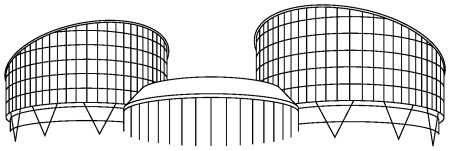

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ZHERDEV v. UKRAINE

(Application no. 34015/07)

JUDGMENT

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 25 January 2018.

STRASBOURG

27 April 2017

FINAL

27/07/2017

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

In the case of Zherdev v. Ukraine,

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

Angelika Nußberger, *President,*
Erik Møse,
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 21 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 34015/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Artyom Leonidovich Zherdev ("the applicant"), on 30 June 2007.

2. The applicant, who had been granted legal aid, was represented by Mr E. Markov, a lawyer admitted to practice in Odessa. The Ukrainian Government ("the Government") were represented, most recently, by their Agent, Mr I. Lishchyna, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had been subjected to physical and psychological ill-treatment by the police in order to extract a confession; that he had been questioned in the presence of a lawyer he had not freely chosen and that the confessions obtained as a result of those alleged breaches of his rights had been used for his conviction; that he had not been assisted by a lawyer at an identification parade and in other investigative actions; and that his pre-trial detention had been unlawful and unreasonably long.

4. On 3 June 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born on 12 May 1988 and at the time of his most recent communication with the Court was detained in Toretsk (previously Dzerzhynsk).

6. Early on the morning of 16 February 2005 Mrs D., a night security guard at a shop in Toretsk, was found dead and partially undressed at her place of work, with injuries on her head and genitals. It was established that a grinder tool had also gone missing. The prosecutor's office instituted criminal proceedings on the same day and over the following days proceeded to interview a number of witnesses.

A. The events of 20 and 21 February 2005

7. At about 10 a.m. on 20 February 2005 two police officers arrived at the applicant's home and asked him, at the time sixteen years of age, and his father to go to the police station with them.

8. Once at the police station, the applicant was separated from his father and questioned as to whether he had any information about the grinder which had disappeared from the shop. According to the applicant, then the police had started urging him to plead guilty to the murder and theft. According to him, as he repeatedly denied those allegations, three officers allegedly beat him on various parts of his body and threatened him that he would be raped in prison.

9. At an unspecified time the same day the applicant's father and grandfather, who lived in the same house as the applicant, made statements to the police about the presence of the grinder in their house. The father stated that the applicant had apparently brought the grinder home around the time of the murder and had originally told him that a stranger had been offering the grinder for sale. On learning that the police were searching for a grinder, the applicant had told him the story he had told the police (see paragraphs 8 above and 13 below). However, in the applicant's story as retold by the father, the grinder was found in a different street. On hearing this, the father had hidden the grinder. The grandfather's account of events was similar to the father's. On the same day the police also obtained a statement of Mr S., the applicant's friend, about the time they had spent together on the night of the murder and the circumstances under which they had parted.

10. From 12.30 p.m. to 1.20 p.m. the police went to the place where the applicant's father had hidden the grinder. The father pointed to where the grinder was and the police seized it.

11. At about 3 p.m. the applicant signed a document explaining his rights as a suspect, including the right to remain silent and to consult a lawyer before his first questioning. When signing the document, the applicant added that he did not object to L. representing him. The applicant alleged that he had mistakenly understood that L. had been asked to appear on his behalf by his parents. In fact, L. had been asked to represent the applicant by the investigator.

12. Subsequently the Qualifications Commission of the Bar of Ukraine, at the time the highest authority in charge of the advocates' qualifications and discipline, examined the applicant's parents' complaint concerning the procedure used in the appointment of L. The Commission established that there was no evidence that L. had been appointed through a bar association, as required by law, in particular there was no order of the bar association or agreement with the client appointing L. It also established that there was no evidence that the investigator had issued a formal decision appointing L. as the applicant's lawyer, as he had been required to do by law.

13. At 3.20 p.m. the applicant was questioned in the presence of L. He stated that on the night of the murder he had been walking home after a night out with friends. He had observed a stranger running down the street with a grinder and had started running after him. Once the man had dropped the grinder, the applicant had picked it up and run away. When he had brought the grinder home he had said to his father that someone had been offering to sell a grinder. When he had learned the next day that a night security guard had been killed and that grinders had been stolen, he had revealed the truth to his father, who had then hidden the grinder.

14. At 3:55 p.m. the applicant was examined by a forensic medical expert, who concluded that he had several light injuries that had been inflicted two to seven days before the examination.

15. At 4 p.m. the investigator K. drew up an arrest report, whereby the applicant was arrested on suspicion of D.'s murder. According to the report, the applicant was being arrested on the grounds that "eyewitnesses indicate the person who committed the crime". According to the Government, the applicant's parents were informed of the applicant's arrest at that time. According to the applicant, no such notification was made.

16. At the same time most of the applicant's clothes were seized for a forensic examination.

17. The applicant's father was taken to the family home to accompany the police during a search.

18. At about 6.20 p.m. the police completed the search of the applicant's home, seizing some clothes. According to the applicant it was only then that the police officers who had conducted the search brought replacement clothes from the applicant's home to the police station.

19. According to the applicant, he was left handcuffed at the police station, wearing just his underwear, for the entire period from the seizure of

his clothes until the end of the search and return of the police officers who conducted it, feeling very cold and vulnerable. During that time police officers continued urging the applicant to confess to the murder and beat him with plastic water bottles.

20. On the evening of 20 February 2005 the applicant was placed in a cell in the police's temporary detention facility with two adult detainees, K., born in 1975, and O., born in 1956, who were at the time registered as suffering from drug addiction. O. had also been suffering from tuberculosis and had had a prior conviction (see paragraphs 62 and 63 below). It is unclear whether the applicant knew of the above background of his co-detainees at the time he had been held with them.

According to the applicant, the two other detainees were secret police informants. They advised the applicant that as he was a minor and if he chose to cooperate the investigative authorities would prosecute him on less serious charges and he would not receive a real prison sentence.

K. was diagnosed with tuberculosis in November 2005. O. and K. died in January and December 2006 respectively, the former allegedly of an overdose and the latter of a disease.

21. The applicant continued to be detained in the cell with O. and K. until a court detention order arrived on 23 February 2005 and he was transferred to the remand prison (see paragraph 26 below).

22. According to the applicant, on the morning of 21 February 2005 two police officers took him out of his cell without registering it. They threatened to make sure he got a long prison sentence, to charge him with rape, which would lead to him being raped and harassed in prison by other inmates, and to create "problems" for his family, unless he confessed. Unable to withstand such pressure, the applicant agreed to copy by hand a statement prepared for him by the police officers, acknowledging his guilt for murder in "self-defence".

According to the authorities, on the morning of 21 February 2005 the applicant asked to see the officer in charge of the police detention facility.

23. The applicant then made a handwritten statement of surrender to Officer G., the head of the police detention facility. In his statement, the applicant noted that early on 16 February 2005, while in a state of alcoholic intoxication, he had decided to burgle the shop. Having suddenly run into the victim, who had tried to attack him with a grinder, he had defended himself and had hit her with a brick. When she had become unconscious, the applicant, scared of what had happened, had carried her to a couch and had undressed her to make it look as though there had been a rape. Then he had picked up the grinder and taken it home.

24. Later on the same day the applicant repeated the above confessions in a formal questioning session in the presence of his lawyer, L.

25. On the same day the applicant, unaccompanied by L., was taken to an identification parade, where Y., a shop assistant who had been working

on a night shift at a kiosk close to the scene of the crime on the night of the murder, picked the applicant out of a four-person line-up as the person she had seen by her kiosk shortly before D. had been killed. In the course of one of the subsequent trials Y. stated that she had not identified the applicant with total certainty but had merely thought that there was a resemblance between him and the person she had seen that night.

B. Subsequent investigation and the first trial

26. On 22 February 2005 the applicant was charged with murder without aggravating circumstances and theft. Accordingly, his procedural status changed from that of "suspect" to "accused". Questioned on the same day in the presence of L. the applicant repeated his previous confession.

27. On 23 February 2005 the Toretsk Court remanded the applicant in custody pending the completion of the investigation. That decision was not appealed against and became final.

28. On the same day the applicant's cellmates, K. and O., were released.

29. On 25 February 2005 the applicant was transferred from the police detention facility to the remand prison in Bakhmut (at the time Artemivsk).

