescribed some drugs for V.K. via intravenous drip, but it appears that he received only glucose, which was administered on 29 August 2003 (see paragraph 34 below).

29. It is not clear what medicine was administered to V.K. during his stay in Fastiv Hospital. It appears that he was prescribed anti-edema drugs and two different types of antibiotic. As stated by numerous patients, including those sharing the ward with V.K., all medications were at their own expense. Furthermore, none of the nurses questioned in the course of the criminal proceedings against P. (see paragraphs 63-73 below) was able to say what medication the hospital had had at its disposal to administer to patients free of charge.

30. On 26 August 2003 the traumatology doctor P.V. was appointed to oversee V.K.'s treatment and examined him. On that day and the next the applicant's son was also examined by the head of the traumatology department and a neuropathologist.

31. On 28 August 2003, following a serious deterioration in V.K.'s condition, a panel of six of the hospital's doctors examined him and it was decided to consult a neurosurgeon.

32. A neurosurgeon from Kyiv Regional Clinical Hospital examined V.K. that evening and stated that he needed a computerised brain tomography scan for a proper diagnosis. As there was no such machine at Fastiv Hospital he needed to be transferred to the regional hospital.

33. However, for unknown reasons that recommendation was not followed. P.V. stated in the course of his trial (see paragraphs 63-73 below) that, firstly, he had considered V.K. to be too ill to be moved and, secondly, that it had been impossible to overcome all the administrative formalities needed to obtain the required vehicle, for which he blamed his superiors.

34. On 29 August 2003 V.K. was given an intravenous infusion of glucose and his condition improved slightly. That was the only intravenous infusion carried out.

35. On 2 September 2003 V.K. slipped into a coma. Although the change in his condition was brought to their attention, the medical staff did not react. V.K. was not examined by his doctor or any other specialist. He was kept in the same ward in the traumatology department and no resuscitation measures were undertaken.

36. He died at 6.20 p.m. on 3 September 2003.

D. Investigation into the death of the applicant's son and related events

37. On 4 September 2003 a forensic medical expert, G.S., conducted an autopsy of V.K. (documented as an unidentified person) and issued a preliminary death certificate. He stated that V.K. had died of toxic hypoxic encephalopathy (a brain dysfunction caused by oxygen deprivation resulting from toxic exposure) complicated by swelling of the brain on a background of proliferative leptomeningitis (inflammation of the tissues surrounding the brain), pericarditis (inflammation of the sac surrounding the heart), and chronic hepatitis. The expert also reported some minor injuries but stated that they had had nothing to do with his death. He did not mention the numerous tattoos on V.K.'s body (see also paragraph 48 below).

38. On 5 September 2003 the chief doctor at Fastiv Hospital wrote a letter to the Fastiv town police informing them that an unidentified man with head injuries had been brought to the hospital on 25 August 2003 and that he had died on 3 September 2003. The hospital's administration therefore requested that the police identify that person.

39. On 9 September 2003 the applicant found out about her son's death from unspecified sources and immediately went to the Fastiv police. However, V.K. had already been buried in Fastiv as an unidentified person earlier that day. The applicant identified him from photographs of his body. According to her, "he was all dirty, shaggy, wizened, and his hair was covered with dried blood".

40. On 12 September 2003, at the applicant's wish, the body was reburied in Vyshneve. She had the coffin opened so she could see her son. According to her, his body bore signs of torture. She submitted, in particular, that there were numerous injuries, including handcuff marks on his wrists and traces of electrical burns between the fingers. The applicant also alleged that one of her son's tattoos appeared to have been "burnt off". It appears that she complained to the prosecution authorities about the above matters.

41. On 10 October 2003 G.S. issued a post-mortem examination report reiterating his earlier findings (see paragraph 37 above).

42. On the same date the Prosecutor General's Office ("the PGO") opened a criminal case in respect of the suspected murder of V.K., however, no suspects were identified. That case was subsequently joined to and eventually severed from numerous other related criminal proceedings (see the sections below).

43. On 29 October 2003 G.S. issued a forensic examination report with similar conclusions as before. He also stated that V.K.'s medical condition had been caused by lengthy alcohol and drug intoxication. As regards his injuries, they were insignificant and might have resulted from his falling on a hard surface.

44. On 30 October 2003 the applicant took her son's clothes and shoes from Fastiv Hospital and handed them over to the prosecution (the exact name of the authority is not legible in the copy of the document concerned). The clothes were covered with stains which looked like blood and the shoes had no laces. Given that removing the shoelaces of detainees was a well-known police practice, the applicant suspected that her son had been detained and asked the authorities to investigate that possibility.

45. Forensic immunological examinations of the clothes and shoes, which were carried out on 5 December 2003 and 1 July 2005, established, respectively, that the stains were blood and that it could have been V.K.'s.

46. The investigation was entrusted to various prosecution and law-enforcement authorities at different times: the town prosecutor's offices in Fastiv, Vasylkiv and Bila Tserkva, the Kyiv Regional Prosecutor's Office and the PGO. It was discontinued and resumed on many occasions. Overall, from 2003 to 2016 the investigator in charge of the case was changed at least twenty times.

47. On 15 October 2004 V.K.'s body was exhumed on the PGO's order.

48. On 15 November 2004 a forensic medical expert (S.A.) completed a report after examining the body. He documented the following injuries: a fracture of the nose, three wounds on the right side of the head, an unspecified number of haematomas in the soft tissues under the scalp and on the face, and three haematomas under the pericranium. All the injuries had been inflicted by blunt objects, possibly by hands and/or feet, without further specification being possible. The report also noted large tattoos on the arms and shoulders.

49. According to the applicant, the forensic examination also found that the left kidney, the suprarenal glands and the pancreatic gland were missing from her son's body. The expert report stated in that regard:

> "In the place where the left kidney should be is a greyish-brown mass resembling a kidney in texture. [...] It has not been possible to identify secretions from the suprarenal glands or the pancreatic gland."

50. The mass resembling a kidney was taken for a forensic histological analysis, which did not discover anything of note. S.A. was asked during G.S.'s subsequent trial whether any organs were missing from the body and he replied in the negative.

51. Between 2004 and 2009 numerous forensic medical examinations were carried out on the basis of the material in the case file (at least six). They found that although, as established by the forensic histological examinations, V.K. had been suffering from various diseases (namely chronic leptomeningitis, chronic encephalopathy, granular myocardial dystrophy, interstitial hepatitis with the first signs of cirrhosis, granular kidney degeneration, diffuse proliferative nephritis and chronic bronchitis), none of them, either taken separately or together, could have caused his death. It was eventually established that the direct cause of death had been swelling of the brain and meninx, which had blocked the circulation of blood in the brain. Only a computerised brain tomography could have diagnosed that condition while V.K. was still alive, but that had not been done. The experts held that the fatal brain injuries could have resulted from him being beaten. It was stated in that connection that he had sustained at least eight blows to the head from blunt objects (possibly a rubber truncheon, fists and/or feet). At the same time, it was impossible to establish precisely the nature and scope of all the injuries to V.K.'s head given the omissions and deficiencies of the post-mortem examination. Details of additional forensic medical examinations, carried out in 2010 and 2012, are provided in paragraphs 65-66 and 81 below.

