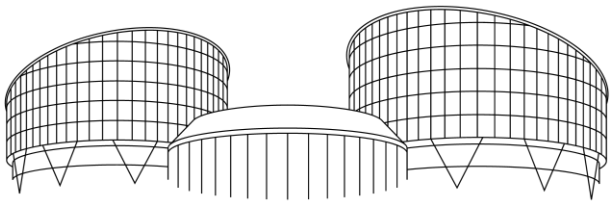

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MATUSHEVSKYY AND MATUSHEVSKA
v. UKRAINE

(Application no. 59461/08)

JUDGMENT

STRASBOURG

23 June 2011

FINAL

23/09/2011

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

In the case of Matushevskyy and Matushevska v. Ukraine,

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

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 59461/08) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Petro Mykolayovych Matushevskyy and Ms Mariya Petrivna Matushevska ("the applicants"), on 21 November 2008.

2. The applicants were represented by Ms L. Topolevska, a lawyer practising in Lviv. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

3. The applicants complained, in particular, that the domestic authorities had been responsible for and had failed to effectively investigate the death of their son, following his alleged ill-treatment, in detention.

4. On 24 November 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1952 and 1956 respectively and live in Lviv.

6. On 4 February 2008 the applicants' thirty-year-old son, Mr Igor Matushevskyy ("I.M."), was placed in Lviv Pre-Trial Detention Centre

no. 19 ("the SIZO") following his arrest on suspicion of a drug-related offence.

7. On the same date I.M. was examined by a medical commission which found him to be in good health.

8. On 7 February 2008 a drug specialist found him to be in unstable remission from drug addiction.

9. On 24 April 2008 I.M. was placed in cell no. 153, which was shared by nine inmates. It was his sixth transfer to a different cell in the SIZO.

10. On 22 May 2008 at 6.10 p.m., the inmates of cell no. 153 knocked on the door and informed the prison guard that I.M. had fallen from the upper bed and had fainted. A few minutes later, a medical attendant and the on-duty doctor arrived. According to an entry made by them in I.M.'s medical record, they administered the following injections to him: cordiamin, cortisol, mezaton, caffeine and atropine. He was then transported to the medical unit, still alive. At 6.50 p.m. an ambulance, for which the prison administration had called, arrived; and at 7.02 p.m. I.M. was pronounced dead. According to the medical certificate written by the SIZO administration and the doctors recording I.M.'s death, a closed craniocerebral injury was indicated as the preliminary cause of death.

11. On the same date three of the inmates, as well as the personnel involved, gave written statements concerning the matter to the SIZO's governor. The detainees explained that there had been no incidents in the cell, that I.M. had accidentally fallen from his bed and that they had unsuccessfully tried to bring him back to consciousness by putting a wet towel on his forehead. According to them, they had promptly called for a doctor, who, in turn, had arrived without delay. The inmates also submitted that a few hours before his death I.M had complained of headache. One of the detainees noted that I.M. had occasionally mentioned that he suffered chest pains.

12. In the evening on the same date, 22 May 2008, the SIZO administration examined the scene and informed the Lviv police and the Lviv Regional Prosecutor's Office ("the LRPO") of I.M.'s death.

13. On 23 May 2008 at about 4.30 p.m., the SIZO administration sent a telegram to the applicants informing them that their son had died and that they could collect his body from the Lviv morgue.

14. According to the applicants, at about 10 a.m. on 23 May 2008, before the telegram had reached them (on 24 May 2008), they received an anonymous phone call from a person who had introduced himself as a detainee at the SIZO. He had allegedly stated that I.M. had been killed by SIZO officers.

15. The applicants immediately got in contact with the local morgue, which confirmed that I.M.'s body was there. However, according to the applicants, its staff refused to show them his body.

16. The first applicant also informed the LRPO of the allegations received in the anonymous phone call and sought the opening of a criminal investigation into the matter.

17. On the same date, 23 May 2008, the Lviv Regional Police found that there was no indication of a homicide and terminated the investigation.

18. On 24 May 2008, from 9 a.m. to noon, the first applicant waited outside the morgue while an autopsy of I.M.'s body was going on. He saw some people there (whom he later found out were from the SIZO) and allegedly heard one of them saying on the phone: "Everything is fine, the haematomas have been removed and the bruises behind the ears have been retouched. There is something there with his heart and lungs." The applicant had the impression that the conversation had been about his son.