30. On 31 March 2005 the applicant was questioned in the presence of B., a lawyer engaged by his parents. He stated that he confirmed his prior statements about the murder. In the course of the subsequent investigation he was again questioned in the presence of the same lawyer and made detailed statements that repeated his confession.

31. On 6 April 2005 a commission of psychologists and psychiatrists produced a report at the request of the investigator concerning the applicant's mental state at the time of the crime and at the time of his examination by the experts. The experts concluded, in particular, that the applicant, according to his own account, had committed the killing in self-defence, without premeditation and through an unexpected confluence of circumstances. As a result, he had suffered a serious shock and confusion. At the remand prison he had suffered from sleep troubles, fear, and confusion and had displayed inappropriate behaviour. When examined by a prison psychiatrist he had been diagnosed with an acute reaction to stress, put in the prison's medical wing and treated with sedatives, which had helped.

32. In the course of the trial, conducted in the presence of his lawyer A.Kh. and his mother acting as a lay defender, the applicant confirmed the account of the attack on D. which he had given in the course of the pre-trial investigation.

33. On 21 July 2005 the Toretsk Court convicted the applicant of murder without aggravating circumstances and theft and sentenced him to seven and a half years' imprisonment.

34. On 5 August 2005 the applicant, represented by his parents and a new lawyer, Y.K., appealed against the judgment. Additional appeals were also lodged by them on later dates. In the appeals the applicant retracted his confessions as false. He and his representatives alleged that the confessions had been extracted from him under physical and psychological pressure from the police, namely that he had been subject to "physical pressure", "threats and beatings", "moral and physical influence", that his statement of surrender "resulted from beatings" ("*применены меры силового давления*", "*угрозами, избиваниями*", "*моральные и физические воздействия*", "*выбита явка с повинной*" respectively). According to him, he had been told that unless he confessed to murder he would be falsely accused of rape making his life in prison extremely difficult. He stated that two cellmates at the police detention facility also urged him to confess. He also noted that he had kept to his initial confessions until his conviction because his cellmates and the police had told him that the police would make his life difficult in prison if he told anyone of the pressure on him. On the other hand, they had assured him that if he chose to cooperate with the police they would make sure the charges against him were not serious and that he would be released from custody right after his trial. Accordingly, he had said nothing to his lawyers about his ill-treatment.

35. The prosecutor also appealed, in particular arguing that the sentence was excessively lenient.

36. On 4 October 2005 the Donetsk Regional Court of Appeal ("the Regional Court") quashed the judgment of 21 July 2005 and returned the case for further investigation. The court noted that the judgment had been poorly reasoned. As far as the motives for the applicant's actions were concerned, it had also been based heavily on the applicant's confessions, without sufficient corroboration from other evidence. The description of the crime scene, for instance that the lock had been sawn off rather than broken off, had not matched the trial court's conclusion, based on the applicant's account, that the applicant had simply been exploring the shop out of curiosity. The victim had also had unexplained injuries on her genitals.

C. Further investigations and retrials

37. On 19 December 2005 and on several subsequent occasions the investigators attempted to question the applicant within the framework of the further investigations. However, he refused to answer any questions and denied any involvement in the crimes he had been charged with.

38. On 11 and 12 January 2006 the investigator reclassified the charges against the applicant from simple murder to aggravated murder for gain, and from theft to robbery. The applicant was also charged with theft of a friend's cell phone.

39. On 17 February 2006 the Regional Court released the applicant from custody, finding that a further extension of his detention would be in breach of the applicable procedural time-limits.

40. On 21 April 2006 the applicant's case was submitted for a retrial.

41. On 10 May 2006 the Toretsk Court again remanded the applicant in custody. It held that while the applicant had no prior convictions and had positive character references, he had no employment and had been charged with grave offences. Accordingly, it held that detention was necessary to prevent the applicant from absconding or interfering with the investigation and to ensure his compliance with procedural decisions. No time-limit for his detention was fixed in that decision or in those made on 30 November 2006, 21 May 2007, 24 July and 30 December 2008, and 27 May 2009 (see below).

42. On 30 November 2006 the Toretsk Court returned the case for further investigation and ruled that the applicant should remain in custody. The court based its decision on the gravity of the charges which, according to the court, made the applicant likely to abscond.

43. On 21 March 2007 the applicant's case was submitted to the Regional Court for a retrial.

44. On 21 May 2007 the Regional Court again sent the case back for further investigation and, without giving reasons, ruled that the applicant should remain in custody.

45. On 25 January 2008 the Regional Court convicted the applicant of robbery and the murder of D.

46. On 24 July 2008 the Supreme Court quashed the conviction, returning the case for further investigation. The Supreme Court also ruled that the applicant should remain in custody. It gave no reasons for the latter part of its decision.

47. On 30 December 2008 the Regional Court returned the case, which in the meantime had been re-submitted to it, for further investigation. It also ruled that the applicant should remain in custody. By way of reasoning it stated that there were no grounds to order his release given that, in view of the gravity of the charges against him, it could not be ruled out that the applicant would attempt to abscond. On 9 April 2009 the Supreme Court quashed that decision.

D. Final re-trial and conviction

48. On 27 May 2009 the Regional Court committed the applicant for trial and ruled that he should remain in custody for the same reasons as given in the order of 10 May 2006 (see paragraph 41 above).

49. In the course of the final retrial the applicant denied any involvement in the attack on D. and said that he had found the grinder, describing essentially the same circumstances as on 20 February 2005 (see paragraph

13 above). To explain the presence of his fingerprint in the shop where the victim had been killed he stated that he had bought cigarettes there on 15 February 2005.

50. On 11 November 2009 the Regional Court convicted the applicant of robbery and aggravated murder and sentenced him to thirteen years' imprisonment. In particular, it made the following findings.

(a) It found established that the applicant had broken into the shop intending to burgle it, had discovered D. sleeping, had repeatedly hit her on the head with a brick and then, after she had become unconscious, had inserted the neck of a vodka bottle into her vagina.

(b) In finding the applicant guilty, the court referred to various pieces of evidence, including forensic examinations, witness statements and the applicant's confessions "given by him when questioned as a suspect and as an accused" (see paragraph 26 above), and the presence of the applicant's fingerprint at the crime scene. In particular, the trial court referred to the pre-trial identification of the applicant by witness Y. and to the testimony of V.B., who had seen the applicant near the shop around the time of the murder. The court considered the applicant's explanation for the presence of his fingerprint in the shop unconvincing since he had first mentioned the supposed visit to the shop on 15 February 2005 in the course of the retrial and had not previously mentioned that visit.

(c) The court rejected the applicant's argument that his confessions had been inadmissible because they had been obtained under duress. It noted in particular that there was no evidence that the applicant had suffered any physical injuries at the hands of the police. Moreover, the applicant had consistently repeated his confessions in the presence of his lawyers, mother, and psychiatric experts in the course of the first investigation and trial. His parents had voluntarily paid the victim's burial costs. Still, the applicant's confessions had only partially reflected the truth. In particular, according to the forensic and other evidence, D. had been raped with a vodka bottle, which was not in line with the applicant's initial statements that he had accidentally killed her after being surprised by her and had then run away almost immediately.

(d) The absence of the applicant's lawyer from the identification parade on 21 February 2005 had not breached the applicant's defence rights since he had not made any statements on that occasion and had simply been physically shown with other men in the line-up to the witness Y. through a one-way glass partition. It had been Y., and not the applicant, who had actively participated in that investigative measure, and therefore it had not had any impact on his chosen defence strategy. Moreover, contrary to the applicant's submissions, Y.'s statements concerning the applicant's presence near the crime scene on the night of the murder had been consistent with the statements of other witnesses.

(e) On an application by the defence the court ruled certain expert evidence inadmissible.

(f) While the statement in the arrest report that "eyewitnesses indicate the person who had committed the crime" (see paragraph 15 above) had been technically incorrect in the applicant's case, the discovery of the grinder in the applicant's home had in fact constituted an independent legal basis for his arrest. Accordingly, the Regional Court refused to declare the applicant's arrest unlawful.