52. On 21 December 2008 the investigator in charge of the case inspected V.K.'s cell at Fastiv railway station police unit and took several samples from the walls and floor (see paragraph 75 below for the context of that investigative measure). A number of forensic immunological examinations were carried out in 2008, 2009 and 2010. They found that the

samples contained traces of blood, which could have come from the applicant's son.

53. On 6 December 2012 an investigator at Bila Tserkva City Prosecutor's Office (it is not known when and in what circumstances the investigation had been handed over to that authority) made an entry in the Unified Register of Pre-Trial Investigations regarding an investigation into abuse of office by two unidentified police officers on account of V.K.'s ill-treatment on 22 August 2003. Such an entry was a new procedure for initiating a pre-trial investigation under the new Code of Criminal Procedure, which had come into effect on 19 November 2012. The case was transferred to the Kyiv Regional Prosecutor's Office on 10 September 2013.

54. There is no information in the case file about further developments in the investigation. According to the Government's observations, it was still ongoing as of September 2016.

E. Criminal proceedings against G.S. (the forensic medical expert who conducted the autopsy)

55. On 7 April 2005 the PGO opened a criminal case against the forensic medical expert G.S. on suspicion of negligence. Further charges were subsequently brought against him (see below).

56. On 5 May 2010 the Kyyevo-Svyatoshynskyy District Court ("the Kyyevo-Svyatoshynskyy Court") found G.S. guilty of abuse of office and forgery in office leading to grave consequences and of delivering a knowingly false expert conclusion. More specifically, the trial court held that the expert had knowingly given false data on the cause of V.K.'s death, had failed both to collect all the requisite tissue samples and to carry out a number of essential analyses. However, it acquitted G.S. of concealing a serious crime. He was also exempted from punishment for forgery and a false expert conclusion as those charges had become time-barred. He was sentenced on the charge of abuse of office to three years and six months' imprisonment and a three-year ban on holding expert positions. The Kyyevo-Svyatoshynskyy Court allowed a civil claim by the applicant in part. It awarded her 1,851 Ukrainian hryvnyas (UAH; at the time equivalent to 175 euros (EUR)) in respect of pecuniary damage and UAH 10,000 (about EUR 950) in respect of non-pecuniary damage, to be paid by G.S. In addition, the applicant was awarded UAH 50,000 (about EUR 4,700) in respect of non-pecuniary damage, to be paid by the Kyiv Regional Bureau of Forensic Medical Examinations.

57. On 18 August 2010 the Kyiv Regional Court of Appeal ("the Regional Court of Appeal") allowed an appeal by G.S., quashed the first-instance court's judgment in the part which convicted him of making a knowingly false expert conclusion and discontinued proceedings on that charge, because there were no constituent elements of an offence in his

actions. The appellate court also reclassified the remaining charges. Instead of abuse of office and forgery in office leading to grave consequences, he was found guilty of professional negligence with grave consequences and was sentenced to three years' imprisonment and a ban on holding expert positions for three years. As that new charge had become time-barred, the Regional Court of Appeal absolved him from the penalty. The judgment upheld the applicant's civil claim.

58. On 18 October 2010 the Supreme Court rejected a prosecution request for leave to appeal on points of law.

59. On 28 October 2010 G.S. paid the amount due to the applicant.

60. According to the applicant, she has never received any money from the Kyiv Regional Bureau of Forensic Medical Examinations.

F. Criminal proceedings against the Vyshneve police officials

61. Following numerous complaints by the applicant about the inadequacy of Vyshneve police's search for her son in August 2003, on 16 April 2007 the PGO opened a criminal case against officer K.O., who had been in charge of the search. Courts at two levels of jurisdiction (the Kyyevo-Svyatoshynskyy Court on 9 July 2012 and the Regional Court of Appeal on 9 April 2014) found him guilty of abuse of office with grave consequences and of forgery in office (see paragraph 24 above). They sentenced him to five years' imprisonment and a prohibition on holding positions related to the performance of public duties for two years. He was, however, exempted from serving the sentence given the expiry of the statutory limitation period. The decision became final as there were no appeals on points of law.

62. The applicant also unsuccessfully sought the prosecution of A.V., K.O.'s supervisor.

G. Criminal proceedings against P.V. (the doctor in charge of V.K.'s treatment at Fastiv Hospital)

63. On unspecified dates the prosecution authorities refused to institute criminal proceedings in respect of V.K.'s death against the chief doctor, the head of the traumatology department, the anaesthesiologist and the neuropathologist at Fastiv Hospital. The case file does not contain any further information or documents in that regard. Nor is there any information as to whether there were any disciplinary proceedings.

64. On 24 October 2007 the PGO opened a criminal case against P.V., the traumatology doctor at the hospital, on suspicion of failure to provide V.K. with the requisite medical care, which had led to the latter's death.

65. On 14 September 2010 the investigator ordered a forensic examination of the case file by a panel of experts with a view to assessing

the care provided to V.K. at Fastiv Hospital. The panel had to answer thirty specific questions, including the following:

(a) Were there any legal standards for the treatment of craniocerebral injuries and, if so, had they been complied with in V.K.'s case?

(b) Was the neurosurgeon's recommendation to undertake a computerised brain tomography binding on P.V.?

(c) How had the failure to carry out the computerised brain tomography influenced the quality of the medical care provided to V.K. and his health condition?

(d) Would a timely computerised brain tomography have helped to detect the pathological developments that caused V.K.'s death? If so, would a timely medical response have made it possible to prevent them?

(e) Had it been feasible to transport V.K. to the better equipped Kyiv Regional Hospital given the state of his health?

(f) Were there any legal standards for such transportation?

(g) Were any resuscitation measures carried out once V.K. had gone into a coma?

(h) Did his coma result from low blood sugar?

(i) Was V.K. so ill when he had arrived at Fastiv Hospital that he had been bound to die, regardless of any medical care?

