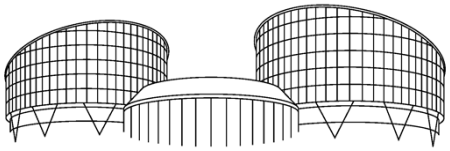

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF PANKIV v. UKRAINE

(Application no. 37882/08)

JUDGMENT

STRASBOURG

28 February 2019

This judgment is final but it may be subject to editorial revision.

In the case of Pankiv v. Ukraine,

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

Yonko Grozev, *President,*
Gabriele Kucsko-Stadlmayer,
Lado Chanturia, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 5 February 2019,

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

PROCEDURE

1. The case originated in an application (no. 37882/08) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Roman Sergiyovych Pankiv ("the applicant"), on 28 July 2008.

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

3. On 12 April 2015 the Government were notified of the applicant's complaints concerning his alleged ill-treatment in police custody and the lack of an effective investigation in that respect, the lack of timely medical assistance, the use of evidence obtained under duress for his conviction, as well as his complaint of hindrance of his contacts with his family and the lack of an effective remedy in that respect. A part of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee. Having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987 and is detained in Drogobych.

A. The applicant's administrative detention and the alleged ill-treatment

6. On 6 September 2007 the B. family's house in the village of Side was burgled by a masked gang. On unspecified dates, a number of other robberies were committed in a similar way in the region.

7. At the end of October 2007 M., a relative of the B. family, confessed to them that he had participated in the burglary, having been forced to do so by K. and Ya., who had also taken part in the crime. He submitted that the other participants had not been known to him.

8. On 4 December 2007 criminal proceedings were instituted in respect of the burglary.

9. On unspecified dates K. and Ya. – and, subsequently, three other persons – were arrested as suspects in the case. Before being arrested on criminal charges, all of them had been placed in administrative detention for alleged resistance to the police, in the course of which they confessed to the burglary. One of the detainees, Sh., allegedly named the applicant as an accomplice.

10. On 6 February 2008, in order to verify the applicant's possible involvement in the aforementioned crime, police officers approached him when he was in the backyard of his house and ordered him to accompany them to a police station. The applicant refused and, according to the police record, attempted to flee. Accompanied by his father, he was taken to the Sambir police station and spent the following night in detention. His father was sent home.

11. At about 10 a.m. on 7 February 2008, the applicant was taken to Drogobych police station where the police drew up a report stating that he had committed an administrative offence, having manifested wilful disobedience to a lawful order given by police officers. They also drew up a report on the applicant's administrative arrest, which suggested that no physical injuries had been found on him during his apprehension. The applicant refused to sign both reports. Thereafter, he was brought before the Drogobych District Court, which sentenced him to twelve days' administrative detention for manifest disobedience to the lawful demands of the police.

12. On the same day at the Sambir police station, according to the relevant record the applicant made a "statement of surrender and confession" (*явка з каяттям*) in which he confessed to two counts of burglary, including that of the B. family. According to this statement, the applicant had participated in the crime because he had been under constant threats from K., the alleged organiser of the burglary, to whom he had owed money, and from K.'s friend, P., who had also participated in the burglary. He also stated that he had no complaints against the police and that no physical or psychological coercion had been applied to him. On the same

date, according to the relevant record, "explanations" were obtained from the applicant in which he confirmed his participation in the burglary and provided further details as to the circumstances of the crime.

13. According to the applicant, the police ill-treated him with a view to extracting confessions from him. In particular, after the hearing at the Drogobych District Court on 7 February 2008 (see paragraph 11 above), he was taken back to Drogobych police station. At about 3 p.m., police officers of that station, in the presence of their colleagues from Sambir police station, handcuffed his hands behind his back, kicked him and hit him with the back of a chair; when he requested a lawyer, police officer Y. came in holding a white stool leg. He placed the applicant face down on a table, stuffed a knitted hat in his mouth and beat him with the stool leg on his bare heels, causing him a fractured foot. To stop the beating the applicant agreed to confess and signed the statement of surrender to the police. Thereafter, he was taken to the investigator in charge of the investigation of the burglary for questioning. He once again confirmed his confessions, being afraid of further ill-treatment by the police. Prior to being taken to the investigator, the applicant was transferred back to Sambir police station in the late evening on 7 February 2008. There he was taken to the Sambir Temporary Detention Centre ("the Sambir ITT") where he drafted a statement that he had not been beaten by the police and that his foot pain had been caused by accidently twisting his foot on the stairs. According to the applicant, he was forced to make such a statement by the head of the police station. He further submitted that no medical assistance had been administered to him for the following five days, despite his complaints of severe pain in the foot.