51. In an appeal to the Supreme Court the applicant gave the account of alleged ill-treatment by the police set out above. He stressed, however, that he had managed to withstand most of the pressure from the police. What had made him finally agree to plead guilty to a murder he had not committed had been the threat that he would be charged with rape and that that would lead to him being raped in prison. That threat had had a particularly strong impact on him given that he had already been made to spend several hours in a state of undress and vulnerability. He had chosen the false confession as a lesser evil. He had then maintained his confession throughout the trial because he had been assured by the lawyer B., who had good relations with the investigator in charge of the case, that the trial court would reclassify the charges against him from murder to a lesser charge of a "killing committed while exceeding the limits of legitimate defence". He had hoped that such a reclassification would allow him to get probation instead of an actual prison sentence. It was not true that, as stated by the Regional Court, he had repeated his confession to psychiatrists. In fact the investigator had assured him that the psychiatric assessment was pre-arranged to allow for reclassification and its results would be worded accordingly. The applicant had not talked to the experts and his mother assured him that she had arranged for the psychiatrists' report to be worded in such terms that it may justify reclassification of charges against him.

52. On 3 June 2010 the Supreme Court upheld the above judgment and it became final.

E. Investigation into the applicant's allegations of ill-treatment

53. It would appear that the applicant first raised his allegations of ill-treatment in his appeals against his first conviction (see paragraph 34 above). In those appeals his allegations were framed in rather general terms and were limited essentially to allegations of "beatings" and "psychological pressure". He also stated, more specifically, that he had been told that, unless he confessed, charges of rape would be brought against him and this would make his life in prison extremely difficult.

Afterwards the applicant's parents also lodged complaints about his alleged ill-treatment with the prosecutor's office. It appears that the applicant's mother lodged first such complaints on 23 December 2005 and

16 January 2006. The Court has not been provided with copies of those complaints.

54. On 26 January 2006 the Toretsk prosecutor's office, in response to the applicant's mother's complaint of 16 January 2006, refused to institute criminal proceedings in relation to the applicant's complaints for lack of a *corpus delicti* in the police officers' actions, concluding that there was no evidence of any physical or psychological ill-treatment. The prosecutors referred essentially to the lack of medical evidence of any injuries suffered by the applicant at the time of the alleged ill-treatment and the lack of any complaints from him before his first conviction. The prosecutors also stated that there had been no irregularities in the applicant's placement and holding in the police detention facility and that O. and K. with whom the applicant had been placed at that facility had had no prior convictions.

55. In the course of examination of the case against the applicant, on 14 June 2006, the applicant complained to the trial court about the beatings, handcuffing, stripping and the threats of prison rape he had allegedly been subjected to by the police. On 15 June 2006 the trial court ordered the prosecutor's office to investigate the allegations.

56. On 29 June 2006 the prosecutor's office again refused to institute criminal proceedings essentially on the same grounds. No mention was made of the applicant's placement with adults in the detention facility.

57. On 26 September 2006 the applicant's mother complained to the regional prosecutor's office, reiterating her allegations that the applicant had been physically ill-treated by the police, left in a state of undress and handcuffed and threatened that he would be charged with rape and would, therefore, be raped in prison. She referred to her previous complaint of 23 December 2005 on the same subject and complained that she had received no satisfactory answer to it.

58. On 16 October 2006 the regional prosecutor's office overruled the decisions of 26 January and 29 June 2006.

59. On 3 November 2006 the Toretsk prosecutor's office again refused to institute criminal proceedings, essentially on the same grounds as in its previous decisions. The prosecutors stated, with no further explanation, that there were no irregularities in the course of the applicant's placement and holding in the police detention facility. On 25 June 2007 the regional prosecutor's office overruled that decision as premature.

60. On 10 July 2007 the Toretsk prosecutor's office again refused to institute criminal proceedings essentially on the same grounds. No mention was made of the applicant's detention with adults. On 8 February 2008 the regional prosecutor's office upheld that decision.

61. Subsequently, other decisions refusing to institute criminal proceedings were taken, the most recent one on 31 December 2008. The copies of those decisions have not been provided to the Court.

62. On 6 January 2011 the Toretsk prosecutor's office wrote to the applicant's father in response to his complaint. It said that the records of local medical institutions showed that at the time the applicant had been placed in the cell with O. the latter had been registered as suffering from tuberculosis but, according to his file, he had not posed a danger of infection to others. He had been admitted to hospital in March 2005 to treat his tuberculosis. O. had had a conviction at some point in the past but his conviction had been considered sufficiently old to have been considered expunged by time the applicant had been detained with him.

63. On 14 March 2011 the Toretsk prosecutor's office wrote to the applicant's father, again in response to his complaint, stating that the placing of adult arrestees in the same cell with the applicant, a minor, had been in breach of domestic law (section 8 of the Pre-Trial Detention Act) and had constituted a disciplinary infraction on the part of the police officers who had taken that decision. However, they could not be disciplined because the six-month limitation period for disciplinary measures had expired. The prosecutor's office also confirmed that the applicant's cellmates were at the time registered as drug users.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure of 1960 (repealed with effect from 20 November 2012)

64. Under Article 45 of the Code participation of a defence counsel was mandatory in the cases of persons who committed an offence while under eighteen years of age, from the moment they acquired the procedural status of "suspects" or "accused". Under Article 43 and 43-1 of the Code the procedural status of a "suspect" was acquired when the person was arrested on suspicion of a crime and the status of the "accused" when he or she was formally charged with a crime.

Article 47 § 3 of the Code authorised the investigator to appoint a defence counsel, according to the procedure provided by law, through a bar association, the investigator's demand being obligatory for the head of the bar association. According to Article 44 of the Code the authority of a lawyer appointed as a defence counsel had to be confirmed by an order of the bar association unless the lawyer appointed was not a member of a bar association in which case his or her authority was to be confirmed by written agreement with the client.

65. Under Article 48 of the Code a defence counsel had the right to be present at all investigative actions, including questioning, search and seizure and identification parades, in which the defendant participated.

66. Other relevant provisions of the Code of Criminal Procedure are quoted in the Court's judgments in *Osypenko v. Ukraine* (no. 4634/04, § 33,

9 November 2010), and *Smolik v. Ukraine* (no. 11778/05, § 32, 19 January 2012).

B. Pre-Trial Detention Act of 1993

67. Section 8 of the Pre-Trial Detention Act requires that minors are to be kept separately from adults and that those being prosecuted for the first time are to be held separately from those with a prior criminal record.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

68. The applicant complained that he had been physically and psychologically ill-treated by police officers and that there had been no effective investigation into his complaints in that respect. He relied on Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

1. Alleged ill-treatment

69. The Government submitted that the applicant's complaint was ill-founded. They pointed out that there was no evidence that any injuries had been inflicted on him while he had been in police custody. Officer G., who had taken the applicant's original confession, had testified that the applicant's statement of surrender had been voluntary. The applicant had failed to refute that testimony, in particular by refusing to participate in a formal confrontation with G. The applicant had been questioned in the presence of his lawyer L. and his parents had failed to engage another lawyer. The applicant had not raised any complaints until after he had been convicted. While the applicant had indeed received psychiatric care in detention, his psychological troubles had been caused by the stress of his having committed a crime. The content of the expert report (see paragraph 31 above), not challenged by the applicant or his lawyer, supported that conclusion. The applicant's cellmates, K. and O., had been ordinary arrestees and not police agents.

70. The applicant insisted that his complaint was admissible. He submitted that he had been beaten and threatened by the police on 20 and 21 February 2005. In addition to beatings and threats, he had been left

handcuffed and in a state of undress from 4 p.m. to 7.30 p.m. on 20 February 2005 and had been placed in a cell with adult detainees who had allegedly been police informants. He maintained that such treatment had amounted to sustained psychological pressure contrary to Article 3, as a result of which he had been forced to make his confession. According to him, physical ill-treatment and the threat that he would be raped in prison had been decisive factors in his decision to make a false confession.

71. He explained the delay in raising his complaint before the domestic authorities by his desire to ensure that he would get a speedy investigation and trial and a light sentence, as had been promised to him by the investigating authorities.

72. The mental troubles the applicant had suffered after transfer from police custody to the remand prison, recorded in the psychiatrists' report of 6 April 2005 (see paragraph 31 above), had been a consequence of that treatment. In his view, certain other circumstances also provided corroboration for his allegations. In particular: (i) while he had been *de facto* detained on the morning of 20 February 2005, his arrest had only been documented with a report at 4 p.m. that day, (ii) he had been kept "incommunicado" (by which the applicant apparently meant without contact with his parents) during the first few days of the investigation, (iii) he had been kept handcuffed in a state of undress after his clothes had been taken for forensic examination, (iv) he had been detained with adults suffering from a contagious disease. His vulnerability as a minor separated from his parents had to be taken into account. According to the applicant, his sudden confession on the morning of 21 February 2005, combined with the above circumstances and the lack of an effective investigation into his allegations of ill-treatment, allowed for a presumption that he had been ill-treated.