66. The experts issued their report on 28 January 2011. It stated that there had been no legal standards for treating craniocerebral injuries until 13 June 2008. However, according to general practice, treatment was to consist of sedatives and pain relief; treatment of symptoms; an initial surgical debridement of wounds; anti-inflammatories, and, if required, hormonal, dehydrating, anti-edemic, antioxidant and nootropic treatment. The experts noted that the drugs prescribed for the applicant's son (see paragraph 29 above) appeared to correspond to that practice. The report also observed that there were no regulations that had obliged P.V. to comply with the neurosurgeon's recommendation. A timely computerised brain tomography would have helped to clarify the nature and scope of V.K.'s craniocerebral injuries, which, in turn, would have led to the right treatment. Accordingly, the failure to carry out that diagnostic measure had impaired the quality of the medical care given to V.K. and had contributed to aggravating his condition. Transporting him had been necessary and possible using a special intensive care vehicle, which the hospital had had at its disposal. In the absence of any relevant legal standards, questions concerning the transportation of patients were at the discretion of the doctor treating the patient and the hospital's administration. The panel of experts further noted that V.K.'s medical file made no mention of resuscitation measures. As regards the cause of V.K.'s coma, there appeared to be no conclusive evidence that it had been due to low blood sugar. At the same time, the experts noted that given V.K.'s inability to eat and drink on his own it was probable his sugar level had dropped. Furthermore, they

observed that although his condition had warranted regular infusions of glucose under the supervision of an endocrinologist, there had been only one such intravenous infusion, on 29 August 2003. Lastly, the report stated that there was no indication of an inevitable fatal outcome for V.K., regardless of any medical assistance.

67. In March 2011 the investigation was completed and the case was sent for trial.

68. On 19 September 2013 the Vasylkiv Town Court remitted the case for additional investigation. However, on 6 February 2014 the Kyiv City Court of Appeal quashed that ruling.

69. On 29 July 2014 the Kyyevo-Svyatoshynskyy Court (to which the case had been transferred at the applicant's request) found P.V. guilty of a failure to provide the applicant's son with the requisite medical care, which had led to grave consequences. The court held, in particular, that P.V., without any good reason, had failed to make sure V.K. was transferred to the regional hospital for a computer brain tomography, which had seriously undermined the effectiveness of his treatment. Furthermore, it was concluded that P.V. had failed to take even the minimum measures in response to V.K.'s coma on 2 and 3 September 2003. The court sentenced him to three years' imprisonment, but released him from serving the sentence as the limitation period for that type of offence had expired. Furthermore, the court allowed a civil clam by the applicant in part and awarded her UAH 100,000 (at the time equivalent to about EUR 6,100) in respect of non-pecuniary damage, to be paid jointly by P.V., the Fastiv District State Administration and Fastiv Hospital.

70. On 5 November 2014 the Regional Court of Appeal upheld that judgment. The only amendment it ordered was to make Fastiv Hospital solely responsible for paying the applicant.

71. As there was no appeal on points of law the judgment became final.

72. The Government submitted an information note from the unified register of enforcement proceedings along with their observations. It stated that the bailiffs service had on 23 January 2015 terminated enforcement of the above judgment at the applicant's request.

73. Without commenting on that document, the applicant submitted that as of 1 August 2016 she had not received any payment from Fastiv Hospital.

H. Criminal proceedings against K.M. (one of the police officers who ill-treated the applicant's son)

74. On 19 November 2008 the investigator questioned several persons, who had been detained at the Fastiv railway station police unit on the evening of 22 August 2003. They submitted that they had witnessed the ill-treatment of another inmate (see paragraph 18 above).

75. On 8 December 2008 a former detainee, S.P., recognised K.M. as one of the police officers who had beaten V.K. On various dates thereafter several other former detainees made similar statements.

76. On 26 December 2008 the PGO detained K.M.

77. Subsequently, several criminal cases were opened against him on suspicion of abuse of office by a law-enforcement official with grave consequences, the exceeding of authority associated with ill-treatment of the victim, also with grave consequences, and infliction of grievous bodily harm leading to the death of the victim. K.M. consistently denied being present at the police unit on the evening on 22 August 2003, let alone having beaten V.K.

78. On 7 September 2011 the Bila Tserkva City Court found K.M. guilty of abuse of office by a law-enforcement official with grave consequences, and exceeding his authority associated with ill-treatment of the victim, also with grave consequences. The court acquitted him in respect of the charge of inflicting grievous bodily harm leading to the victim's death. It sentenced him to six years' imprisonment and a prohibition on holding positions related to public duties for three years. It also ordered the confiscation of his property. The court noted that the applicant had lodged a civil claim, however, it left it without examination on the grounds that there were a number of related criminal proceedings still ongoing and that she could later bring a civil claim under the civil procedure.

79. On 7 December 2011 the Regional Court of Appeal quashed K.M.'s acquittal and remitted that part of the case for additional investigation. It upheld the rest of the judgment.

80. On 7 March 2012 S.P. took part in a reconstruction of the events of 22 August 2003 (see paragraph 75 above).

81. On 12 March 2012 the investigator ordered a forensic medical examination to verify S.P.'s account. Furthermore, the expert was to establish the cause of V.K.'s death and the existence of any cause and effect between the death and his being beaten by K.M. The report was issued on 21 March 2012 and stated that the injuries sustained by V.K., as documented by the earlier forensic examination reports, could have been inflicted in the manner and in the circumstances described by S.P. As regards the cause of death, the panel referred to its earlier findings and stated that V.K. could have died of the brain and meninx injuries (see paragraph 51 above). Lastly, they concluded that the injuries could have resulted from K.M.'s assault on V.K., as described by S.P.

82. On 30 October 2012 the Higher Specialised Court for Civil and Criminal Matters upheld the lower courts' decisions of 7 September and 7 December 2011 (see paragraphs 78 and 79 above).

83. K.M. was released on parole on 2 November 2012.

84. However, on 15 November 2012 he was remanded in custody as a preventive measure pending his trial on the remaining charge (see paragraph 79 above).

85. On 12 August 2013 the Kyyevo-Svyatoshynskyy Court found K.M. guilty of inflicting grievous bodily harm on V.K., which had led to the victim's death, and sentenced him to ten years' imprisonment. The court saw no aggravating or mitigating circumstances in the case. At the same time, the case file material referred to in the judgment included the testimony of two witnesses who stated that K.M. was prone to violence. One of them, Vo., a retired teacher, stated that he had been arbitrarily detained in December 2003 and that K.M. had punched him in the face and used a pepper spray on him when he had complained. Being scared, Vo. had written a statement that he had no complaints against the police. Another witness, M., submitted that she had been in a café in October 2005 when K.M., clearly drunk, had passed by her and pushed her. She was pregnant and had told him his behaviour was unacceptable. K.M. had reacted by punching her in the face. Later, in the presence of the police, he had hit her again and she had fallen to the ground. Both K.M. and his superior had subsequently apologised to her and asked her not to lodge a complaint so she had not.