19. After the autopsy was completed, the first applicant was allowed to collect I.M.'s body. According to him, he discovered the following injuries on it: I.M.'s chest, shoulders, arms and legs, as well as his groin area, were covered with bruises, his fingertips were bluish in colour, the phalanx bone of the little finger on his left hand was broken, his face was swollen and his nasal bridge was deformed, the hair on his temples was missing as if it had been torn out, and there were bloodstains on his earlobes. The applicant asked the doctor about the injuries and was told that they were the signs of post-mortem lividity.

20. The morgue issued a death certificate to the first applicant indicating that the cause of death had "not been preliminarily clarified".

21. Later on 24 May 2008, the applicants discovered in their mailbox a letter from an anonymous "detainee", according to which I.M. had been beaten up by one of the inmates, T., on police instructions with a view to extracting a confession from him, and had died of the injuries he had sustained. It was noted in the letter that the SIZO administration was intimidating the witnesses in order to conceal the real cause of death. However, the witnesses would give truthful testimonies if questioned by the prosecutor in absence of SIZO staff.

22. On 26 May 2008 the first applicant again complained to the LRPO that his son had been killed in the SIZO. On an unspecified date shortly thereafter the prosecutor questioned him as to what made him think that I.M.'s death had been a violent one. The first applicant referred to the information received from the anonymous phone call and letter. He also noted that his son had not made any complaints about his health. Furthermore, on 19 May 2008, the last time that the second applicant had passed over a food parcel for I.M., she had enquired with the SIZO medical staff whether he needed any medicine but had been told that he did not require any.

23. On the same date, 26 May 2008, the assistant to the SIZO governor, who had been on duty when I.M. had died, gave a written statement to the LRPO, according to which: there had been no incidents in cell no. 153 on 22 May; no coercive measures had been applied to any detainees; and he

had not seen any injuries on I.M.'s body. The senior security officer on duty made a similar statement.

24. On 28 May 2008 T. and seven other inmates repeated their previous account of the events (see paragraph 11 above) to the LRPO, without specifying what aid they had provided to I.M. before the medical attendant's arrival, which had been two to three minutes after I.M.'s fall. The inmates from the neighbouring cells, nos. 152 and 154, stated that they had not heard any noise from cell no. 153 on 22 May 2008. The prosecutor also questioned detainee V., with whom I.M. had been sharing cell no. 140 before his transfer to no. 153., and who, according to the applicants, might have had additional information about the circumstances of his death. V. submitted that I.M. had not wanted to encounter T. and had therefore been unwilling to be transferred to cell no. 153. V. had allegedly warned the administration about a possible conflict between T. and I.M., as, according to him, they had been "opposites in the criminal world".

25. On 29 May 2008 the prosecutor questioned the SIZO governor as regards, in particular, the reasons for I.M.'s frequent transfers from one cell to another. The governor stated that I.M. had had a negative influence on other detainees, without giving further details. He submitted that I.M. had neither opposed his transfer to cell no. 153 nor had he later asked to be transferred to another cell. T. and I.M. had not shared cells before. The governor also contended that he had not received any information about conflicts between them or about any wrongdoing on the part of T. According to him, the atmosphere in cell no. 153 had been calm.

26. On 29 May 2008 T. stated that he had known I.M. since 1998 because they had lived in the same town. According to him, they had been neither friends nor enemies, rather just acquaintances. He also supplemented his earlier statements to the effect that the inmates had tried to bring I.M. back to consciousness by pouring water on him and by rubbing his hands, feet and ears.

27. On 29 May 2008 a toxicologist of the Regional Bureau of Forensic Medical Examinations issued a report, according to which no alcohol had been discovered in I.M.'s blood.

28. On 30 May 2008 another forensic medical report was issued by a histologist following an examination of I.M.'s body tissues. It concluded that the deceased had been suffering from: swelling of the lungs and haemorrhaging, focal serous bronchopneumonia, chronic leptomeningitis, fatty liver disease, chronic persistent hepatitis, signs of chronic nephritis, and atheromatosis of the aorta.

29. On the same date the Galytskyy Police Department refused to open a criminal case regarding the death of I.M. for want of indication of a crime.

30. On 2 June 2008 the Galytskyy District Deputy Prosecutor quashed the aforementioned decision as having been delivered prematurely.