2. Effectiveness of the investigation

73. The applicant submitted that his complaint had been "arguable" given that he had provided a coherent account of the alleged ill-treatment, the irregularities in his arrest and questioning and the overall context of his detention. The authorities had made no attempt to question the officers who had seized the applicant's clothes, his cellmates, doctors, or the applicant himself. The decisions to refuse to initiate criminal proceedings had been repeatedly overruled. The applicant alleged that the authorities' conduct in his case had reflected the general pattern of the ineffectiveness of domestic investigations described in *Kaverzin v. Ukraine* (no. 23893/03, §§ 172-80, 15 May 2012).

74. The Government submitted that the enquiries conducted by the prosecutor's office into the applicant's allegations had been effective. The prosecutor's office had relied on medical evidence which showed that the applicant had had no injuries. The effectiveness of the investigation had

been undermined by the applicant's delay in raising his complaints. Accordingly, there had been no violation of the procedural limb of Article 3.

B. The Court's assessment

1. Admissibility

75. In assessing the admissibility of the applicant's complaint the Court considers that a distinction must be made between the various elements of his allegations.

(a) Physical ill-treatment and threats against the applicant's family

76. As far as the applicant's allegations of physical ill-treatment or threats of "problems" for his family are concerned, they are not supported by any evidence. In particular, there is no evidence that the applicant suffered any injuries in police custody: it is notable in this respect that the applicant was examined on the day of arrest by a forensic medical expert who established that his injuries predated the arrest (see paragraph 14 above). No further injuries were ever recorded. That part of the applicant's allegations is, therefore, wholly unsubstantiated. For the same reason they were not "arguable" for the purposes of the procedural limb of Article 3.

77. Therefore, that part of the application should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(b) Other elements of the alleged ill-treatment

78. Unlike the applicant's allegations of physical ill-treatment and threats against his family, other elements of the applicant's allegations find some support in the material before the Court. In particular, the applicant alleged that: (i) he had been left handcuffed and in his underwear for several hours at the police station, (ii) he had been placed in the same cell as adult detainees, at least one of whom was suffering from a contagious disease, and (iii) he had been threatened that unless he confessed to murder he would be charged with rape, which would result in him being raped and harassed in prison by fellow inmates.

79. While those allegations were raised before the domestic authorities after a substantial delay, the case file nevertheless contains important elements corroborating them.

80. In particular, the relevant search and seizure records show that all of the applicant's clothes were seized from him for forensic analysis at 4 p.m. on 20 February 2005 and that the search of his home was completed at 6.20 p.m. the same day, after which he allegedly first received replacement clothes. His account of what occurred in those hours is coherent and plausible. In contrast, the Government failed to provide any alternative

account of those events. In particular, neither any domestic authority in the course of the domestic investigations nor the Government before the Court stated that he had been provided with any other clothes or a covering immediately after his clothes had been seized. The Government also did not contest his allegation that throughout that time he had remained handcuffed.

The applicant's placement with adults in breach of domestic law was admitted by the authorities (see paragraph 63 above).

As to the threat that the applicant could be charged with rape and that this would expose him to the risk of prison rape, it can be noted that clear signs that the victim might have been subjected to some sort of sexual assault had been discovered early on and that that was eventually confirmed by the domestic courts in convicting the applicant (paragraphs 6 and 50 above). Therefore the Court cannot rule out the possibility that a sex offence charge was discussed with the applicant on 20 or 21 February 2005 (see paragraphs 8 and 22 above). Given that such a charge could have been warranted by the facts of the case, the mere discussion of such a possibility would not fall within the ambit of Article 3. However, the possibility that such a discussion may have taken place can be taken into account when assessing the likely impact on the applicant's state of mind of the other objective elements of the applicant's treatment that have been proven (see paragraph 91 below).

81. The Government failed to provide any evidence, resulting from the domestic investigations or otherwise, to rebut the applicant's allegations other than to point out that his allegations had been raised after a substantial delay.

The Court reiterates that in accordance with its case-law the scope of the obligation to apply promptly to the domestic authorities, which is part of the duty of diligence incumbent on the applicants, must be assessed in the light of the circumstances of the case (see, *mutatis mutandis*, *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 265, ECHR 2014 (extracts)).

Turning to the circumstances of the present case, the Court observes that the applicant explained his tardiness in bringing up this complaint by referring to his hope that by cooperating with the investigating authorities he would get a more lenient sentence. On the one hand, such an explanation would appear to undermine the applicant's credibility. After all, if he believed it to be beneficial to maintain a false confession in the hope of a lenient sentence, he might also be prepared to make a false ill-treatment allegation to achieve the same result or some other goal. On the other hand, the applicant's explanation is not necessarily inconsistent with his allegations. After all, the treatment described by the applicant might well have been a "stick" accompanied by a "carrot" in the form of an offer to plead guilty in return for favourable legal treatment in terms of the charges brought against him.

Therefore, in the light of the available evidence (see paragraph 80 above), the Court cannot consider that the applicant's delay in raising his allegations is in itself decisive for determining the credibility of his allegations.

82. Accordingly, the Court finds that the applicant's complaint under the substantive and procedural limbs of Article 3 – that he was left in a state of undress for hours and placed in a cell with adults and that the domestic authorities failed to effectively investigate his allegations in that respect – raises serious issues of fact and law requiring an examination of the merits. Therefore, contrary to the Government's submissions, this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

83. The relevant general principles of the Court's case-law concerning the substantive and procedural aspects of obligations under Article 3 of the Convention are summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90 and 100-101 ECHR 201581-90), and *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, §§ 182-85, ECHR 2012) respectively.

(a) Alleged ill-treatment

84. In the light of the preceding discussion concerning admissibility, the Court finds that the two elements of the applicant's allegations – his stripping and placement with adult detainees on 20 February 2005 – have been proven to the required standard of proof.

85. The Court considers that those elements are insufficient to make an arguable case that the applicant was subjected to either "torture" or "inhuman treatment". The question for the Court is whether those elements are sufficient to find that the applicant suffered "degrading" treatment contrary to Article 3 of the Convention.

86. In *Bouyid* (cited above), the Court held that any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. Treatment which arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance may equally be characterised as degrading and fall within the prohibition set forth in Article 3 (ibid., §§ 101 and 87 respectively).

Moreover, in *Bouyid* the Court also reiterated that ill-treatment is liable to have a greater impact – especially in psychological terms – on a minor and emphasised that it was vital for law-enforcement officers who are in contact with minors in the exercise of their duties to take due account of the vulnerability inherent in their young age. Police behavior towards minors

may be incompatible with the requirements of Article 3 of the Convention simply because they are minors, whereas it might be deemed acceptable in the case of adults. Therefore, law-enforcement officers must show greater vigilance and self-control when dealing with minors (ibid., §§ 109 and 110, with further references).

87. Turning to the circumstances of the present case, the Court finds it established that the applicant was left handcuffed in just his underwear at the police station for at least two and a half hours on 20 February 2005. The authorities clearly had a valid reason for taking his clothes as they could have provided physical proof of his involvement in the crime. However, the Government have not provided any explanation to the Court as to why the authorities allowed the applicant to remain in a state of undress for at least two and a half hours afterwards.

88. The Court notes that the forced stripping of a person is a strong measure which often implies a certain level of distress. In certain circumstances it might fall within the ambit of Article 3 of the Convention (see, for example, *Lyalyakin v. Russia*, no. 31305/09, §§ 75-78, 12 March 2015, which concerned the stripping of a nineteen-year-old army recruit down to his briefs).