86. On 27 November 2013 the Regional Court of Appeal quashed the first-instance court's judgment and discontinued the proceedings in that part as time-barred. The appellate court noted that the statutory ten-year limitation period had not been interrupted as K.M. had not absconded or committed other criminal offences. K.M. was released in the courtroom.

87. The applicant appealed on points of law. She submitted, in particular, that K.M. had for many years concealed the truth about both knowing V.K. and ill-treating him. Accordingly, the applicant contended that he had been seeking to evade justice.

88. On 21 August 2014 the Higher Specialised Court for Civil and Criminal Matters upheld the appellate court's ruling.

I. Criminal proceedings against G.V. (the officer on duty at the Fastiv railway station police unit on 22 August 2003)

89. On 9 August 2012 the Baryshivka Town Prosecutor's Office (in the Kyiv region) opened a criminal case against G.V., who had not stopped his colleague K.M. from beating the applicant's son.

90. During the pre-trial investigation and the trial G.V. consistently denied that either V.K. or K.M. had been present at the police unit on 22 August 2003.

91. On 14 October 2013 the Kyyevo-Svyatoshynskyy Court found G.V. guilty of negligence with grave consequences and of concealing a criminal offence. It sentenced him to five years' imprisonment and a prohibition on

holding any office related to the performance of public duties for three years. G.V. was absolved from the penalty as the charges had become time-barred. A civil claim by the applicant was allowed in part. The court ordered G.V. to pay her UAH 80,000 (equal to about EUR 7,100 at the time) in compensation for non-pecuniary damage.

92. On 10 December 2013 the Regional Court of Appeal upheld the first-instance court's judgment, increasing the compensation to UAH 100,000 (about EUR 8,800).

93. There was no appeal on points of law against those decisions.

94. The applicant states that as of 1 August 2016 she has received no payment.

II. RELEVANT DOMESTIC LAW

95. The relevant provisions of the Criminal Code of 2001 (as worded at the material time) are summarised below.

96. Article 49 provided for exemption from criminal liability on the grounds of the expiry of the statutory limitation period after five years in the case of a medium-gravity offence; ten years for a grave offence; and fifteen years for a particularly grave offence. It stated that the running of the limitation period would be interrupted if the offender absconded.

97. Under Article 74, a court could deliver a verdict but decide to exempt the guilty person from punishment on the same grounds as in Article 49.

98. Article 121 penalised the premeditated infliction of grievous bodily harm causing the victim's death by imprisonment for seven to ten years.

99. Article 139 provided for up to four years' restriction of liberty or up to three years' imprisonment, with or without a ban on holding certain offices or carrying out certain activities for a period of up to three years, as punishment for a medical specialist's failure to provide assistance (§ 2).

100. Article 364 provided for five to eight years' imprisonment with a prohibition on holding certain offices or carrying out certain activities for a period of up to three years as punishment for abuse of power or office with grave consequences (§ 2). If the same offence was committed by a law-enforcement official, the possible term of imprisonment was between five and twelve years, with confiscation of property, in addition to a three-year ban on holding certain offices or carrying out certain activities (§ 3).

101. Article 365 envisaged three to eight years' imprisonment with a prohibition on holding certain offices or carrying out certain activities for a period of up to three years as punishment for exceeding one's power by engaging in the violent or degrading treatment of a victim (§ 2). The same acts, if they caused grave consequences, were punishable by seven to ten

years' imprisonment, with a prohibition on holding certain offices or carrying out certain activities for a period of up to three years (§ 3).

102. Article 366 provided for imprisonment from two to five years, with a prohibition for up to three years on the holding of certain posts or the performance of certain activities, as the penalty for forgery in office (forgery of documents by an official) with grave consequences (§ 2).

103. Article 367 sanctioned neglect of official duty with grave consequences by imprisonment for two to five years, with a prohibition for up to three years on the holding of certain posts or the performance of certain activities, and a fine of one hundred to two hundred and fifty times the amount of the non-taxable minimum-level income.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

104. Relying on Articles 2, 6 and 13 of the Convention, the applicant complained that the State had been responsible for her son's death and that there had been no effective domestic investigation. The Court considers that the complaints fall to be examined under Article 2 of the Convention only, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Admissibility

105. The Government did not raise any objections as regards the admissibility of the application. At the same time, they drew the Court's attention to the numerous criminal proceedings brought in respect of the death of the applicant's son, most of which had resulted in the conviction and sentencing of the persons concerned. The Government also stated in their observations on the merits of the case that adequate amounts had been

awarded and paid to the applicant under her civil claims (see paragraphs 121 and 122 below).

106. The circumstances referred to by the Government might be considered as suggesting that the applicant has lost her victim status. Regardless of the possible interpretation of those submissions, the Court notes that the issue of the applicant's victim status concerns a matter of compatibility *ratione personae*, which goes to the Court's jurisdiction and does not depend on the existence of an objection by the Government to that effect (see, for example, *R.P. and Others v. the United Kingdom*, no. 38245/08, § 47, 9 October 2012, and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts)).

107. The Court considers it necessary to examine, of its own motion, whether the applicant can be regarded as having lost her victim status.

108. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive that person of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V, with further references). As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, with particular regard to the nature of the right alleged to have been breached (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010).

109. In the present case the question of the applicant's victim status is closely linked to the issue of the State's compliance with its procedural obligations under Article 2 of the Convention. The Court therefore joins this matter to the merits of that complaint (see *Özcan and Others v. Turkey*, no. 18893/05, § 55, 20 April 2010).

110. For the sake of the completeness of its analysis, the Court takes note of the fact that the applicant did not lodge an appeal on points of law in most of the criminal proceedings concerning her son's death (see paragraphs 58, 71 and 93 above). That is a relevant factor for assessing whether she exhausted domestic remedies before lodging her application with the Court.

111. It is noteworthy, however, that the scope of review of the applicant's compliance with the rule on exhaustion of domestic remedies is limited by the Government's objections. In other words, if the Government have not raised this point in their submissions, the Court is not in a position to rule, of its own motion, on whether the application is inadmissible for non-exhaustion of domestic remedies (see, for example, *Mechenkov v. Russia*, no. 35421/05, § 78, 7 February 2008, and, more recently, *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, § 131, 2 June 2016, with further references). Accordingly, the Court will not deal with this issue in the present case.

112. The Court further notes that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

113. The applicant submitted that her son had died because of a chain of crimes and omissions by the State authorities, in particular, as a result of his ill-treatment by the police and the subsequent failure to provide him with adequate and timely medical assistance.

114. The applicant emphasised the arbitrariness of V.K.'s detention and the violence inflicted on him. She further drew the Court's attention to the connivance with those crimes by other State officials and the overall environment of impunity in the State authorities and institutions involved.