31. On 3 June 2008 the forensic medical expert who had performed the autopsy gave a written statement to the LRPO. He stated that there had been

bruises and sores on I.M.'s face, both earlobes, and on the inner parts of both thighs, while no bone fractures or craniocerebral injuries had been discovered. The expert expressed the view that a possible cause of I.M.'s death could have been a heart or lung condition.

32. On the same date detainee V. additionally explained that he had wanted to stay in the same cell as I.M. because the latter had often received food parcels and had shared them with his cellmates.

33. On 3 June 2008 the LRPO refused to institute criminal proceedings against the SIZO staff in respect of I.M.'s death for a lack of *corpus delicti* in their actions.

34. On 6 June 2008 the Frankivskyy District Court in Lviv terminated the pending criminal proceedings against I.M. given that he had died. It also issued a separate ruling in which it noted that the circumstances of I.M.'s death warranted a criminal investigation (it had been informed by the SIZO administration that I.M. had died because of a closed head injury).

35. On 11 June 2008 the LRPO quashed the decision of 3 June 2008 and resumed the investigation. In particular, it noted that it was still necessary to question the ambulance doctors, to analyse the anonymous letter received by the applicants with a view to establishing its author, to question T. as to whether he had suffered any injuries, and to take steps to find out who had telephoned the applicants on 23 May 2008.

36. On 12 June 2008 the applicants complained to the LRPO that the cause of their son's death had never been officially established. They pointed out that the accounts of the SIZO governor in that regard lacked consistency. Thus, according to them, he had explained that I.M. had died because he "had fallen from his bed", subsequently because he "had fallen ill", and, lastly, because he "had fallen down in the shower".

37. On 17 June 2008 a forensic medical report was issued, according to which a chemical examination had discovered the presence of an organic substance possibly belonging to a group of amphetamines (psychostimulant drugs) in I.M.'s body. A precise identification of the substance was impossible. At the same time, it was noted in the report that the examination had not revealed any traces of caffeine or atropine, amongst other substances.

38. On 18 June 2008 another forensic medical examination (started on 24 May) was completed. It found the following injuries on I.M.'s body: two sores, one on each side of the nose; three sores under the left eyebrow; a brownish-red sore on the lower part of the right earlobe and a bluish-violet bruise on its upper part; a bluish-violet bruise of 2 x 1 cm behind the left earlobe and a similar bruise measuring 2.5 x 3 cm behind the right earlobe; a triangle-shaped sore on the neck behind the right ear; a bluish-violet bruise of 24 x 24 cm on the inner side of the right thigh and a similar bruise of 15 x 14 cm on the inner part of the left thigh; as well an area of 10 x 20 cm on the front part of the left thigh which was bruised all over. The examination of I.M.'s internal organs revealed a 7 x 9 cm long and 0.4 cm

deep area of haemorrhaging in the right temple and a 6 x 7 cm long and 0.3 cm deep area of haemorrhaging in the left temple. The expert concluded that I.M. had sustained the aforementioned injuries while still alive. He classified them as insignificant and having no relation to his death. No bone fractures were discovered. The examination report indicated cardiomyopathy, presumably caused by drug addiction, as the cause of I.M.'s death. It noted that I.M. had been intoxicated by a psychostimulant substance belonging to the amphetamine group which had triggered a heart attack and death. Furthermore, it discovered features of the following conditions: focal serous bronchopneumonia and chronic leptomeningitis, fatty degeneration of the liver, chronic hepatitis and nephritis, atherosclerotic heart disease, thyroid hyperplasia and cardiomegaly. They were also found to have contributed to I.M.'s death.

39. On 26 June 2008 T. was examined by a forensic medical expert, who did not discover that he had suffered any injuries.

40. By a letter of 27 June 2008, the SIZO governor informed the LRPO that an internal investigation had not revealed any drug trafficking in the SIZO. He noted that the psychostimulant substance discovered in I.M.'s body might have been passed to him from the outside with his food parcel, given that he had not shared his food parcels with anybody.

41. On 3 July 2008 the LRPO questioned the ambulance doctor who had pronounced I.M. dead. He submitted that he had not seen any injuries on I.M., but only traces of bleeding from the nose and the left ear. He explained that he had given the "closed craniocerebral injury" diagnosis on the basis of the initial visual inspection, without giving further details.

42. On the same date the LRPO decided that the investigation had not revealed anything criminal in the actions of the SIZO staff or I.M.'s cellmates. It therefore refused to institute criminal proceedings against them.