14. According to the Government, the applicant had not suffered any ill-treatment and had confessed to the burglary of the B. family's home of his own free will.

15. In the early morning of 8 February 2008, according to the applicant, he was made to write another document, referred to as "explanations", as dictated by police officers. In this document he confirmed his confession to the burglary.

16. On 12 February 2008 the applicant was taken to Sambir Town Hospital, where he was diagnosed with a fractured right foot and received the necessary medical assistance.

17. On the same date, once he had been discharged from the Sambir ITT, the applicant submitted in writing that he had no complaints against the police officers of Sambir police station in connection with his detention in that facility.

18. On a number of occasions during the applicant's administrative detention, namely on 9, 11 and 12 February 2008, a lawyer, Ms I., appointed by the applicant's family on 7 February 2008, unsuccessfully attempted to hold a meeting with the applicant. She managed to "briefly meet" him for the first time in the late evening of 12 February 2008.

B. Criminal proceedings against the applicant

19. On 18 February 2008, when the term of the applicant's administrative detention expired, criminal proceedings were instituted against him in connection with the burglary of the B. family's home and, without leaving the police premises, he was re-arrested as a suspect in the case. According to the arrest report, the applicant was arrested on the grounds that he had been identified by an eyewitness. The relevant entry in the arrest record suggests that the applicant expressed his wish to be assisted by a lawyer before the first questioning.

20. According to the Government's submissions, on the same date the applicant was questioned as a suspect. He admitted his guilt in respect of the burglary and provided the relevant details. Before the questioning, he had been apprised of his procedural rights and waived his right to legal assistance. Copies of the interview record, as well as of the waiver and the note on acquaintance with procedural rights, submitted to the Court by the Government, bear a visible handwritten correction of their dates: from an illegible pre-typed to a handwritten "18" February 2008.

21. The applicant submitted that he had not been questioned on 18 February 2008 and had never waived his right to legal assistance. He alleged that the authorities had forged the documents and that the recorded interview they referred to had in fact taken place in the investigator's room on 7 February 2018, during his administrative detention (see paragraph 13 above).

22. On 19 February 2008, at the applicant's request, Ms I. was admitted to the proceedings as his defence counsel. Thereafter, the applicant was assisted throughout the proceedings either by her or by another lawyer, Mr M., appointed by the applicant's father.

23. On 20 and 25 February 2008 the applicant was questioned in the presence of his lawyer. He denied his guilt in respect of the burglary and refused to make any further statement in that respect.

24. On 21 February 2008 the Sambir Town Court remanded the applicant in custody as a preventive measure pending trial.

25. On the same day an expert from the Sambir Town Forensic Examination Bureau examined the applicant on the investigator's instruction with a view to establishing whether he had any injuries and, if so, their location and nature, and whether they could have been caused by a free fall from one's height or by falling onto some objects. The applicant told the expert that he had been beaten at Drogobych police station on 7 February 2008, including with a stool leg. The examination report was completed on 4 March 2008. It documented inflammation at the base of the first finger on both hands (*осадження шкіри в ділянках основи перших пальців на обох руках*), which could have been caused by blunt hard objects, possibly on the date and in the circumstances as described by the

applicant. The injury was assessed as a minor one and not typical of a free fall from a man's height. In addition, the expert noted that the applicant's right foot was in a plaster cast during the examination and that on 4 March 2008 a radiologist from the Lviv Regional Diagnostic Centre had examined an X-ray image of 12 February 2008 and found "no signs of traumatic injuries" on the bones of the right foot.

26. On 31 March 2008 the applicant retracted his earlier confessions and submitted that he had incriminated himself as a result of ill-treatment by the police and that he had not committed the crime in question.

27. On 24 April 2008, during an identification parade, the victim B. pointed to the applicant as having participated in the burglary of her home. She alleged that she recognised him by his hands and provided the relevant details.

28. On 4 June 2008 the applicant again denied his participation in the burglary.

29. On 6 June 2008 the pre-trial investigation was completed and the case against the applicant and his five alleged accomplices was sent to the Sambir District Court of Lviv Region ("the Sambir District Court") for trial. During the trial, the applicant and his alleged accomplices pleaded not guilty and submitted that their confessions to the burglary had been extracted from them by the police by means of ill-treatment. They relied on the bodily injuries which had been discovered on them shortly after their arrest and on the pending criminal proceedings against the police officers.