115. She contended that in addition to having been severely beaten, her son had been tortured with electric current, without further details. Furthermore, referring to the forensic medical examination report of 15 November 2004 (see paragraph 48-50 above), the applicant stated that certain organs had been missing from V.K.'s body.

116. As regards the deficiencies in the medical treatment provided to V.K. in Fastiv Hospital, the applicant maintained that they had been possible owing to numerous gaps in Ukrainian legislation. In that connection, she pointed to the absence at the time of any legal standards governing the treatment of cerebrocranial injuries or on decision-making on and the implementation of a patient's transfer from one hospital to another.

117. The applicant further contended that the lack of diligence by the Vyshneve police in searching for V.K. after his disappearance on 18 August 2003 had also to a certain extent contributed to his death. According to her, if they had performed their duties properly, this would have saved him.

118. The applicant complained about the overall ineffectiveness and length of the domestic investigation. She found it inconceivable that it had not been possible to identify the other two police officers involved in the ill-treatment of her son.

119. Lastly, she submitted that only a very small amount of the compensation awarded to her under her civil claims had actually been paid (see paragraph 59 above).

(b) The Government

120. The Government confined their observations to the issue of the effectiveness of the investigation concerning V.K.'s death.

121. They contended that the domestic authorities had done everything that could reasonably have been expected of them to elucidate the circumstances of his death and to bring those responsible to account. The Government observed that guilty verdicts had been delivered against five persons. They further maintained that all the requisite investigative measures had been carried out to identify the two police officers involved in V.K.'s ill-treatment and bring them to justice.

122. Lastly, the Government observed that the applicant's civil claims had been allowed and that she had received all the money awarded.

2. The Court's assessment

123. Given that the issue of the applicant's victim status was joined to the merits of her complaint about the allegedly ineffective domestic investigation into the death of her son, the Court considers it appropriate to start its examination of the merits of the application with that complaint.

(a) Alleged failure to carry out an effective investigation into V.K.'s death

(i) General principles

124. The obligation to carry out an effective investigation into unlawful or suspicious deaths is well established in the Court's case-law. When considering the requirements flowing from the obligation, it must be remembered that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Furthermore, even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital 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 *Brecknell v. the United Kingdom*, no. 32457/04, § 65, 27 November 2007, with further references).

125. The obligation of effective official investigation under Article 2 of the Convention is not confined to cases where it has been established that the death was caused by an agent of the State. The mere fact that the authorities have been informed of the death will give rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances in which it occurred (see *Vasîlca v. the Republic of Moldova*, no. 69527/10, § 28, 11 February 2014, with further references). The same principle applies when there are reasons to believe that an individual has sustained life-threatening injuries in suspicious circumstances (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 171, 14 April 2015). The investigation must be capable of establishing the cause of the injuries and the identification of those

responsible with a view to their punishment. Where death results, the investigation assumes even greater importance (see *Keller v. Russia*, no. 26824/04, § 93, 17 October 2013).

126. The above investigative duty, which has been implied in varying contexts under the Convention, may differ, both in content and in terms of its underlying rationale, depending on the particular situation that has triggered it. While an official investigation and/or a criminal trial must be regarded as furnishing the strongest safeguards to provide protection under Article 2 in cases of intentional taking of life, where the allegations raise issues of negligence, the procedural obligation may come into play upon the institution of proceedings by the deceased's relatives and a civil, administrative or even disciplinary remedy may be sufficient (see *Petrović v. Serbia*, no. 40485/08, § 73, 15 July 2014, with numerous further references).

127. In the particular sphere of medical negligence, the procedural obligation under Article 2 has been interpreted by the Court as imposing an obligation on the State to set up an effective judicial system for establishing both the cause of death of an individual under the care and responsibility of health professionals and any responsibility on the part of the latter (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I).

128. Regardless of its specific context, in order to comply with the requirements of Article 2 of the Convention, the investigation must be, *inter alia*, thorough, impartial and careful (see, for example, *Mustafa Tunç and Fecire Tunç*, cited above, § 169). The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV). The requirements of promptness and reasonable expedition are implicit in this context (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009).

129. The persons responsible for an investigation should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Aliyev and Gadzhiyeva v. Russia*, no. 11059/12, § 96, 12 July 2016).

130. Lastly, an investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see, for example, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, 4 May 2001).

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

(α) Scope of issues for the domestic investigation

131. Before starting its analysis of whether the domestic investigation into the death of the applicant's son in the present case complied with the requirements of Article 2 of the Convention as outlined above, the Court finds it necessary to establish the scope of the issues which had to be dealt with by the Ukrainian investigating authorities.

132. The Court notes that V.K. died after sustaining a number of injuries in circumstances which were unknown at the time and following allegedly deficient medical treatment in a State-run hospital. Furthermore, it is of relevance to note that he had been suffering from various chronic illnesses and had had a health-related concern which had warranted admission to hospital shortly before the incident in August 2003.

133. Accordingly, the domestic investigation had to establish, first of all, the nature and scope of the injuries sustained by V.K. and their role in his death, as well as all the circumstances in which he had been injured with a view to bringing those responsible to account. Another issue for examination was the adequacy of the medical treatment provided to V.K. prior to his death.

(β) Investigation regarding V.K.'s injuries

134. The Court notes that on 25 August 2003 V.K., severely beaten and unconscious, was found at Fastiv railway station and taken by ambulance to the local hospital. Having regard to the seriousness of his injuries, the Court considers that it was important to bring that matter to the knowledge of the law-enforcement authorities without delay with a view to launching an investigation.

135. It appears, however, that the only law-enforcement officials who had information about V.K.'s injuries at that stage were those involved in his ill-treatment. Thus, the applicant's son was not able to talk or identify himself, let alone raise any complaints or give details about his ill-treatment. The hospital administration's statement that it informed the town police of the incident appears to be without basis (see paragraph 22 above). Nor is there any indication in the case file that any efforts were made to establish V.K.'s identity. The Court can hardly blame the hospital administration for that, given that they themselves had received the information about him from a police officer (see paragraph 20 above).

136. As confirmed by the documents to hand, the first official notification by Fastiv Hospital to the town police about the arrival, treatment and death of an unidentified man with head injuries was made on 5 September 2003, that is two days after his death (see paragraph 38 above). While, strictly speaking, that delay was not such as to undermine the effectiveness of the subsequent investigation, the Court finds no

justification for it, even more so given that the identity of V.K. remained unknown and it was likely that his relatives were looking for him.