43. On 8 July 2008 the prosecutor of the LRPO Supervision Department quashed the aforementioned decision as premature and ordered further investigation, the aim of which was to clarify, in particular, how the injuries had been inflicted on I.M. and how the drugs could have appeared inside the SIZO.

44. On the same date the LRPO informed the applicants of the developments in the investigation and invited them to study the case file if they wished to do so.

45. On 14 July 2008 four inmates of cell no. 153 gave further statements regarding the events of 22 May 2008. They noted that on that day I.M. had been exercising, after which the inmates had been taken to the shower area. Upon their return to the cell, I.M. had complained about having a headache. They also stated that they had massaged and rubbed I.M. and had slapped him in the face after his fall to bring him to his senses.

46. On 28 July 2008 the LRPO delivered another decision refusing to open a criminal case against the SIZO administration or I.M.'s cellmates for

a lack of *corpus delicti* in their actions. At the same time, the investigation into the death of I.M. continued, without being targeted against any particular person.

47. On 8 August 2008 the LRPO ordered another forensic medical examination, this time by a commission of experts, with a view to finding answers to the following questions:

- when I.M. had died and what the cause had been;
- whether he had sustained any injuries and, if so, what their nature and origin were;
- whether those injuries could have originated from being hit with blunt objects (such as fists, feet, a stick, etc.), and, if so, what those objects had been;
- whether his injuries could have originated from first aid provided to him (rubbing of his ears, eyes, eyebrows and hands) and, if so, which of the injuries were caused in such a manner;
- whether there was a causal link between I.M.'s injuries and his death;
- whether I.M. had been suffering from any diseases or handicaps and, if so, whether those had had a causal link with his death; and
- whether I.M. had consumed any alcohol or drugs shortly before his death, and, if so, what their impact had been.

48. On 18 September 2008 a microscopic examination of I.M.'s internal organs revealed: subarachnoid haemorrhage in the pia mater surrounding the brain (it was impossible to localise the bleeding with additional precision); punctuate cerebral haemorrhage; and renal haemorrhage.

49. On 27 October 2008 the forensic medical commission of three experts delivered its report. It confirmed that I.M. had died of a heart attack at about 7 p.m. on 22 May 2008. His injuries were estimated as light, with the exception of the subarachnoid haemorrhaging, which was of medium gravity. The haemorrhaging had commenced shortly before death and had originated from the repeated "hitting and shaking" action of blunt objects against the body. It could not be excluded that those objects had been fists, feet or other objects impossible to define. Given that the injuries were to different parts of the body, they could not all have been inflicted at the same time. Some of them – such as the sores on the nose and under the right eyebrow – could have originated from falling against a blunt object. The injuries could not be characterised as having resulted from first-aid efforts. No direct connection was established between I.M.'s injuries and his death. The experts also concluded that, prior to his death, I.M. had suffered from a number of diseases – of the lungs, heart, kidneys and liver – which had been aggravated by a heart attack and had caused his death. They also confirmed that a psychostimulant substance had been found in his body, without commenting on how it was related to his death.

50. On 3 November 2008 the prosecutor of the LRPO Supervision Department quashed the decision of 28 July 2008 as lacking a proper basis and ordered further investigation.

51. On 5 November 2008 the LRPO additionally questioned the toxicologist who had issued the report of 17 June (see paragraph 37 above). The expert specified that the drug discovered in I.M.'s body was not contained in any of the medications given to him by the doctors before his death. It could have stayed in the body for up to five days.

52. On 7 November 2008 the prosecutor repeatedly inspected cell no. 153, together with a forensic medical expert (a member of the commission authoring the report of 27 October 2008 (see paragraph 49 above)) and in the presence of one of the detainees and two attested witnesses. A detailed inventory was produced containing details of all the beds and furniture items and measurements of the distances between them.

53. On 10 November 2008 the LRPO questioned the expert who had participated in the inspection of the cell on 7 November 2008 (see paragraphs 49 and 52 above). Referring to the inspection of the scene, the expert stated that I.M. could have hit himself against the table while falling from the upper bed, then against the bench next to the table, and, finally, against the floor. Most of his bruises and sores, as well as the cerebral haemorrhaging, could have resulted from such a fall. As to the bruises behind both ears, they could have resulted from the intensive rubbing which the inmates had resorted to, having no knowledge as to how first aid should be provided. Lastly, the expert noted that the subarachnoid haemorrhaging could be assessed as being of both light and medium gravity, as the major criterion for the categorisation of such an injury was the effect of time, which was not applicable to the circumstances under examination.