30. On 28 December 2010 the Sambir District Court found the applicant, along with his five co-defendants, guilty of aggravated burglary and sentenced him to nine years' imprisonment, with confiscation of all his personal property. The court relied on, among other things, the confessions the applicant had made during the pre-trial investigation – in particular, on 7 February 2008 and "during his questioning as a suspect" – even though he had retracted them at the investigation stage and during the trial. The court rejected the applicant's argument that his statement of voluntary surrender and confession to the police had been extracted from him by means of ill-treatment. It noted that in accordance with the applicant's submissions, after his arrest on 6 February 2008 he had been taken first to Sambir police station and then, on 7 February 2008, to Drogobych police station where his alleged ill-treatment had taken place. The court thus concluded that "the applicant had made his confessions to the police on 7 February 2008 at Sambir police station before the physical injuries had been inflicted on him." The allegations of the applicant's co-defendants as to their ill-treatment by the police were also dismissed by the trial court. The term of the applicant's sentence was to be calculated from 6 February 2008.

31. The applicant lodged an appeal with the Court of Appeal of Lviv Region ("the Lviv Regional Court"). He submitted, among other things, that his conviction had been based mainly on confessions obtained from him by

coercion, as well as on the statements made in a similar way by his co-defendants.

32. On 23 November 2011 the Lviv Regional Court upheld the first-instance court's judgment. As regards the applicant's allegation of ill-treatment and his objection to the use of his self-incriminating statements obtained under duress, the court found that the first-instance court had established that the applicant had made his confession at Sambir police station before being taken to Drogobych police station where the alleged ill-treatment had taken place. It further relied on the Sambir prosecutor's findings set out in his decision of 7 March 2008, which had not been appealed against by the applicant, according to which on 7 and 12 February 2008 the applicant himself submitted that he had had twisted his foot on the stairs and that he had had no complaints against the officers of Sambir police station (see paragraph 37 below).

33. The applicant, both in person and through his lawyer, M., appealed on points of law. In his appeal, the applicant mainly maintained the arguments advanced in his earlier appeal. He emphasised in this connection that the Lviv Regional Court had relied on the results of the investigation of his ill-treatment allegations conducted by the Sambir prosecutor's office as the final and conclusive ones, whereas the criminal proceedings in respect of his ill-treatment complaint had been still pending. Lawyer M. mainly challenged the allegedly selective approach to the assessment of evidence and the establishment of the facts.

34. On 22 January 2013 the Higher Specialised Court for Civil and Criminal Matters ("the HSC") upheld the judgments of the lower courts. It concluded that the applicant's guilt had been sufficiently proved by the evidence, including his own confessions. In so far as his allegation of ill-treatment was concerned, the HSC relied on the reasoning given by the Lviv Regional Court and found that it had correctly dismissed the allegation as unsubstantiated. The complaints of the applicant's co-defendants about their ill-treatment in police custody with a view to extracting their confessions to the burglary of the B. family were likewise dismissed by the HSC.

C. Investigation into the complaints of the applicant's ill-treatment

35. On 14 February 2008 lawyer I., acting upon the instructions of the applicant's relatives, lodged a criminal complaint with the Sambir district prosecutor's office about the applicant's ill-treatment and requested that he be given a forensic medical examination. She also complained that the head of Sambir police station had unlawfully obstructed her from meeting with the applicant on 9, 11 and 12 February 2008 and had provided false information as to the applicant's whereabouts.

36. On 27 February and 20 March 2008 the applicant's mother and father respectively complained to the Sambir district prosecutor's office and the Prosecutor General of the applicant's ill-treatment in police custody and the police's failure to provide the applicant with timely medical assistance for his foot injury. The father requested that the applicant be given a forensic medical examination.

37. On 7 March 2008, in response to the complaints of lawyer I. and the applicant's mother, the deputy prosecutor of Sambir refused to institute criminal proceedings against the heads of Sambir police station and of the Sambir ITT and a police officer, K., on the grounds that there was no evidence that they had committed any crime. He relied on the applicant's statements made on 7 and 12 February 2008, according to which nobody had ill-treated him and his foot injury had been caused by accidentally twisting it on the stairs (see paragraphs 13 and 17 above). He noted that the applicant had not complained to him of any ill-treatment shortly after his arrest. The prosecutor forwarded the ill-treatment allegations to the Drogobych prosecutor's office for further examination. By the same decision, the prosecutor rejected as unsubstantiated the complaints concerning the lack of medical assistance in respect of the applicant's foot injury and the allegations that his relatives and lawyer had not been allowed to see him.