89. In the present case, there is no conclusive evidence before the Court that the authorities' intention was to humiliate or debase the applicant. This is a relevant factor, even though the absence of such an intention is not decisive (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

90. In contrast to some other cases where the Court found the stripping of applicants "degrading", there is no indication in the present case that the applicant's situation was aggravated by the presence of persons of opposite sex (contrast *Valašinas v. Lithuania*, no. 44558/98, § 116, ECHR 2001-VIII, and *Wiktorko v. Poland*, no. 14612/02, §§ 54-55, 31 March 2009, which concerned the applicants being stripped entirely naked); the touching of his private parts (contrast *Valašinas*, cited above, § 117, and see *Jaeger v. Estonia*, no. 1574/13, § 42, 31 July 2014); or by being paraded in public (contrast *Lyalyakin*, cited above, § 76). It would appear that for the whole of the time the applicant remained in his underwear he was in a relatively enclosed space, an investigator's office at the police station. That absence of public exposure is a relevant factor, although not a decisive one (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26). The Court also notes that the applicant remained in a state of undress for a relatively limited period of time (contrast *Van der Ven v. the Netherlands*, no. 50901/99, §§ 61 and 62, ECHR 2003-II, and *Hellig v. Germany*, no. 20999/05, § 57, 7 July 2011) although that, too, is not in itself decisive (see *Wieser v. Austria*, no. 2293/03, §§ 12 and 40, 22 February 2007).

91. However, the Court finds that it is highly relevant that the applicant was a minor and that there is a lack of any explanation for the authorities'

failure to provide him with replacement clothes or some other covering sooner and to keep him in such state handcuffed for at least two and a half hours (compare *Lyalyakin*, cited above, §§ 77 and 78, and *Ilievska v. the former Yugoslav Republic of Macedonia*, no. 20136/11, §§ 61-62, 7 May 2015, concerning lack of sufficient explanations for the necessity of parading the applicant in a state of undress and for an hour-long handcuffing of a vulnerable applicant respectively). Moreover, the Court takes note of the applicant's statement (see paragraphs 8 and 51 above) that the time he spent in a state of undress left a particularly strong impression on him in view of the possibility, which was on his mind, that he might be charged with a sex offence and, therefore, exposed to the risk of prison rape.

92. Turning to the second element of the alleged ill-treatment, the applicant's placement with adult detainees, the Court notes that it lasted for a relatively short period of time, three days (contrast, for example, *Güveç v. Turkey*, no. 70337/01, §§ 91 and 98, ECHR 2009 (extracts)), and the applicant did not allege that those detainees subjected him to any hostile treatment. It is true that the information about those detainees' health is contradictory: while one of them was at the time diagnosed with tuberculosis, it is not clear whether he posed a particular danger of infection. The Court also notes that both of them were suffering from drug addiction (see paragraphs 20 above). In view of the fact that his placement with adults took place shortly after his arrest and of the applicant's fragile mental state at the time, as documented by the commission of psychologists and psychiatrists (see paragraph 31 above), that detention was bound to leave a strong impression on him. Moreover, this aspect of the treatment which the applicant suffered should not be taken in isolation but should rather be seen in the context of all the circumstances of the case (see, *mutatis mutandis*, *Gäfgen v. Germany* [GC], no. 22978/05, § 88, ECHR 2010).

93. In making an overall assessment, the Court considers that in view of the applicant, a minor facing the criminal justice system for the first time, being left handcuffed and almost without clothes for at least two and a half hours in a state of uncertainty and vulnerability, may be considered to raise on itself an issue under Article 3 (see paragraph 86 above). Moreover, the applicant's placement with adult detainees, which immediately followed and which was in violation of domestic law (see paragraph 63 above), must have contributed to creating in him feelings of fear, anguish, helplessness and inferiority, diminishing his dignity.

94. The Court concludes therefore that the authorities subjected the applicant to "degrading" treatment contrary to Article 3 of the Convention by allowing the applicant, a minor, to remain handcuffed and wearing just his underwear for at least two and a half hours on 20 February 2005 and, subsequently, by placing him in a cell with adult detainees for three days.

95. There has, therefore, been a violation of Article 3 of the Convention under its substantive limb.

(b) Effectiveness of the investigation

96. In view of the coherent and detailed nature of the applicant's allegations and the prima facie evidence supporting his account (paragraph 80 above), the Court considers that the applicant's allegations were "arguable" for the purposes of triggering the authorities' obligation to carry out an effective investigation.

97. Even though the domestic authorities conducted several rounds of pre-investigation enquiries and decided not to institute criminal proceedings in connection with the applicant's allegations, there is no indication that those enquiries, conducted within the context of criminal procedure, concerned the applicant's complaint of what he considered to be forms of psychological ill-treatment, particularly being left handcuffed and in a state of undress without replacement clothing (see paragraphs 54 to 60 above). As to his placement in the same cell with adults, this issue was subject only to cursory attention, with occasional laconic statements to the effect that "no irregularities were found" with no reasons being given for that conclusion, which, moreover, eventually turned out to be erroneous (see paragraphs 54-60 and 63 above).

98. The Court reiterates that when it comes to determining the appropriate forms of response to complaints about treatment contrary to Articles 2 and 3 of the Convention inflicted by the State agents, the cases concerning allegations of unlawful use of force by such agents differ from cases concerning mere fault, omission or negligence on their part. Civil or administrative, as opposed to criminal, proceedings may constitute adequate remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention in the latter cases (see, *mutatis mutandis*, *Mocanu*, cited above, § 227, where the Court emphasised the need for criminal-law remedies in cases involving unlawful use of force by State agents, as opposed to the cases of mere fault, omission or negligence).

99. In view of those principles and its finding in paragraph 89 above that there is no conclusive evidence that the authorities had the intention of debasing the applicant, the Court considers that those of the applicants' complaints, based on which the Court has found a violation of Article 3 of the Convention under its substantive limb, did not necessarily require a criminal-law response. They could be addressed, for example, in the context of an administrative investigation and/or disciplinary proceedings against the officials involved.

100. Still, the fact remains that in the present case the applicant sufficiently raised the entire range of his ill-treatment complaints, both concerning physical ill-treatment and concerning the other elements of his treatment on the basis of which the Court found a violation of Article 3 under its substantive limb, before the prosecutor's office and the courts which examined the case against him. His complaint of physical ill-

treatment was first raised on 5 August 2005, his complaint of being placed with adults on 16 January 2006 and his complaint of being kept handcuffed and in a state of undress on 14 June 2006, at the latest (see paragraphs 34, 54 and 55 above respectively). Accordingly, he sufficiently brought his complaints to the attention of the authorities (see, mutatis mutandis, *Kaverzin*, cited above, § 99). The Government have not suggested that the applicant had available to him an effective civil remedy in respect of his complaints which he could put in motion independently and in the absence of an effective official investigation.

101. There is no material before the Court to show that any domestic authority has ever specifically addressed in any meaningful way, in any procedure, the applicant's complaint concerning being left handcuffed and in a state of undress without replacement clothing for hours. As to the complaint concerning being placed in a cell with adults, it was not resolved until 14 March 2011, when the domestic authorities finally concluded, as a result of an administrative inquiry, that such a placement had been in breach of domestic law but that disciplinary action was time-barred (see paragraph 63 above). That, however, occurred only more than five years after the applicant first raised his complaint.

102. That omission and delay are sufficient for the Court to conclude that the domestic investigation into the applicant's allegations was not effective.

103. There has, accordingly, been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

104. The applicant complained of a number of violations of Article 5 of the Convention which reads, in so far as relevant, 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.
>
> ..."

A. Alleged violations of Article 5 § 1

1. The applicant's detention on the basis of the arrest report of 20 February 2005 and on the basis of the court order of 23 February 2005

(a) The parties' submissions

105. The applicant argued that, as in the case of *Grinenko v. Ukraine* (no. 33627/06, §§ 83-84, 15 November 2012), his arrest report had contained a formulaic phrase referring to unidentified "witnesses". Such wording would not have persuaded an independent observer that there had been a reasonable suspicion against him. The applicant further stated that his detention under the court order of 23 February 2005 had not been necessary as he had been a minor at the time.

106. The Government submitted that the arrest report had complied with the requirements of domestic law and that the domestic court, in ordering the applicant's detention, had followed the procedure established by law and had given serious reasons for its decision.

(b) The Court's assessment

Admissibility

107. The Court observes that the Government did not raise the issue of compliance with the six-month rule. Nonetheless, the Court has already considered that the six-month rule is a public policy rule and that, consequently, it has jurisdiction to apply it of its own motion (see *Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004-II).