137. The Court observes that an autopsy was performed by the forensic medical expert G.S. the day after V.K.'s death, on 4 September 2003. In the preliminary death certificate issued that day, as well as in the post-mortem examination report finalised on 10 October 2003 and in another forensic medical examination report of 29 October 2003, G.S. stated that V.K. had died of a number of medical conditions and diseases, mainly caused by long-running alcohol and drug intoxication (see paragraphs 37, 41 and 43 above). As subsequently established by the domestic authorities, that statement was "knowingly false". Furthermore, G.S. failed to record all the injuries on the body or the numerous tattoos. He also failed to collect all the required tissue samples and carry out a number of essential analyses (see paragraphs 37 and 55-60 above).

138. Those flagrant omissions undermined all later attempts to establish the truth regarding V.K.'s death and at least six further forensic expert evaluations were undertaken, by different experts, between 2004 and 2009. Although they did shed some light on the matter, it was found to be impossible to establish with precision all the injuries to V.K.'s head (see paragraph 51 above).

139. It does not escape the Court's attention that criminal proceedings were eventually instituted against G.S. and that he was found guilty of professional negligence with grave consequences. By the time of his conviction in 2010, however, that criminal offence had become time-barred. He paid the applicant about EUR 950 in compensation for non-pecuniary damage (see paragraphs 57 and 59 above). Although the institution for which he worked was also ordered to pay the applicant about EUR 4,700 in damages, there is no evidence that that amount was actually paid to her (see paragraphs 56 and 60 above).

140. While the outcome of the above proceedings constituted at least some compensatory redress for the applicant, it had no bearing for the effectiveness of the subsequent investigation into the death of her son.

141. When assessing the authorities' response to V.K.'s death, the Court notes that the criminal investigation into his suspected murder by unknown persons was initiated on 10 October 2003 (see paragraph 42 above). Given that neither the autopsy report nor the post-mortem examination report had found any indication of a violent death at that time, the rationale for that decision is unclear. It may be presumed that it was taken in response to the applicant's complaints. Be that as it may, the discrepancies between her description of the injuries on her son's body, which she had seen during his reburial on 12 September 2003, and that given in the reports by G.S. were so serious that they warranted investigation. The authorities, however, waited for more than a year before ordering an exhumation (see paragraph 47 above). It was only then, on 15 November 2004, that

V.K.'s injuries were finally recorded accurately, to the extent allowed by decomposition.

142. As regards the investigation of the circumstances in which the applicant's son was injured, the key question is when the prosecution authorities had or ought to have had reasonable grounds for suspecting the involvement of the Fastiv railway station police unit's officials.

143. The Court notes in that connection that as early as 30 October 2003 the applicant had handed the clothes and shoes which V.K. had been wearing when hospitalised on 25 August 2003 to the investigator. She indicated that it was possible her son had been in detention, given that his shoes had no laces (see paragraph 44 above). In the absence of any evidence to the contrary, the Court concludes that no one checked her statement. At the same time, the Court observes that it took the investigation almost two years to establish undisputed facts: namely, that the stains on the clothes were blood and that it was V.K.'s blood (see paragraph 45 above).

144. The Court next observes that information about the earlier complaint by V.K. of ill-treatment by the Fastiv railway station police unit's officers, which had been lodged in February 2002, was readily available for the investigation being a part of the prosecution authorities' records. It is not known, however, when and how that issue was investigated following V.K.'s death, apart from the fact that it was studied in February 2007 by the trial court dealing with the criminal case against officer K.M. (see paragraph 8 above).

145. On the facts of the case, the Court observes that the investigator decided to question the persons, who had been detained in the Fastiv railway station police unit on 22 August 2003, in November 2008. Only then were criminal proceedings initiated against K.M., who had been recognised as having been involved in the ill-treatment of the applicant's son (see paragraphs 74 and 75 above). It was also at that point, that is more than five years after the impugned events, that the investigator decided to inspect the cell at Fastiv railway station and to take samples from the walls and floor to check for traces of V.K.'s blood (see paragraph 52 above).

146. In other words, the first meaningful investigative measures with a view to establishing the truth about the origin of V.K.'s injuries were not taken until November 2008. Given the considerable lapse of time the prospects of a successful investigation had diminished considerably.

147. It is in that five-year delay that the Court sees the only explanation for the prosecution authorities' failure to identify the two police officers who had beaten V.K. along with their colleague K.M. It proved to be the case that the former detainees recognised only K.M. and were no longer in a position to recognise the other perpetrators.

148. The Court takes note of the fact that K.M. was eventually convicted on account of the ill-treatment of the applicant's son. More specifically, he was found guilty by a final court decision of 30 October 2012 of abuse of

office by a law-enforcement official with grave consequences and of exceeding his powers associated with ill-treatment of the victim, also with grave consequences. He was sentenced to six years' imprisonment with a three-year prohibition on holding positions related to the performance of public duties and confiscation of his property (see paragraph 78 above). As regards the other charge against him, infliction of grievous bodily harm leading to the victim's death, the proceedings were discontinued as time-barred by the final decision of 21 August 2014 (see paragraph 88 above). Altogether, K.M. was in prison for slightly over five years (see paragraphs 76, 83, 84 and 86 above).

149. The Court has already held that where a State agent has been charged with crimes involving torture or ill-treatment it is of the utmost importance that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible (see, for example, *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004). 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 *Cestaro v. Italy*, no. 6884/11, § 205, 7 April 2015, with further references).

150. In the present case, the key charge against K.M. became time-barred owing to the lengthy and inadequate investigation. At no point did he show any remorse for what he had done. Furthermore, for his colleagues who had also participated in V.K.'s ill-treatment, but who had remained unidentified, the only message from the discontinuation of the proceedings against K.M. on that ground was that they would never be punished, regardless of the outcome of the ongoing investigation in their respect (see paragraph 54 above).

151. Accordingly, the judicial system in Ukraine cannot be regarded as having ensured a sufficient deterrent effect in the present case in support of its prohibition of ill-treatment and the protection of human life.

152. The Court does not lose sight of the criminal proceedings against G.V., the police officer who had been on duty on 22 August 2003 and who had not stopped V.K.'s ill-treatment (see paragraphs 89-94 above). It is noteworthy, however, that those proceedings were instituted nine years after the impugned events and that the charge against him became time-barred. While the amount of the compensation awarded to the applicant in respect of non-pecuniary damage was not insignificant (EUR 8,800), the Government failed to rebut the applicant's statement that the judgment had not been enforced.

153. As regards the criminal proceedings against the Vyshneve police officials on account of the inadequate search for the applicant's son (see paragraphs 61 and 62 above), the Court does not consider that the issue calls for separate analysis here.

154. Nor does the Court find it necessary to examine whether the domestic investigation into the death of the applicant's son complied with the requirements of independence and public scrutiny. Having regard to the glaring omissions and prohibitive delays in the investigation in respect of his fatal injuries, which lasted for about thirteen years, failed to establish all the pertinent facts, left two of the three perpetrators unidentified and allowed the prosecution of the third one in respect of some of the charges become time-barred, the Court considers that the State has not complied with its procedural obligation under Article 2 of the Convention.