38. On 26 March, 9 April and 4 June 2008 the prosecutors refused to institute criminal proceedings in connection with the complaints of the applicant's ill-treatment. They questioned the applicant, who maintained that he had been ill-treated by the police and submitted a detailed account of the events of 7 February 2008 as outlined in paragraph 13 above, and the police officers, all of whom denied any use of physical force or psychological pressure against the applicant. The prosecutors then relied on the testimony of the officers and on the statements the applicant had made on 7 and 12 February 2008. They also noted the fact that the applicant had remained silent during a court hearing on the application of a preventive measure in respect of him.

39. On 1 April 2008, 10 May and 10 July 2008 the above-mentioned prosecutors' decisions of 26 March, 9 April and 4 June 2008 respectively were annulled by supervising prosecutors as unfounded and premature. The prosecutors found the inquiries that had been conducted incomprehensive and of a low professional level and ordered additional investigative steps to be taken.

40. On 7 and 23 April 2008 at the request of the applicant's father the applicant underwent another X-ray examination of his right foot. It confirmed that the applicant had a fracture of the fifth metatarsus bone of his right foot.

41. Between July 2008 and August 2010, in the context of unspecified criminal proceedings against officers of Sambir police station, a number of

investigative steps were taken to verify the applicant's allegations of ill-treatment. In particular, the applicant and the police officers identified by him were questioned on a number of occasions; reconstructions of the crime scene were conducted (on 29 July and 16 August 2008) and identification parades were carried out (on 16 August and 17 September 2008). The applicant repeated in detail his account of the events and pointed out the persons who had allegedly ill-treated him. On 17, 18 and 30 September 2008 confrontation interviews between the applicant and the police officers were carried out. The officers denied any ill-treatment.

42. On 12 August 2008, a traumatologist who had examined the applicant on 12 February 2008 was questioned. He confirmed that the applicant had had a fractured foot when he had been admitted to the hospital, and submitted that the applicant had not replied when asked about the origin of his trauma.

43. On an unspecified date another witness submitted that he had seen police officers holding the applicant under his arms because he had a foot injury. When the witness had asked the applicant what had happened to his foot, the applicant had allegedly replied: "I don't know".

44. On 17 September 2008, following an order given by the prosecutor, comparative X-ray images of the applicant's feet were made.

45. On 21 October 2008 the prosecutor ordered a forensic medical examination by a panel of experts from Lviv Regional Forensic Examination Bureau aimed at answering the following questions. Did the applicant sustain traumatic injuries to his right foot and, if so, how serious were the injuries and could they have been inflicted in the circumstances indicated by the applicant during his questioning as a witness and during the reconstruction of the crime scene with his participation? Could the injuries have been sustained in the circumstances indicated in the applicant's written statement of 7 February 2008, namely that he had twisted his foot on the stairs? Could the injuries have been self-inflicted (intentionally or accidently), without the application of external force, for example by twisting the foot while walking or running? What were the features of the object which could have been used to cause the injuries and could this have been a wooden stool leg, as suggested by the applicant? Could those injuries have been inflicted on 7 February 2008 (between 6 and 12 February 2008) and, if so, what was the precise date of their infliction? Lastly, was it possible to establish how many blows had been inflicted on the applicant and in which order?

46. On 28 October 2008 the experts' report answered those questions as follows: the applicant did sustain a fracture of the fifth metatarsus bone of his right foot; the injury could have been caused at the beginning of February 2008, as suggested by the applicant, but it was not possible to state with precision the particular date of infliction; the injury originated from a blunt object and could be classified as "light" in terms of severity; such a

fracture would normally be caused by a direct impact on the bone either by inflicting a blow with a blunt object or by falling on the foot from a height, but in the applicant's case it most likely originated from a blow to his foot with a blunt object such as a wooden stool leg or a wooden bar; the particularities of the applicant's injury which could be observed on the X-ray images were not typical of an accidental twisting of the foot; and the last question could not be answered.

47. On 3 August 2010 the Drogobych interdistrict prosecutor's office instituted separate criminal proceedings against the officers of Drogobych police station identified by the applicant for abuse of powers in connection with the alleged ill-treatment of the applicant. On 24 December 2010, following questioning of the applicant and the police officers, the criminal investigation was discontinued for lack of evidence of a crime in the police officers' actions.