108. The Court observes that the applicant was first detained under an arrest report drawn up by the investigator on 20 February 2005 and detained on this basis until 23 February 2005 when his detention was ordered by the domestic court. This detention under the court order was then extended until the applicant's release on 17 February 2006. The applicant was re-arrested on 10 May 2006. Between 17 February and 10 May 2006 the applicant was at liberty.

109. Therefore, the period of detention which had begun on 20 February 2005 came to an end on 17 February 2006 when the applicant was released. The application was lodged more than six months after that date. Accordingly, this complaint is out of time (see *Idalov v. Russia* [GC], no. 5826/03, § 130, 22 May 2012, and *Yaroshovets and Others v. Ukraine*, nos. 74820/10, 71/11, 76/11, 83/11, and 332/11, § 117, 3 December 2015).

110. The Court concludes, therefore, that the applicant's complaint under Article 5 § 1 in respect of his detention under the arrest report of 20 February and under the court order of 23 February 2005 must be rejected

in accordance with Article 35 §§ 1 and 4 of the Convention for being lodged outside the six-month time-limit.

2. The applicant's detention from 10 May 2006 to 25 January 2008 and from 24 July 2008 to 11 November 2009

(a) The parties' submissions

111. The applicant, relying in particular on the Court's judgment in *Kharchenko v. Ukraine* (no. 40107/02, §§ 98 and 101, 10 February 2011), maintained that his detention in the relevant period had been in breach of Article 5 § 1 of the Convention.

112. The Government submitted that the applicant's detention in the above period was in compliance with domestic law.

(b) The Court's assessment

(i) Admissibility

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

(ii) Merits

114. The Court has previously found that at the material time domestic law did not set clear rules stating by what authority, on what grounds and for what term the detention of a defendant could be ordered or extended at the stage of a trial and the return of cases for further investigation. The Court has held that such a situation stemmed from a legal lacuna and was a recurrent structural problem in Ukraine (see *Kharchenko*, cited above, §§ 73-76 and 98, and, for a recent example of an application of that approach, see *Kleutin v. Ukraine*, no. 5911/05, §§ 105 and 106, 23 June 2016). No arguments have been put forward in the present case to enable the Court to reach a different conclusion.

115. There has therefore been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention from 10 May 2006 to 25 January 2008 and from 24 July 2008 to 11 November 2009.

B. Alleged violation of Article 5 § 3

1. The parties' submissions

116. The Government submitted that the period of pre-trial detention had been reasonable in the circumstances of the case.

117. The applicant submitted that he had been detained for more than five years and that the reasoning of the judicial decisions concerning his detention never evolved from that given in the original detention order.

2. The Court's assessment

(a) Admissibility

118. The Court observes that the applicant's complaint concerning his detention from 20 February 2005 to 17 February 2006 has been lodged out of time (see *Idalov v. Russia* [GC], no. 5826/03, § 130, 22 May 2012) and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

119. At the same time, the applicant's complaint in respect of his detention after 10 May 2006 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

120. The relevant general principles of the Court's case-law are summarised in *Idalov* (cited above, §§ 139-41).

121. Turning to the circumstances of the present case, the Court observes that the applicant was re-arrested on 10 May 2006 and then continuously detained until 11 November 2009, when he was convicted at first instance. Deducting the period from 25 January to 24 July 2008, when he was detained after conviction for the purposes of Article 5 § 1 (a) of the Convention, the overall period of detention to be assessed for compliance with Article 5 § 3 is three years. However, in assessing the reasonableness of that period the Court is also conscious of the fact that the applicant had already spent time in custody pending trial (see *Idalov*, cited above, § 130).

122. The Court has often found a violation of Article 5 § 3 of the Convention in cases against Ukraine on the basis that even for lengthy periods of detention the domestic courts referred to the same set of grounds, if there were any, throughout the period of the applicant's detention (see *Kharchenko*, cited above, §§ 80-81 and 99).

123. In the present case, too, the seriousness of the charges against the applicant and the risk of his absconding or interfering with the investigation had been given in the initial order for his detention. However, that reasoning did not evolve with the passage of time. Moreover, on several occasions the domestic courts failed to give any reasons whatsoever for their decisions extending detention (see paragraphs 41 to 48 above).

124. In view of the length of the applicant's detention, the foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

125. The applicant complained of a number of violations of Article 6 of the Convention which reads, in so far as relevant, as follows:

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

A. The parties' submissions

1. The applicant

126. The applicant complained that the criminal proceedings against him had been unfair in that:

(i) no lawyer had been present during the applicant's questioning on the morning of 20 February 2005 prior to his official arrest;

(ii) L.'s services had been ineffective because he had behaved passively in the course of the applicant's questioning on 20-22 February 2005 and had failed to request a confidential consultation with the applicant prior to or after those interviews;

(iii) confessions given under duress were used for his conviction;

(iv) the applicants' parents had been prevented from appointing a lawyer and the investigator had appointed L. without following the procedure required by domestic law, namely he had not asked a bar association. The applicant and his parents had not been given the possibility to appoint a lawyer themselves, because they had not been informed of the applicant's arrest and because they had not been advised of that right. The applicant had been faced with a *fait accompli* by the investigator who had appointed L. as the applicant's lawyer and presented him to the applicant as such. In accepting that lawyer, the applicant had been under the mistaken impression that L. had been appointed by his parents;

(v) the applicant's lawyer had been absent when the applicant had written his statement of surrender to the police on the morning of 21 February 2005;

(vi) the applicant's lawyer had been absent during the seizure of the applicant's clothes and the identification parade.

127. Accordingly, the applicant submitted that there had been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

2. The Government

128. As to admissibility, the Government, referring to their position under Article 3, submitted that the applicant's complaint under Article 6 concerning the use of confessions allegedly obtained through ill-treatment was ill-founded.

129. As to the merits, the Government submitted that during the questioning on 20 and 21 February 2005 the applicant had been represented by a lawyer and that neither he nor his parents had expressed a wish to appoint a different lawyer at the time. Prior to the questioning, the applicant had been told of his right not to incriminate himself. The Government stressed that the applicant had repeated his initial confessions in several interviews in the presence of counsel chosen by his parents, in the presence of his parents themselves, and in the course of the first trial.

130. Accordingly, the Government submitted that there had been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

B. Court's assessment

1. General principles

(a) General approach to Article 6 in its criminal aspect

131. The protections afforded by Article 6 §§ 1 and 3 apply to a person subject to a "criminal charge", within the autonomous Convention meaning of that term. A "criminal charge" exists from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, § 249, 13 September 2016, here and below the relevant paragraphs of *Ibrahim and Others* contain further references).

132. The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case. The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (ibid., § 250).

133. The primary purpose of Article 6 as far as criminal matters are concerned is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge". However, as noted above, the guarantees of Article 6 are applicable from the moment that a "criminal charge" exists within the

meaning of this Court's case-law and may therefore be relevant during pre-trial proceedings if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with them. The manner in which Article 6 §§ 1 and 3 are to be applied during the investigation stage depends on the special features of the proceedings involved and on the circumstances of the case (ibid., § 253).

134. Complaints under Article 6 about the investigation stage tend to crystallise at the trial itself when an application is made by the prosecution to admit evidence obtained during the pre-trial proceedings and the defence opposes the application. As the Court has explained on numerous occasions, it is not its role to determine, as a matter of principle, whether particular types of evidence, including evidence obtained unlawfully in terms of domestic law, may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair (see *Bykov v. Russia* [GC], no. 4378/02, § 89, 10 March 2009). In determining the latter question, regard must be had to whether the rights of the defence were respected. It must be established, in particular, whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see, for example, *Prade v. Germany*, no. 7215/10, §§ 33 and 34, 3 March 2016, with further references). However, an exception to this approach applies in the case of confessions obtained as a result of torture or of other ill-treatment in breach of Article 3: the Court has stated that the admission of such statements as evidence to establish the relevant facts in criminal proceedings renders the proceedings as a whole unfair, irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction (see, for example, *Gäfgen*, cited above, § 166).

135. In its case-law on Article 6 the Court has held that when criminal charges are brought against a child, it is essential that he be dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings. The right of an accused minor to effective participation in his or her criminal trial requires that he be dealt with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce as far as possible his feelings of intimidation and inhibition and ensure that the accused minor has a broad understanding of the nature of the investigation, of what is at stake for him or her, including the significance of any penalty which may be imposed as well as of his rights of defence and,

in particular, of his right to remain silent (see *Panovits v. Cyprus*, no. 4268/04, § 67, 11 December 2008, with further references).