54. On 11 November 2008 another forensic medical expert participating in the commission which had issued the report of 27 October 2008 was questioned by the prosecutor. She noted that the internal bleeding could have resulted from a generalised trauma to the dead body. It could have occurred owing either to blows or to falling against a hard surface.

55. On 12 November 2008 the LRPO again refused to institute criminal proceedings against the SIZO administration or the detainees for a lack of *corpus delicti* in their actions. On the same date it informed the applicants of that decision and explained to them that they had the right to study the case file at the LRPO's premises.

56. On 17 November 2009 the lawyer representing the applicants asked the LRPO for a copy of the decision of 12 November 2008. On 17 December 2009 the LRPO granted that request.

57. On 8 February 2010 the prosecutor of the LRPO Supervision Department quashed the decision of 12 November 2008 as based on an incomplete investigation.

58. On 9 April 2010 the LRPO ordered a complex forensic medical examination with a view to finding answers to the same questions as posed

on 8 August 2008 (see paragraph 47 above). The investigator noted, in particular, that there had been injuries on I.M.'s body and that initially a closed craniocerebral trauma had been given as a possible cause of his death. It remained, however, to be established whether I.M. had in fact sustained the aforementioned injury and what the cause of his death had been.

59. There is no information on the progress or outcome of the investigation.

60. The applicants submitted to the Court ten colour photos of the dead body of their son, dressed and placed in a coffin. The only visible parts of his body are his face and hands. The bridge of his nose appears to be swollen. There are sores on the upper part of the bridge of his nose and below both eyebrows, and a bruise below his left brow. Both earlobes are covered with what appears to be bloodstains and bruises. There are also bruises and patches of missing hair on both temples. His fingertips and nails are bluish in colour.

II. RELEVANT DOMESTIC LAW AND PRACTICE

61. The relevant provisions of the Constitution and the Code of Criminal Procedure can be found in the judgment of *Sergey Shevchenko v. Ukraine*, no. 32478/02, §§ 36 and 38, 4 April 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

62. The applicants complained under Article 2 of the Convention that the State authorities bore responsibility for the death of their son, I.M., during his pre-trial detention. They further complained under Article 13 of the Convention that there had been no effective investigation into the matter and that they had not been duly informed of or involved in it.

63. The Court considers it appropriate to examine both complaints solely from the standpoint of Article 2 of the Convention (see, for example, *Gasyak and Others v. Turkey*, no. 27872/03, § 53, 13 October 2009), which reads, insofar as relevant, as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law..."

A. Admissibility

64. The Government submitted that the applicants had failed to contest any of the domestic decisions refusing to institute criminal proceedings against the SIZO administration or I.M.'s cellmates in respect of his death. They noted that the investigation had been resumed on 8 February 2010 and was still underway. Accordingly, the applicants could not be regarded as having exhausted domestic remedies.

65. The applicants maintained that they had not been informed of the respective decisions in due time. They further noted that the Government's objection was closely linked to the substance of their complaint concerning the alleged ineffectiveness of the investigation into I.M.'s death.

66. The Court notes that this objection on the part of the Government indeed raises issues which are closely linked to the question of the effectiveness of the investigation. It therefore decides to join this objection to the merits of the applicants' complaint to be examined from the standpoint of the procedural limb of Article 2 of the Convention (see, for example, *Trapeznikova v. Russia*, no. 21539/02, § 78, 11 December 2008, and *Kats and Others v. Ukraine*, no. 29971/04, § 99, 18 December 2008).

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

B. Merits

1. The parties' submissions

68. The applicants submitted that their son had died while being under the full control of the State authorities, which had failed to provide a plausible explanation in that regard. They further contended that the domestic investigation had been superficial and ineffective and that they had not been kept aware of the investigative measures undertaken.

69. The Government denied any responsibility on the part of the State for the death of the applicants' son. They maintained that I.M. had died from a pre-existing heart condition aggravated by his drug addiction and a number of chronic diseases, while the injuries discovered on his body had not been of a life-threatening nature. The Government insisted that the domestic authorities had undertaken a prompt and thorough investigation into the circumstances of I.M.'s death and had given a clear explanation regarding its cause. They also maintained that the applicants had been notified of all the investigative measures taken and had had access to the case file materials.