48. On 19 January 2011 the Lviv regional prosecutor's office quashed the decision of 24 December 2010, having noted that there remained a number of investigative steps yet to be taken in order to establish the truth in the case.

49. On 21 March 2011 the investigator ordered another medical examination by a panel of experts to answer the same questions as those which had been answered by the forensic experts on 28 October 2008 (see paragraph 45 above). In the prosecutor's opinion, the experts' conclusions of 4 March 2008 and 28 October 2008 raised doubts as to their correctness and contradicted the material in the case file.

50. On 23 January 2012 an additional forensic medical report was delivered by a panel of experts from the Main Forensic Examination Bureau of the Ministry of Health. According to the report, the applicant had a fracture of the fifth metatarsus bone of his right foot which, given the absence of external injuries in the area of the fracture, could have been sustained without the application of external force to the applicant, for example by twisting the foot while walking or running. The experts found that the injury could not have been sustained in the circumstances described by the applicant or by falling from a height. They further noted that the abrasions on both his hands had been caused by a blunt object, but that there was insufficient information in the file to identify the object. The experts concluded that both injuries could have been sustained between 6 and 12 February 2008 and stated that it was not possible to establish the date more precisely. Likewise, it was impossible to establish "the number of blows and ... in which order" they had been administered.

51. On 20 March 2012 the Drogobych interdistrict prosecutor closed the criminal proceedings against the police officers of Drogobych police station. He relied on the police officers' denial of any ill-treatment, supported by statements by their colleagues, the applicant's statement made on 7 February 2008 that he had accidently twisted his foot on the stairs and the

results of the forensic medical examination of 23 January 2012, which the prosecutor regarded as the only reliable one. That decision was not appealed against by the applicant. Instead, he complained of ill-treatment in the course of the trial in the criminal case against him (see paragraph 29 above).

II. RELEVANT DOMESTIC LAW

52. The relevant provisions of the Constitution of Ukraine, the Criminal Code and the Code of Criminal Procedure can be found, in particular, in the Court's judgment in the case of *Nechiporuk and Yonkalo v. Ukraine* (no. 42310/04, §§ 121-23, 131, 134 and 138, with further references, 21 April 2011).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT

53. The applicant complained that on 7 February 2008 he had been ill-treated by the police and that there had been no effective domestic investigation into that matter. 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. Admissibility

54. 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.

B. Merits

1. Alleged ill-treatment of the applicant by the police

(a) The parties' submissions

55. The applicant insisted that he had been subjected to ill-treatment while in police custody and had been forced to sign a "statement of surrender and confession", in which he had confessed to the burglary of B.'s

family home. He had also been forced to write a note to the effect that no physical force had been used against him.

56. Referring to the medical evidence, the applicant stated that it was an established fact that he had sustained injuries while in the hands of the police. He further submitted that although the authorities had denied the use of force towards him, they had failed to advance any plausible explanation regarding the origin of his injuries. They had selectively relied on the medical report of 23 January 2012, having provided no satisfactory explanation as to the results of the previous forensic examinations which had supported his allegations.

57. The Government denied any link between the applicant's treatment in police custody and his fractured foot, having explained that injury by his having accidentally twisted his foot on the stairs. In doing so, they relied on the applicant's written statement, made on the day of his alleged ill-treatment, that he had not been ill-treated by the police and that he had twisted his foot on the stairs (see paragraph 13 above). They also relied on the results of the forensic medical report dated 23 January 2012 (see paragraph 50 above).

(b) The Court's assessment

58. The relevant case-law principles are summarised, in particular, in the Court's judgment in the case of *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81 to 83, 85 and 88 to 90, 28 September 2015, with further references).

59. In the present case, the medical evidence submitted by the parties conclusively demonstrates that the applicant suffered a fractured foot and abrasions shortly after his placement in administrative detention. It has not been alleged by the Government, nor is it suggested by the documents before the Court, that the applicant could have sustained those injuries before being arrested on 6 February 2008. The administrative arrest report clearly stated that no injuries had been observed on the applicant at the time of his arrest (see paragraph 11 above). The Court thus concludes that the applicant sustained the injuries in question while in police hands. It was therefore for the State to provide a plausible explanation for the injuries sustained.