(b) Access to a lawyer

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

137. As clarified by the Court in *Ibrahim* (cited above), in applying the *Salduz* test the Court must first assess whether there were compelling reasons for the restriction on access to a lawyer. In the second stage, it must evaluate the prejudice caused to the rights of the defence by the restriction (see *Ibrahim and Others*, cited above, § 257). Where compelling reasons are established, a holistic assessment of the entirety of the proceedings must be conducted to determine whether they were "fair" for the purposes of Article 6 § 1 (ibid., § 264). Where compelling reasons are not established, the Court must apply a very strict scrutiny to its fairness assessment, with the onus shifting to the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice (ibid., § 265).

138. Where the applicant was afforded access to a lawyer from his first interrogation, but not – according to his complaint – a lawyer of his own choosing, the first step should be to assess whether it has been demonstrated in the light of the particular circumstances of each case that there were relevant and sufficient grounds for overriding or obstructing the defendant's wish as to his or her choice of legal representation. Where no such reasons exist, the Court should proceed to evaluate the overall fairness of the criminal proceedings in the light of the factors set out in *Dvorski v. Croatia* ([GC], no. 25703/11, §§ 81-82, ECHR 2015).

(c) Factors to be taken into account in assessing overall fairness of proceedings

139. When examining the proceedings as a whole in order to assess the impact of procedural failings at the pre-trial stage on the overall fairness of the criminal proceedings, the following non-exhaustive list of factors, drawn from the Court's case-law, should, where appropriate, be taken into account:

(a) Whether the applicant was particularly vulnerable, for example, by reason of his age or mental capacity.

(b) The legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with; where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair.

(c) Whether the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use.

(d) The quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion.

(e) Where evidence was obtained unlawfully, the unlawfulness in question and, where it stems from a violation of another Convention Article, the nature of the violation found.

(f) In the case of a statement, the nature of the statement and whether it was promptly retracted or modified.

(g) The use to which the evidence was put, and in particular whether the evidence formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case.

(h) Whether the assessment of guilt was performed by professional judges or lay jurors, and in the case of the latter the content of any jury directions.

(i) The weight of the public interest in the investigation and punishment of the particular offence in issue.

(j) Other relevant procedural safeguards afforded by domestic law and practice (see *Ibrahim and Others*, cited above, § 274).

(d) Waiver of rights

140. Neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, his entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance. Furthermore, it must not run counter to any important public interest (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II). In particular, for a waiver to be effective it must be shown that the applicant could reasonably have foreseen the consequences of his conduct (see, *mutatis mutandis*, *Idalov v. Russia* [GC], no. 5826/03, § 173, 22 May 2012). The right to counsel, being a fundamental right among those which constitute the notion of a fair trial and ensuring the effectiveness of the rest of the guarantees set forth in Article 6 of the Convention, is a prime example of those rights which require the

special protection of the "knowing and intelligent waiver" standard established in the Court's case-law (see *Dvorski*, cited above, § 101).

2. Application of the above principles to the present case

141. The Court will assess the applicant's complaints in full awareness of his particular vulnerability as a minor, which is an important consideration for the Court (see *Ibrahim and Others*, cited above, § 274). However, this vulnerability does not exempt the applicant's allegations from scrutiny in the light of the case file material.

(a) Admissibility

(i) Absence of a lawyer during the seizure of the applicant's clothes on 20 February 2005 and during the identification parade on 21 February 2005

142. The applicant argued that the absence of a defence lawyer from the seizure of the applicant's clothing on 20 February 2005 and from the identification parade on 21 February 2005 was contrary to domestic law and breached his rights under Article 6 §§ 1 and 3 (c) of the Convention. The Court considers that it is not necessary to decide whether these complaints fall to be examined under Article 6 § 1 of the Convention only or under Article 6 §§ 1 and 3 (c) of the Convention taken together since they are in any case inadmissible for the following reasons.

143. The Court observes that the seizure of clothes did not result in any specific incriminating evidence against the applicant and therefore no arguable case can be made that it prejudiced the fairness of the proceedings against him.

144. By contrast, it is not open to doubt that the identification parade resulted in incriminating evidence against the applicant: Y. identified him as the person she had seen near the crime scene.

145. The Court accepts that the applicant's lawyer was not summoned to and was not present during the identification parade. The provision of domestic law which entitled defence counsel to be present at all investigative actions (see paragraph 65 above) was therefore clearly breached. Moreover, there is no indication that the applicant waived his right to have a lawyer present at that investigative action, either explicitly or implicitly.

146. However, the applicant had ample opportunity to challenge the authenticity of the results of that identification and oppose its use: his objections were examined in the course of the retrials and on appeal. It is notable in this respect that Y. was examined at the trial in the course of which she moderated her identification of the applicant (see paragraph 25 above). The trial court subjected the results of that pre-trial identification to considerable scrutiny and found that it was consistent with a range of other

evidence in the file, including the evidence of another witness and the presence of the applicant's fingerprint on the crime scene (see paragraphs 50 (b) and (d) above). Finally, the Court notes that there is no suggestion of any compulsion in the course of the identification parade or of a specific procedural irregularity in its organisation which would be capable of tainting its results.

147. Therefore, no arguable case can be made that the authorities' failure, contrary to domestic law, to ensure the defence lawyer's presence at the identification parade and the admission of the result of that parade in evidence against the applicant prejudiced the fairness of the proceedings against him.

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

(ii) Absence of a lawyer from the first questioning of the applicant on the morning of 20 February 2005

149. There is no indication in the case file that on the morning of 20 February 2005 the applicant made any statements which played any role in his conviction. It is true that in convicting the applicant the trial court relied on the applicant's statements made in the capacity of a "suspect" (see paragraph 50 (b) above). However, the applicant was first questioned in that procedural status at 3.20 p.m. on 20 February 2005 when he already had a lawyer, so all the incriminating statements used for his conviction were made in the presence of a lawyer.

150. While it appears, and the Government did not deny this, that an informal interview with the applicant had indeed taken place at the police station on the morning of 20 February 2005, there is no precise information in the case file as to the tenor of any statements the applicant may have made on that occasion. Moreover, on the morning of 20 February 2005 the situation developed rapidly, with the authorities apparently interviewing several witnesses and gathering various pieces of evidence. There is no information in the case file which would allow the Court to ascertain at what particular hour the first informal interview with the applicant took place and, accordingly, whether by that time the authorities had sufficient incriminating material to consider the applicant a "suspect" and bring Article 6 guarantees into play. Accordingly, the Court considers that this complaint is not sufficiently developed and substantiated.

151. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(iii) Alleged ineffectiveness of L.'s services

152. Given the applicant's allegations about his deliberate decision not to inform his lawyer about the alleged ill-treatment he had suffered and the

falsity of his confessions (see paragraph 34 above), the applicant has failed to demonstrate how L. could have been more effective in his defence at the interviews on 20-22 February 2005 where he was present.

L.'s absence during the seizure of the applicant's clothes and the identification parade on 20 and 21 February 2005 respectively is more readily explained by the authorities' failure to summon him (which will be examined under the merits below) rather than any omission on his part.

Moreover, there is no suggestion that the applicant attempted to refuse L.'s services or expressed any dissatisfaction with them at the time or that the applicant or his parents sought the appointment of any other lawyer as soon as the latter became aware of his arrest on 20 February 2005 (see paragraph 158 below). Therefore, there was no indication that L.'s alleged failings were manifest in themselves or brought to the attention of the authorities (contrast *Pavlenko v. Russia*, no. 42371/02, §§ 106, 107, 109 and 113, 1 April 2010, and see *Daud v. Portugal*, 21 April 1998, § 38, *Reports of Judgments and Decisions* 1998-II, for relevant principles).

153. Accordingly, the applicant's complaint, to the extent that it concerns the alleged ineffectiveness of L.'s services in connection with the interviews with the applicant on 20-22 February 2005 at which L. was present, is wholly unsubstantiated and manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(iv) Rest of the applicant's complaints under Article 6 §§ 1 and 3 (c)

154. The Court considers that the rest of the applicant's complaints under Article 6 §§ 1 and 3 (c), set out in paragraph 126 (iii)-(v) above, are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

(b) Merits

(i) Admission of the applicant's confessions in evidence

155. There is no evidence that the applicant's confessions resulted from that treatment forming the basis for the finding of a violation of Article 3 in the present case. It is relevant in this respect that the applicant consistently repeated his initial confessions throughout the investigation and at his first trial, even though he did not allege that he was subjected to continuing intimidation or feared reprisals during that later period.