155. There has therefore been a violation of that provision on that account.

(γ) Investigation regarding V.K.'s medical treatment in Fastiv Hospital

156. In the absence of any information from the parties as to whether there were disciplinary proceedings, the Court considers that there were none. It further notes that the authorities refused to institute criminal proceedings against the doctors, including the management of Fastiv Hospital, and that the applicant brought no separate civil proceedings (see, in particular, paragraph 63 above).

157. The forum for investigating the issue of V.K.'s treatment in Fastiv Hospital was therefore limited to the criminal proceedings against doctor P.V. The Court notes that the outcome of those proceedings was overall favourable for the applicant: the doctor was found guilty of a criminal offence and the hospital was ordered to pay her compensation for non-pecuniary damage. However, having regard to all the circumstances of the case, the Court does not consider the above considerations sufficient for reaching a conclusion that the State has duly discharged its procedural obligations under Article 2 of the Convention in that regard.

158. First of all, the Court takes note of the considerable delays in the proceedings in question – they were instituted more than four years after the death of the applicant's son. It then took another seven years before they were completed by a guilty verdict upheld on appeal. The domestic courts found P.V. guilty of a failure to provide V.K. with the requisite medical care, which had caused grave consequences. More specifically, they established that the doctor had failed to arrange V.K.'s transfer to the regional hospital to confirm his diagnoses and that no measures had been taken after he fell into a coma. By the time the verdict was pronounced, however, the offence had become time-barred and P.V. was exempted from serving his three-year prison sentence (see paragraph 69 above).

159. As the Court has already held in its case-law, resort to criminal-law remedies is not essential in the context of medical negligence. What matters is establishing all the pertinent facts and bringing those responsible to liability (see paragraphs 126 and 127 above).

160. The Court is mindful of the fact that the investigation of V.K.'s medical treatment, similarly to that regarding his ill-treatment prior to his hospitalisation, was hampered by the irretrievable deficiencies of the autopsy and post-mortem examination reports (see paragraphs 137 and 138 above). However, regardless of those inherent difficulties, the Court does not consider that the domestic authorities made every reasonable effort to analyse V.K.'s medical treatment before his death.

161. The Court notes, in particular, that although the criminal proceedings against P.V. resulted in serious factual findings about major omissions in V.K.'s treatment, it was never established unequivocally what medical assistance the applicant's son had actually received at Fastiv Hospital. While certain drugs were prescribed for him, there was no evidence that they had actually been administered (see paragraphs 28 and 29 above). Nor was it established what caused the deterioration of his health to the point of his going into a coma. One of the reasons could have been low blood sugar as a result of his head injuries, aggravated by malnutrition. That possibility was eventually dismissed by experts as not based on conclusive evidence (see paragraph 66 above). However, no other meaningful explanation was advanced.

162. The Court next observes that the X-rays of V.K.'s skull, which had been carried out as soon as he had arrived at hospital (see paragraph 26 above), inexplicably disappeared. Nor was it explained how the reported conclusion of that examination, that there were no fractures, could be reconciled with the subsequent finding that V.K. had a broken nose.

163. The Court notes that the applicant brought a civil claim within the above-mentioned criminal proceedings and that it was granted in part. As a result, Fastiv Hospital was ordered to pay her about EUR 6,100. Although the applicant denied receiving any money, the Court considers that the circumstances of the case suggest otherwise. It observes, in particular, that enforcement proceedings were terminated on 23 January 2015 at the applicant's own request (see paragraph 72 above).

164. However, the Court notes the inordinate delay in the judgment enforcement of eleven years and four months after the death of her son. Furthermore, the amount is considerably lower than that awarded by the Court in medical negligence cases found to be in breach of Article 2 of the Convention (see, for example, *Arskaya v. Ukraine*, no. 45076/05, 5 December 2013, and *Ioniță v. Romania*, no. 81270/12, 10 January 2017).

165. In the light of the foregoing, the Court considers that there has been a violation of the procedural limb of Article 2 of the Convention on account of the ineffective domestic investigation into the allegation of inadequate medical care provided to the applicant's son in Fastiv Hospital.

(δ) Conclusion

166. Having regard to its findings (see paragraphs 155 and 165 above), the Court considers that the domestic authorities have not afforded effective or sufficient redress to the applicant for the alleged breaches. Accordingly, she can still claim to be a "victim" of a violation under the Convention within the meaning of Article 34 of the Convention (see paragraph 109 above).

(b) Alleged violation of V.K.'s right to life

(i) V.K.'s fatal ill-treatment by the police

(α) General principles

167. Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324).

168. In view of the fundamental nature of the right to life, the circumstances in which deprivation of life may be justified must be strictly construed. Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means, amongst other things, that the State must ensure, by putting in place a system of adequate and effective safeguards against arbitrariness and abuse of force, that its agents duly understand the limits of their power and that, in their actions, they are guided not only by the letter of the relevant professional regulations but also pay due regard to the pre-eminence of respect for human life as a fundamental value (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 284, 26 April 2011, with further references).

169. The Court has emphasised in its case-law that persons in custody are in a vulnerable position and the authorities are under an obligation to account for their treatment. Consequently, where an individual is taken into police custody without physical injuries but later dies, it is incumbent on the State to provide a plausible explanation of the events leading to his death (see, *mutatis mutandis*, *Anguelova*, cited above, § 110).

170. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie

wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

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

171. The Court notes at the outset that not all of the applicant's allegations are sufficiently corroborated. She complained that V.K. had been tortured by electric current and that some of his organs had been found to be missing from his body. However, the Court does not discern any direct or indirect evidence in the case file to support those statements (see paragraphs 48-50 and 115 above).

172. At the same time, although the applicant's son did have some health concerns, it has been established that the applicant's son died as a result of the force applied to him by the police during his unacknowledged detention (see, in particular, paragraphs 19 and 51 above).

173. It is noteworthy that at the time of the events V.K. was locked in a cell, apparently in a poor state of health given the preceding medical treatment, and that his resistance to the police was limited to verbal expressions of dissatisfaction about being detained (see paragraphs 9, 12, 15 and 18 above). That was, however, enough to provoke officer K.M. to enter the cell and hit V.K. in the face with a rubber truncheon, breaking his nose and causing him to collapse. Although the applicant's son was lying helpless on the floor, with a bleeding nose, two other police officers joined in beating him, which continued for an unspecified period of time. As eventually established by the domestic investigation, he sustained at least eight blows to the face and head (see paragraph 51 above).