60. The Court is not convinced by the Government's arguments (see paragraph 57 above). It notes in the first place, that both, during his medical examination by a forensic expert on 21 February 2008 and in the course of the investigation of his ill-treatment complaint, that is after the written statement referred to by the Government, the applicant submitted that he had sustained a foot fracture as a result of his ill-treatment by the police and provided a detailed and consistent account of the circumstances surrounding the alleged ill-treatment (see paragraphs 25, 38 and 41 above), and his account of the events remained consistent throughout the proceedings (see *Mihhailov v. Estonia*, no. 64418/10, § 123, 30 August 2016; *Belozorov*

v. Russia and Ukraine, no. 43611/02, § 107, 15 October 2015 and *Nalbandyan v. Armenia*, no. 9935/06, § 107, 31 March 2015).

61. As regards the medical evidence, the Court cannot but note at the outset that the case-file suggests that the investigating authorities were avoiding a medical expert opinion, at first closing the investigation without one (see paragraph 38 above). An expert opinion was requested by the prosecutor more than seven months after the complaint about the applicant's ill-treatment had been lodged by his family and lawyer (see paragraph 45 above). The clear and substantiated conclusion of this examination was put at doubt by the prosecutor without providing any convincing reasons and a new expert examination requested (see paragraph 49 above). The new examination - which was conducted years after the impugned events – resulted in a different conclusion and was accepted by the prosecutor, again without any reasoning for such a decision (see paragraph 51 above). No justification for the prosecutor's preference has been provided by the Government either. The Court further notes that the second expert opinion justified its conclusion that the fracture was likely the result of the applicant twisting his foot, by the absence of an external injury corresponding to the fracture. Whether the applicant did or did not have such an external injury on the foot, however, was never established, as his medical examination of 21 February 2008 simply noted that his foot is in a plaster (see paragraph 25). In these circumstances, the Court is not ready to accept the experts' conclusion referred to by the Government as evidence convincingly establishing the fact that the applicant twisted his foot.

62. In any event, apart from referring to the applicant's statement, which had been written in brief and general terms, the Government provided no information or evidence whatsoever to support their version as to the origin of his injury, such as when and where (on which stairs) the applicant had twisted his foot. The Court notes that the applicant was an arrested person in police hands when he sustained the foot fracture and would have been unable to move freely without being accompanied by police officers. The authorities should therefore have been aware of what had happened to him while under their control.

63. Moreover, no explanation whatsoever has been advanced by the Government as to the origin of the abrasions found on the applicant, which, according to all the forensic medical experts, were caused by a blunt object and could have been inflicted on the date indicated by the applicant.

64. In such circumstances, the Court concludes that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than by ill-treatment while in police custody on 7 February 2008, as alleged by him (see, *mutatis mutandis*, *Adnaralov v. Ukraine*, no. 10493/12, § 45, 27 November 2014).

65. As to the seriousness of the ill-treatment in question, the Court notes that the injuries sustained by the applicant, and in particular the foot

fracture, even though classified as "minor" in the medical reports, attest to certain severity of the ill-treatment the applicant suffered. According to the detailed and consistent description provided by the applicant of the treatment, confirmed as to the blows on his foot by the first expert opinion, this treatment was administered behind closed doors in the police where the applicant had no means of resisting. Further, following the foot fracture caused to the applicant, he was provided no medical assistance, but instead was subjected to another round of questioning, this time in the presence of an investigator (see paragraphs 13 and 15 above). In these circumstances his physical pain associated with the above injury must have been exacerbated by feelings of helplessness, acute stress and anxiety. Moreover, the applicant's ill-treatment was intentional and was aimed at extracting evidence from him in relation with the crime of which he was suspected (see, similarly, *Belousov v. Ukraine*, no. 4494/07 § 67, 7 November 2013).

66. In these circumstances, the Court finds that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue amounted to torture within the meaning of Article 3 of the Convention.

67. Accordingly, there has been a violation of Article 3 under its substantive limb.

2. Effectiveness of the investigation

(a) The parties' submissions

68. The applicant submitted that, despite the existence of objective evidence that he had sustained physical injuries while in police custody, the prosecution authorities had refused many times to institute criminal proceedings against the police officers concerned, mainly on the basis of the statements of the police officers. He further submitted that the length of the investigation had been excessive and was an indication of the authorities' lack of will to establish the truth in the case and to hold the police officers who had ill-treated him criminally liable.