70. In response to the Government's observations, the applicants argued that the authorities had failed to provide I.M. with adequate medical assistance and had therefore been responsible for his death. They also

alleged that he had been detained in poor conditions, which had contributed to the deterioration of his health and, subsequently, to his death.

71. The Government commented that the issues of I.M.'s medical care or conditions of his detention had never been mentioned in any of the applicants' earlier submissions to the Court.

2. The Court's assessment

72. The Court emphasises that Article 2 enshrines one of the basic values of the democratic societies making up the Council of Europe and ranks as one of the most fundamental provisions in the Convention (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324). In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII). Thus, the Court attaches importance to the particular vulnerability of persons in custody (ibid.). It considers that, where an individual is taken into police custody in good health but is later found dead, it is incumbent on the State to provide a plausible explanation for the events leading to his death, failing which the authorities must be held responsible under Article 2 of the Convention (see *Velikova v. Bulgaria*, no. 41488/98, § 70, ECHR 2000-VI). Indeed, events in prisons or other State-controlled facilities lie wholly or in large part within the exclusive knowledge of the authorities, which therefore have a duty to account for them (see *Ertak v. Turkey*, no. 20764/92, § 132, ECHR 2000-V, and *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 103, ECHR 2001-III (extracts)). This obligation becomes even more stringent where it concerns a death (see *Salman*, cited above, § 99).

73. The aforementioned obligation of the State under the substantive limb of Article 2 has a close affinity with its procedural obligation to undertake an effective investigation into a suspicious death. Thus, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. While the obligation to investigate is of means only and there is no absolute right to obtain a prosecution or conviction, any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Makaratzis v. Greece* [GC], no. 50385/99, § 74, ECHR 2004-XI). At the same time, a failure on the part of the State to advance a satisfactory and convincing explanation for a death occurring under its control is an inconceivable result if an investigation complies with the minimum standards satisfying the requirement of effectiveness.

74. Given that in the present case the applicants' son died in a detention facility to which he had been admitted having been – as documented by the SIZO doctors – in good heath (see paragraph 7 above), the Court will now

examine the explanation given by the Ukrainian authorities for his death and the underlying investigative efforts.

75. According to the findings of the domestic authorities, I.M. died as a result of a heart attack supposedly caused by an unidentified drug and further exacerbated by some chronic illnesses (see paragraphs 37 and 38 above). It remains unclear what kind of drug was found in I.M.'s body and how it had been trafficked into the SIZO. The Court also observes that about three months before his death, I.M. had been found to be healthy and in unstable remission from drug addiction, and that the state of his health had never been the object of the SIZO doctors' attention. The applicants' belated allegation about the poor health of their son has also to be taken into account although it is not corroborated by any documents and contradicts their own submissions to the domestic authorities (see paragraph 22 above). While the actual state of I.M.'s health before his death can therefore not be assessed with certainty, the Court is convinced that he did not have any visible injuries when he was placed in the SIZO.

76. It is noteworthy that the aforementioned cause of I.M.'s death was not the only one under consideration. According to the preliminary conclusions of the ambulance and the SIZO doctors reached immediately after I.M.'s death, it might have been caused by a closed head injury. While the findings of a later forensic medical examination might be expected to overrule that early and preliminary conclusion, this is not obvious in the present case, given that about two years after I.M.'s death the investigators called for another expert examination in order to verify whether I.M. had in fact suffered a head injury before his death (see paragraph 58 above).

77. The Court further notes that forensic examinations discovered certain injuries on I.M.'s body, namely: bruises and sores on his face, neck, behind both ears, as well as on the inner side of his both thighs and on the front part of the left thigh. The bruises on his thighs were notably large (24 x 24 cm, 15 x 14 cm, and 10 x 20 cm respectively). There was also internal bleeding (haemorrhaging) discovered in I.M.'s brain, and in both of his temples and kidneys (see paragraphs 38 and 48 above). Furthermore, as submitted by the applicants and confirmed by the photos provided by them, there were bruises on and patches of hair missing from both of I.M.'s temples (see paragraphs 19 and 60 above). Given that he had apparently sustained those injuries shortly before dying (see paragraphs 38 and 49 above), clarifying their origin was essential for establishing the circumstances of I.M.'s death.

78. The Court is not convinced by the explanation given by the domestic authorities for the injuries in question. It also considers questionable the way their conclusions were reached.