174. It is not known what happened to V.K. after the night of 22 to 23 August 2003, before he was discovered unconscious at Fastiv railway station shortly after midnight on 25 August 2003 (see, in particular, paragraph 19 above). Having regard to his injuries, it is unlikely that he arrived there on his own. The only factual inference that can be made in the circumstances is that following his severe beating on 22 August 2003 V.K. remained under the control of the police, without any medical assistance, which undoubtedly contributed to aggravating his health condition.

175. The Court deplores the utter arbitrariness of the police officers' actions and their unwarranted violence against V.K. It notes that a year and a half before the incident, in February 2002, he had already complained to the prosecution authorities of continued physical ill-treatment and psychological pressure from officers at the Fastiv railway station police unit

(see paragraph 8 above). Their behaviour in August 2003 suggests that his complaint had not received due attention and that they had nothing to fear.

176. The Court also takes note of some other case file material indicating that the way in which the police officers treated the applicant's son was quite habitual for them. It transpires from two uncontested witness statements that K.M. punched an elderly man in the face in December 2003 and hit a pregnant woman in October 2005, without any negative consequences for his career (see paragraph 85 above).

177. In the light of the foregoing, the Court considers that V.K. received fatal injuries while being at the hands of the police.

(ii) Lack of adequate medical treatment prior to V.K.'s death

(α) General principles

178. The Court reiterates that the first sentence of Article 2 enjoins the State not only to refrain from the "intentional" taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III).

179. Those principles apply in the public-health sphere too. The aforementioned positive obligations therefore require States to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives. They also require an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (see *Calvelli and Ciglio*, cited above, § 49, with further references).

180. However, where a Contracting State has made adequate provision to secure high professional standards among health professionals and to protect the lives of patients, it cannot accept that matters such as error of judgment on the part of a health professional or negligent coordination among health professionals in the treatment of a particular patient are sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (see *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V).

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

181. The Court notes that although V.K.'s condition was very serious following his ill-treatment by the police, his life could still have been saved if he had received timely and adequate medical assistance (see paragraphs 65 and 66 above).

182. It is an established fact, however, that such assistance was not provided to him. It soon became obvious that Fastiv Hospital did not have the right equipment and that in order to clarify V.K.'s diagnoses and give him the correct treatment he had to be transferred to Kyiv Regional Hospital for a computerised brain tomography. Although V.K.'s condition permitted for his transportation by an adapted vehicle and Fastiv Hospital had such vehicles at its disposal, no steps were taken to arrange his transfer.

183. It is also noteworthy that no resuscitation measures were given to V.K. after he went into a coma (see paragraphs 35, 66 and 69 above). In the absence of any evidence to the contrary, the Court cannot but state that the applicant's son was simply left to die without any medical assistance, albeit being in a hospital setting.

184. As established by the domestic investigation, one of the factors undermining the quality of the treatment provided to the applicant's son was the absence of any legal standards at the time regarding the treatment of craniocerebral injuries. There were also no regulations concerning the transfer of patients from one hospital to another (see paragraph 66 above).

185. Having regard to all the circumstances of the present case, the Court considers that the applicant's son's situation in Fastiv Hospital constituted a *de facto* denial of health care having led to his death (see, *mutatis mutandis*, *Mehmet Şentürk and Bekir Şentürk v. Turkey*, no. 13423/09, § 88, ECHR 2013, with further references).

(iii) Conclusion

186. The above considerations lead the Court to conclude that the State bears responsibility for the death of the applicant's son on account of both his severe beating by the police and the lack of adequate medical treatment. In the particular circumstances of this case both these factors were fatal for V.K. and it is neither necessary nor possible to establish with prevision which of them played a decisive role for his death.

187. There has therefore been a violation of the substantive limb of Article 2 of the Convention in this regard.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

188. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

189. The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

190. The Government contested the claim as unsubstantiated and exorbitant.

191. The Court observes that it has found particularly serious violations of Article 2 of the Convention in the present case. Namely, it has held that the State bears the responsibility for the death of the applicant's son, who was severely injured by the police in unacknowledged detention and did not receive adequate medical care. The Court has also found the domestic investigation into the matter to be seriously flawed. The Court considers that the applicant suffered intense distress and anguish on account of those circumstances. Moreover, her suffering must have been aggravated by the feeling of helplessness in her efforts to find her son and help him when he was still alive. While bearing in mind that the applicant did receive certain monetary redress at the domestic level, the Court considers it appropriate to award her EUR 72,000 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

1. Legal costs incurred before the Court

192. The applicant claimed EUR 3,600 for her legal representation in the proceedings before the Court, to be paid into Mr Mykhailo Tarakhkalo's bank account. To substantiate that claim she submitted a legal assistance contract of 5 June 2016 indicating an hourly rate of EUR 150. The applicant also submitted a copy of an invoice from the lawyer dated 1 August 2016, for EUR 3,600 for a total of twenty-four hours' work.

193. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 2,750 (equivalent to EUR 3,600 minus EUR 850, the sum received by way of legal aid) under this head, plus any value-added tax that may be chargeable to her. The net award is to be paid into Mr Tarakhkalo's bank account, as indicated by the applicant (see,

for example, *Belousov v. Ukraine*, no. 4494/07, §§ 116-117, 7 November 2013).

2. Other expenses

194. The applicant further claimed 1,021.24 Ukrainian hryvnias (UAH) (equivalent to about EUR 36 at the time) for translation and postal expenses. She submitted postal receipts for UAH 301.24 and a receipt from a translation agency for UAH 720 to substantiate the claim.

195. The Government left the issue at the discretion of the Court as far the applicant's claim for postal fees was concerned and asked the Court to reject the remainder of her claim regarding the translation costs.

196. Having regard to all the material in its possession, the Court awards the applicant EUR 36 under this head, plus any value-added tax that may be chargeable.

C. Default interest

197. 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. *Joins* to the merits the issue of the applicant's victim status and holds that she can still claim to be a victim of the alleged violations;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of the substantive limb of Article 2 of the Convention on account of the fatal injuries sustained by the applicant's son at the hands of the police and the lack of adequate medical treatment provided for him prior to his death;

4. *Holds* that there has been a violation of the procedural limb of Article 2 of the Convention on account of the ineffective domestic investigation into the origin of V.K.'s injuries;

5. *Holds* that there has been a violation of the procedural limb of Article 2 of the Convention on account of the ineffective domestic investigation into the allegation of inadequate medical care provided to the applicant's son in Fastiv Hospital;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 72,000 (seventy-two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,750 (two thousand seven hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of legal costs before the Court (the net award to be paid into the bank account of the applicant's lawyer, Mr Tarakhkalo); and

(iii) EUR 36 (thirty-six euros), plus any tax that may be chargeable to the applicant, in respect of other costs and expenses;

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

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

Done in English, and notified in writing on 18 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Vincent A. De Gaetano
President