69. The Government submitted that the applicant's complaint of ill-treatment had been duly investigated. On a number of occasions a prosecutor had questioned the applicant and the police officers allegedly involved in his ill-treatment. A number of forensic examinations had been conducted in the case and their results had been studied by the prosecutor. In the Government's view, the fact that the investigative authorities had repeatedly refused to initiate criminal proceedings against the police officers, and that those decisions had subsequently been quashed, showed that the State authorities had attempted to establish the truth and had examined the applicant's allegations in a proper way.

(b) The Court's assessment

70. The relevant case-law principles are summarised, in particular, in the Court's judgment in the case of *Savitskyy v. Ukraine* (no. 38773/05, §§ 99-101, 26 July 2012).

71. In the present case, the Court has found that the respondent State is responsible under Article 3 for the applicant's ill-treatment (see paragraph 67 above). The applicant's complaint in this regard is therefore "arguable", which means that the authorities had an obligation to investigate it in compliance with the aforementioned effectiveness standards. The Court cannot conclude, however, that in the present case the authorities have complied with their obligation, for the reasons set out below.

72. The Court notes at the outset that the allegation about the applicant's ill-treatment was raised for the first time on 14 February 2008 by his lawyer, and maintained by the applicant himself thereafter before the domestic investigation authorities. While these allegations were partly supported by the forensic medical examination report as early as on 4 March 2008, the relevant criminal proceedings were not instituted until 3 August 2010, that is more than two years after the alleged ill-treatment. Until that date, on four occasions, decisions refusing to institute criminal proceedings had been taken. The Court is mindful that those decisions were subsequently quashed by supervising prosecutors because of the poor quality of the investigations, as was the decision of 24 December 2010 discontinuing the criminal proceedings against the police officers.

73. Secondly, the origin of the abrasions on the applicant's hands, which according to the results of forensic medical examinations had been caused by a blunt object, possibly on the date referred to by the applicant, remained unexplained in the prosecutor's eventual decision to close the proceedings against the police officers.

74. Likewise, there is nothing in the documents available before the Court to suggest that any attempt whatsoever was made by the investigative authorities to establish the circumstances of the alleged incident on the stairs, to which they referred to explain the origin of the applicant's fractured foot and to provide details of that incident. This, however, was not seen as an obstacle for dismissing the applicant's allegation of ill-treatment as unsubstantiated.

75. The Court considers that the foregoing considerations are sufficient to enable it to conclude that the domestic authorities failed to respond to the applicant's complaint of ill-treatment with the level of diligence required by Article 3 of the Convention. That being so, the Court does not consider it necessary to further elaborate on other shortcomings of the investigation.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S PRIVILEGE AGAINST SELF-INCRIMINATION

77. The applicant complained that his right to a fair trial had been infringed by the use of the self-incriminating statements extracted from him as a result of ill-treatment in police custody while he was being held in administrative detention. He relied on Article 6 § 1 of the Convention, the relevant part of which reads:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

78. The Government disagreed. They argued that the applicant had given his statement of voluntary surrender and confession of his own free will, and had confirmed his statement during his questioning as a suspect on 18 February 2008. They further submitted that his self-incriminating statements were not the sole evidence on which his conviction had been based and that his guilt had been sufficiently proven by other evidence in the case, such as statements given by his accomplices, the records of the identification parade and the results of forensic medical examinations.

A. Admissibility

79. 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.

B. Merits

80. The Court notes that although the admissibility of evidence is, as a matter of principle, a prerogative of domestic courts and its role is limited to assessing the overall fairness of the proceedings, particular criteria apply concerning evidence obtained by a measure found to violate Article 3 of the Convention. The admission of statements obtained through torture or other ill-treatment in breach of Article 3 as evidence for the purpose of establishing the relevant facts in criminal proceedings renders the proceedings as a whole unfair, irrespective of its probative value and whether its use was decisive in securing the defendant's conviction (see, for example, *Gäfgen v. Germany* [GC], no. 22978/05, § 166, ECHR 2010, with further references).

81. In the present case, the Court notes that the self-incriminating statements made by the applicant following his administrative arrest and during his time in police custody formed part of the evidence produced

against him in the criminal proceedings. The trial and appeal courts did not find those statements inadmissible and referred to them when finding the applicant guilty and convicting him (see paragraphs 30, 32 and 34 above).

82. The Court further notes that it has already found a violation of Article 3 with respect to the circumstances under which the applicant confessed to committing a crime (see paragraph 67 above).