79. The Court notes, in particular, that the bruises behind I.M.'s ears were explained by extensive rubbing mistakenly resorted to by his cellmates in their attempts to bring him back to consciousness. First of all, according to the inmates' account, their attempt at giving I.M. first aid before the

doctors' arrival lasted for a matter of a few minutes (see paragraphs 11 and 24 above). The Court next observes that their description as to exactly what they had been doing with I.M. changed significantly over time and became more detailed. Thus, initially, they submitted that a wet towel had been put on I.M.'s head and did not mention any rubbing (ibid.). Only a week after the death of I.M., T., who was suspected by the applicants as having been possibly responsible for I.M.'s death, submitted (for the first time, as it can be seen from the case file materials) that the inmates had been rubbing I.M.'s hands, feet and ears. That account was later supported by the other inmates and was eventually found by the medical expert to be plausible (see paragraphs 26, 45 and 53 above).

80. The Court does not accept that any, no matter how unqualified, attempt to bring a person back to consciousness undertaken for several minutes is likely to result in bruises behind both ears, as well as haemorrhaging and patches of hair torn from both temples.

81. As to the explanation given by the authorities for the other bruises and sores on I.M.'s body, they were initially assessed as having originated from blows with blunt objects, such as fists, feet or other objects (see paragraph 49 above). However, according to a later explanation, I.M. could have sustained those injuries during an accidental fall from his bed, having hit himself first against the table, then against the bench next to it, and, lastly, against the floor (see paragraph 53 above).

82. The Court observes that the injuries in question include large bruises on the insides of both of I.M.'s thighs and many overlapping bruises on the front side of his left thigh (see paragraph 38 above). If the logic of the official explanation is followed, in order to have sustained them, I.M. must have hit himself against three objects – the table, the bench and the floor – on the three aforementioned parts of his body, while falling. In the Court's opinion, the successive and wide (given the size of the bruises) exposure of the interior of both thighs and the front part of the left thigh during such a fall is highly implausible.

83. As regards the internal bleeding discovered in I.M.'s body, the haemorrhaging was found to have possibly resulted from a generalised trauma to the dead body (see paragraph 54 above). The Court considers this finding inexplicable given that – as established by the domestic authorities and supported by the known facts – I.M. died in the SIZO's medical unit, in presence of the medical specialists attempting to resuscitate him, and no further shocks or traumas to his dead body have ever been implied (see paragraph 10 above).

84. The Court further notes that, according to I.M.'s medical records kept by the SIZO, injections of caffeine and atropine were administered to him shortly before his death (see paragraph 10 above). A later forensic examination report explicitly stated that those two substances or traces of them had not been discovered in his body (see paragraph 37 above). Those contradicting medical records have never been reconciled or explained.

85. Lastly, based on the available materials, the Court is unable to conclude that the investigating authorities have taken any meaningful effort to identify who wrote the anonymous letter and made the anonymous phone call to the applicants alleging that the death of their son had been violent.

86. The Court is mindful of the fact that the domestic investigation is still going on. It notes, however, that by now about three years have elapsed from I.M.'s death, during which, as can be concluded in the light of all the above considerations, the authorities have not undertaken an effective investigation into his death and have not given a credible account of the circumstances surrounding it.

87. The Court therefore dismisses the Government's objection regarding the admissibility of this complaint based on the non-exhaustion of domestic remedies, which was previously joined to the merits (see paragraph 66 above).

88. It follows that there has been a violation of Article 2 of the Convention under its both substantive and procedural limbs.

89. Having regard to these findings, the Court does not deem it necessary, under the circumstances, to additionally assess the applicants' involvement in the investigative process, about which they also complained.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

90. The applicants complained that their son had been ill-treated before his death and that the domestic authorities had failed to properly investigate the matter. They relied on Article 3 of the Convention, which provides:

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

A. Admissibility

91. The Government raised an objection as to the exhaustion of domestic remedies by the applicants similar to that regarding their complaint under Article 2 of the Convention (see paragraph 64 above).

92. The applicants disagreed.

93. The Court recalls that it joined the aforementioned plea of inadmissibility to the merits of the applicants' complaint under the procedural limb of Article 2 of the Convention and later dismissed it, finding that the investigation into the death of the applicants' son had not met the requirement of effectiveness (see paragraphs 66 and 87 above).