156. The Court concludes therefore that it cannot establish to the required standard of proof that the applicant's confessions were obtained as a result of the degrading treatment he suffered.

(ii) Access to a lawyer

157. The Court will examine the applicant's complaints concerning access to legal assistance by first resolving factual matters raised by the applicant's various allegations (see paragraph 126 above, other than his complaints under (i), (ii) and (vi) of that paragraph which are inadmissible) and legal matters specific to each particular allegation. The Court will then proceed to a global fairness assessment.

(α) Alleged failure to respect the applicant's free choice of legal representation

158. The Court accepts that the investigator failed to observe the requirements of domestic law when appointing L. as the applicant's defence lawyer (see paragraph 12 above). By contrast, there is no material in the case file which would allow the Court to establish to the required standard that the applicants' parents were in any way prevented from appointing a lawyer for the applicant or that the applicant mistakenly believed or was led to believe that L. had been appointed by his parents rather than by the investigator (contrast, for example, *Lopata v. Russia*, no. 72250/01, § 137, 13 July 2010, and *Dvorski*, cited above, § 102). In particular, the applicant's submission that his parents were unaware of his arrest and, therefore, unaware of his need for a lawyer, do not appear credible given the sequence of events which occurred on 20 February 2005, in particular the father's close involvement in key investigative activities which took place that day.

159. Accordingly, there is no indication that the applicant's wish as to his choice of legal representation was overridden or obstructed and there is, therefore, no call to examine this situation in the light of the *Dvorski* criteria (see paragraph 138 above). As to the impact of the statements he made at the time his appointed lawyer represented him on the overall fairness of the proceedings, the Court refers to its findings in paragraphs 165 to 169 below.

(β) Absence of a lawyer on the morning of 21 February 2005 when the applicant made his statement of surrender

160. The Court finds it established that (i) the applicant made his statement of surrender after being advised of his right to remain silent and have a lawyer present and after having seen a lawyer appointed for him and (ii) the domestic courts, in convicting the applicant, did not rely on his statement of surrender, having relied on a plentiful other evidence instead, most importantly the applicant's repeated consistent confessions all in the course of the first investigation and trial. The parties disagree as to whether the statement resulted in the applicant spontaneously volunteering information to the authorities (the Government) or from police unofficial interrogation (the applicant). However, the Court, in view of its findings in paragraphs 164 to 169 below regarding the limited role the statement played in the overall context of criminal proceedings against the applicant, does not

find it necessary to definitively resolve this dispute. It is prepared to assume, for the sake of argument and in the applicant's favour, that the authorities were under an obligation to ensure the defence lawyer's presence at the taking of the statement on the morning of 21 February 2005. The impact of this assumed omission on the overall fairness of the proceedings is examined below.

(γ) Overall fairness assessment

161. In the light of the above findings, it remains for the Court to now examine whether the fairness of the proceedings as a whole was prejudiced by:

(i) the authorities' failure, contrary to domestic law, to involve a bar association in appointing L. as the applicant's lawyer; and

(ii) the defence lawyer's absence on the morning of 21 February 2005.

162. In making this assessment the Court is guided by the *Ibrahim* criteria (see paragraph 139 above), to the extent it is appropriate in the circumstances of the present case.

163. On the one hand, the applicant, a minor, was particularly vulnerable. The domestic law was breached by the appointment of L. without the involvement of a bar association. On the other hand, the evidence in the case was assessed by professional judges and the public interest in the prosecution of the offence imputed to the applicant, aggravated murder, was very strong (see *Ibrahim* criteria "a", "b", "h" and "j").

164. Turning now to the *Ibrahim* criteria concerning specifically evidentiary matters (criteria "c" to "g"), the Court is not convinced, in the light of its findings above concerning the alleged ineffectiveness of L.'s services (see paragraph 152 above) and the lack of proof that L.'s appointment involved a restriction of the applicant's choice of lawyer (see paragraph 158 above), that the breach of domestic law in question tainted the evidence produced with L.'s participation, namely the results of the interviews with the applicant on 20-22 February 2005. However, even assuming, in the applicant's favour, that this breach of domestic law could have tainted the results of the interviews, that has to be seen in the context of the proceedings as a whole.

The absence of the applicant lawyer's on the morning of 21 February 2001 did not taint the body of evidence against the applicant since the statement of surrender the applicant made on that occasion was not relied upon in convicting the applicant.

165. The applicant had ample opportunity to challenge the authenticity of all the incriminating evidence and oppose its use: his objections were examined in the course of the numerous retrials and on appeal. It is notable that on an application by the defence the domestic courts ruled certain incriminating expert evidence inadmissible (see paragraph 50 (e) above).

166. As to the quality of the evidence, the applicant alleged that his statements on 20-22 February 2005 had been tainted by compulsion. However, the domestic courts rejected his allegations and the Court has found no reason to disagree with that assessment (see paragraphs 155 and 156 above).

167. The applicant's statements on 20-22 February 2005 were not promptly retracted. In fact, the applicant maintained them throughout the initial investigation and at his first trial.

168. The results of the interviews of 20-22 February 2005 (other than the applicant's statement made on the morning of 21 February 2005) formed at least a "significant" part of the evidence on which his conviction was based. However, the Court finds decisive the strength of the other evidence in the case. The key elements of that evidence were the applicant's own admissions made in the course of the first investigation in the presence of a lawyer of his own choice and in the course of his first trial, at which he was not only represented by professional counsel of his choice but also by his mother. In addition, the applicant's conviction was supported by other probative evidence, in particular witness evidence and the presence of the applicant's fingerprint at the crime scene (see paragraph 50 (b) above).

169. The Court finds the weight of this other incriminating evidence and, in particular, the applicant's position in the course of his first trial, to be decisive in its assessment and finds that the proceedings as a whole were fair, in spite of the procedural violations at the early stage of the investigation.

(iii) Conclusion

170. In view of the above considerations, the Court concludes that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

171. Lastly, the applicant complained under Article 5 of the Convention that his detention for various periods between 23 February 2005 and 17 February 2006 had been unlawful. Without referring to any specific provisions of the Convention, he further complained that lawyer B. had engaged in malpractice.

172. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

173. 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

174. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

175. The Government considered that claim excessive.

176. The Court, making its assessment on an equitable basis, awards the applicant EUR 8,000 in respect of non-pecuniary damage (compare *Rudnichenko v. Ukraine*, no. 2775/07, § 130, 11 July 2013, and *Khamroev and Others v. Ukraine*, no. 41651/10, § 106, 15 September 2016).

B. Costs and expenses

177. The applicant also claimed EUR 300 for the costs and expenses incurred before the domestic authorities and EUR 4,650 for those incurred before the Court. He requested that the latter amount be transferred to his lawyer's account.

178. The Government considered that claim unsubstantiated.

179. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,150 (which is equal to EUR 3,000 less EUR 850, the sum paid by way of legal aid) for the proceedings before the Court. This award is to be paid into the bank account of the applicant's lawyer, Mr Markov, as indicated by the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the complaint under Article 3 that the applicant was left handcuffed in a state of undress and was placed in a cell with adults and that the domestic authorities failed to conduct an effective investigation in that respect; the complaint under Article 5 § 1 concerning the applicant's detention from 10 May 2006 to 25 January 2008 and from 24 July 2008 to 11 November 2009; the complaint under Article 5 § 3 in respect of the applicant's detention after 10 May 2006; and the complaints under Article 6 §§ 1 and 3 (c) concerning admission of the applicant's confessions in evidence, lack of access to a lawyer on the morning of 21 February 2005 and appointment of L. as the applicant's defence counsel and declares inadmissible the remainder of the application;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb on account of the fact that the authorities have subjected the applicant to "degrading" treatment;

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

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention from 10 May 2006 to 25 January 2008 and from 24 July 2008 to 11 November 2009;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

6. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention;

7. *Holds*

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

      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

      (ii) EUR 2,150 (two thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred directly to the account of the applicant's lawyer Mr E. Markov;

(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;

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

Done in English, and notified in writing on 27 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President