83. In such circumstances, the Court is not convinced by the Government's argument that the applicant's confessions should be regarded as having been given voluntarily. Furthermore, on the basis of the evidence before it, the Court cannot find it established that the applicant confirmed his confession - as the Government alleged - when questioned as a suspect. In any event, regardless of the impact the applicant's confession of 7 February 2008 had on the outcome of the criminal proceedings against him, and regardless of whether the applicant had later confirmed his statement of confession, the Court concludes that this evidence rendered the criminal proceedings unfair (see, for example, *Nechiporuk and Yonkalo v. Ukraine*, cited above, §§ 258-261, 21 April 2011 and *Zhyzitskyy v. Ukraine*, no. 57980/11, §§ 64-66, 19 February 2015).

84. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. The applicant also complained that he had not been provided with timely medical assistance for his foot injury (Article 3); his detention between 6 and 21 February 2008 had been unlawful (Article 5 § 1 (c)); he had been denied a fair trial in the administrative proceedings against him (Article 6 § 1); his rights to legal assistance and to have witnesses examined had been breached and he had been convicted of a crime that he had not committed (Article 6 §§ 1 and 3 (c) and (d)); and that contacts with his family had been unlawfully hindered and he had had no effective remedy in that respect (Articles 8 and 13).

86. Having regard to the facts of the case, the submissions of the parties and the above findings under Articles 3 and 6 of the Convention, the Court considers that the main legal questions in the present application have been determined. It holds, therefore, that there is no need to give a separate ruling on the admissibility and merits of the complaints mentioned in the paragraph above (see, for a similar approach, *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 210-11, ECHR 2009; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references; and *Mocanu and Others v. the Republic of Moldova*, no. 8141/07, § 37, 26 June 2018).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

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

90. The Court observes that it has found violations of Articles 3 and 6 § 1 of the Convention in the present case. As regards the violation of this last provision, the Court cannot speculate as to the outcome of the proceedings against the applicant. The finding of a violation of Article 6 § 1 in the present case does not imply that the applicant was wrongly convicted. The Court notes that Article 445 of the CCP and section 10 of the Law on the Execution of Judgments of the European Court of Human Rights allow for the possibility of a reopening of proceedings and considers that the finding of a violation constitutes in itself sufficient just satisfaction (see *Zakhshevskiy v. Ukraine*, no. 7193/04, §§ 50-51 and 133, 17 March 2016). As regards the violation of Article 3 of the Convention, ruling on an equitable basis, the Court awards the applicant EUR 16,000 in compensation for non-pecuniary damage.

B. Costs and expenses

91. The applicant claimed 15,000 Ukrainian hryvnias (UAH) (approximately EUR 470) for the services of the lawyer M. during the domestic proceedings. He also claimed EUR 7,030 for his legal representation before the Court, to be paid into Mr Tarakhkalo's bank account, as well as EUR 562.40 and EUR 281.20 as administrative costs and postal expenses respectively. He submitted in this respect a legal assistance contract of 6 October 2015 indicating an hourly rate of EUR 95 and a copy of an invoice from Mr Tarakhkalo dated 8 December 2015 for seventy-four hours' work, without details given.

92. The Government submitted that the claims were excessive and not sufficiently substantiated. They stated, in particular, that the amount of the legal fee claimed by the applicant for the proceedings before the Court was excessively high.

93. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 470 for his representation in the domestic proceedings and, in addition to the legal aid granted (see paragraph 2 above), the sum of EUR 2,200 for costs and expenses for the proceedings before the Court. This latter amount is to be paid into the bank account of the applicant's lawyer, Mr Tarakhkalo, as indicated by the applicant (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288 and point 12 (a) of the operative part, ECHR 2016 (extracts)). The Court rejects the remainder of the claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the alleged ill-treatment in police custody and the lack of an effective investigation in this respect as well as regarding the use of evidence obtained under duress to secure the applicant's conviction admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there is no need to examine the admissibility and merits of the remainder of the applicant's complaints under Articles 3 and 6 of the Convention as well as the complaints under Articles 5 § 1, 8 and 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage sustained by the applicant on account of the violation of Article 3 of the Convention, to be paid to the applicant;
(ii) EUR 470 (four hundred and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred in the domestic proceedings;
(iii) EUR 2,200 (two thousand two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred for the proceedings before the Court, to be paid into the bank account of the applicant's representative, Mr Mykhailo Tarakhkalo;

(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;

6. *Holds* that the finding of a violation of Article 6 § 1 constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant in this respect;

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

Done in English, and notified in writing on 28 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Yonko Grozev
President