94. Given that the investigation in question equally concerned the alleged ill-treatment of I.M. prior to his death, the Court also joins the present objection of the Government to the merits of the applicants' complaint under Article 3 of the Convention in so far as it concerns the investigation in question.

95. The Court notes that this complaint meets the other admissibility criteria provided in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

96. According to the applicants, they had strong reasons to believe that, before his death, I.M. had been beaten by one of his cellmates at the instruction of the SIZO administration. They referred in this connection to the following: on the one hand, the anonymous letter received by them; and, on the other hand, the numerous injuries discovered on the body of their son, the origin of which had allegedly remained without any meaningful explanation.

97. The Government denied these allegations as unfounded.

98. The Court has already found that the Government have not provided a plausible explanation for the injuries to I.M.'s body (see paragraphs 78-83 and 86 above).

99. It considers that those injuries were serious enough to indicate ill-treatment beyond the threshold of severity required by Article 3 of the Convention.

100. There has therefore also been a violation of that provision.

101. The Court does not deem it necessary to make a separate finding under Article 3 in respect of the deficiencies in the investigation, having already dealt with that question under Article 2 of the Convention (see paragraphs 73-88 above; and, for the case-law, see *Mahmut Kaya v. Turkey*, no. 22535/93, § 120, ECHR 2000-III). At the same time, it dismisses the Government's objection regarding the admissibility of the Article 3 complaint previously joined to the merits (see paragraph 94 above).

III. THE REMAINDER OF THE APPLICATION

102. The applicants also complained under Article 3 of the Convention that their suffering on account of the death of their son, further exacerbated by the alleged lack of volition on the authorities' part to establish the truth, amounted to inhuman and degrading treatment. Relying on Article 6 of the Convention, they further complained that the detention of their son had been unlawful and had lacked adequate judicial review.

103. The Court has examined the remainder of the applicants' complaints as submitted by them. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

104. It therefore rejects this part of the application in accordance with Article 35 §§ 3 (a) and 4 of the Convention as being manifestly ill-founded.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicants claimed 12,000 euros (EUR) in respect of non-pecuniary damage.

107. The Government considered this claim to be unfounded and excessive.

108. The Court has no doubt that the applicants suffered distress and frustration on account of the suspicious death of their son under the State's responsibility and the authorities' failure to account convincingly for his death. Ruling on an equitable basis, the Court awards in full the applicants' claim of EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

109. The applicants also claimed EUR 1,000 for legal fees. In support of this claim, they submitted legal services contract with Ms Topolevska signed on 10 June 2008, according to which she was to prepare their application and to further represent them in the proceedings before the Court. The applicants, in turn, were bound to pay her, as stipulated in the contract – as soon as they had the opportunity to do so – the amount of 8,500 Ukrainian hryvnias (UAH) which was equivalent to about EUR 1,000 at the time.

110. The Government considered that the applicants had failed to demonstrate that the costs claimed had been reasonable and had actually occurred.

111. 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. The Court notes that, although the applicants have not yet paid the legal fees, they are bound to pay them pursuant to a contractual obligation. As can be seen from the case file materials, Ms Topolevska has been representing the applicants throughout the proceedings before the Court and is therefore entitled to seek payment of her fees under the contract, which, according to the currency exchange rate as of June 2008, are equal to about EUR 1,000. Accordingly, the Court considers those fees to have been "actually incurred" (see *Tebieti Mühafize Cemiyyeti and*

Israfilov v. Azerbaijan, no. 37083/03, § 106, ECHR 2009-...). However, the Court considers that the claim is excessive and awards it partially, in the amount of EUR 700.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicants' complaints under Articles 2 and 3 of the Convention, and dismisses it;

2. *Declares* the complaints under Articles 2 and 3 of the Convention concerning the death of their son in police custody following his alleged ill-treatment admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of the substantive limb of Article 2 of the Convention;

4. *Holds* that there has been a violation of the procedural limb of Article 2 of the Convention;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment suffered by the applicants' son;

6. *Holds* that there is no need to examine separately the complaint under Article 3 of the Convention in respect of the effectiveness of the domestic investigation;

7. *Holds*
   (a) that the respondent State is to pay the applicants jointly, 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 national currency of the respondent State at the rate applicable on the date of settlement:
      (i) EUR 12,000 (twelve thousands euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 700 (seven hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

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

Done in English, and notified in writing on 23 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President