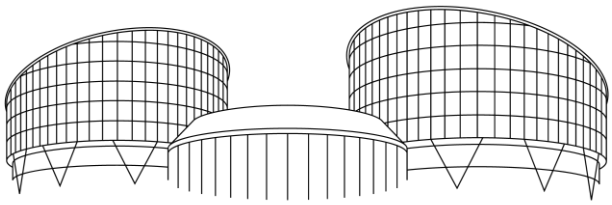

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KARABET AND OTHERS v. UKRAINE

(Applications nos 38906/07 and 52025/07)

JUDGMENT

STRASBOURG

17 January 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Karabet and Others v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal, *judges,*

and Claudia Westerdiek, Section Registrar,

Having deliberated in private on 11 December 2012,

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

PROCEDURE

1. The case originated in two applications (nos 38906/07 and 52025/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eighteen Ukrainian nationals on 27 August 2007 (the first eight applicants, no. 38906/07) and on 21 November 2007 (the remaining ten applicants, no. 52025/07):

- Mr Vitaliy Nikolayevich Karabet, the first applicant (born in 1981 and died in 2011),
- Mr Artyom Valeriyevich Beksyak, the second applicant (born in 1986),
- Mr Igor Vladimirovich Shorban, the third applicant (born in 1987),
- Mr Konstantin Georgiyevich Knyshev, the fourth applicant (born in 1981),
- Mr Aleksandr Anatolyevich Kolesnikov, the fifth applicant (born in 1988),
- Mr Yuriy Yevgenyevich Shmyglenko, the sixth applicant (born in 1975),
- Mr Denis Nikolayevich Lebedev, the seventh applicant (born in 1986),
- Mr Igor Yaroslavovich Shalamay, the eighth applicant (born in 1984),
- Mr Aleksey Vladimirovich Danylyuk, the ninth applicant (born in 1974),
- Mr Anzor Umarkhanovich Tovsultanov, the tenth applicant (born in 1986),
- Mr Konstantin Aleksandrovich Khodakovskiy, the eleventh applicant (born in 1988),
- Mr Mikhail Yuryevich Krasovskiy, the twelfth applicant (born in 1984),

- Mr Dmitriy Sergeyevich Globenko, the thirteenth applicant (born in 1986),
- Mr Nikolay Dmitriyevich Klimashenko, the fourteenth applicant (born in 1972),
- Mr Yevgeniy Leonidovich Plokhov, the fifteenth applicant (born in 1968),
- Mr Aleksandr Stanislavovich Ivanov, the sixteenth applicant (born in 1986),
- Mr Valeriy Valeryevich Gotskovskiy, the seventeenth applicant (born in 1986), and
- Mr Maksim Sergeyevich Batashev, the eighteenth applicant (born in 1986).

2. The applicants, who had been granted legal aid, were represented by Mr A.P. Bushchenko, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were most recently represented by their Agent, Mr Nazar Kulchytskyy.

3. The applicants alleged that they had been severely ill-treated during and following a search and security operation conducted in the Izyaslav Prison on 22 January 2007 with the involvement of a special forces unit. They also alleged that this incident had remained without adequate investigation. Lastly, the applicants complained about the loss of some of their property by the prison administration.

4. On 21 February 2011 the Court decided to give notice of the applications to the Government. It also decided to give priority to the applications under Rule 41 of the Rules of Court.

5. On 19 September 2011 the mother of the first applicant, Ms Elena Ivanovna Karabet, informed the Court that her son had died. She expressed the wish to pursue the application on his behalf and authorised Mr Bushchenko to represent her interests in the proceedings before the Court.

6. On 20 June 2011 the Government submitted their observations on the applications, which were confined to admissibility issues (see paragraphs 238-239, 241, 243, 258 and 337 below). On 3 November 2011 they supplemented them in the light of the factual developments in the case (see paragraphs 240 and 242-243 below).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. At the time of the events the applicants were serving sentences at Izyaslav Prison no. 31 (further referred to as "Izyaslav Prison" or "the prison"), a minimum security prison, in the Khmelnytskyy region.

A. Background facts

1. The prisoners' hunger strike

8. On 14 January 2007 practically all the inmates of Izyaslav Prison, namely, one thousand one hundred and twenty-one prisoners, including the applicants, went on hunger strike in protest at the conditions of their detention, the poor quality of food and drinking water, inadequate medical assistance, arbitrary punishments by and impunity of officials of the administration, and the absence of any remuneration for their work. They sought the dismissal of some prison officials.

9. On the same date the Deputy Head of the State Department for the Enforcement of Sentences ("the Prisons Department") visited the prison. A special commission was established upon his order to conduct an investigation into the prisoners' allegations. The hunger strike was ended.

10. On 16 January 2007, however, the prisoners resumed it on the grounds that the administration had made false statements to the media denying that there had been any protests in the prison. They demanded that journalists be given access to the prison and that the General Prosecutor's Office ("the GPO") and the Parliamentary Commissioner for Human Rights ("the Ombudsman") be notified.

11. Following further negotiations with the Prisons Department's commission and a visit by the Ombudsman's representatives to the prison on 17 January 2007, the hunger strike was called off.

2. Preparations for the search and security operation

12. On 20 January 2007 the Deputy Head of the Prisons Department directed the heads of the Zhytomyr and Khmelnytskyy Regional Offices of the Prisons Department to second special forces and rapid reaction units to Izyaslav Prison with a view to providing practical assistance to its administration for "stabilising the operational situation and carrying out searches".

13. On the same date the requested human resources were deployed to Zamkova Prison (neighbouring Izyaslav Prison), where they remained on standby.

14. On 21 January 2007 the Head of the Khmelnytskyy Regional Office of the Prisons Department approved a plan of the operation, which was scheduled for the following day. It was aimed, in particular, at "detecting and seizing prohibited items ..., and detecting any preparations for escape or other illegal actions".

15. More specifically, the tasks of the search were set out as follows:

> "1. To examine the residential wings and workshop ... [and] prisoners with a view to detecting and seizing prohibited items or goods, as well as identifying any preparations for escape.

2. To undertake preventive security measures for enhancing order, and the study – on the part of the prison administration and the rapid reaction units' staff – of the technical features of risk-prone areas, premises and objects potentially usable for committing large-scale offences.

3. To carry out practical drills with the [prison] administration [staff] in cooperation with the rapid reaction and special forces units by conducting a search of the prison premises, prisoners, and the residential wings.

4. To check:

- knowledge of the general search procedures by the [prison] staff;

- the equipment of the search groups;

- the organisation of the [prison's] management and communication; and

- the procedures applied by the administration for organising and conducting a general search."

16. The search was scheduled to take place from 8 a.m. to 5 p.m. The last thirty minutes were allocated for "conversations with the prisoners regarding their grievances and complaints against the administration, taking measures in response, and resolution of the prisoners' lawful demands".

17. On the same date, 21 January 2007, the Head of the Khmelnytskyy Regional Office of the Prisons Department made the acting governor of Izyaslav Prison responsible for the management of the planned operation. Command over the joint squadron of the rapid reaction groups and general control over "the legality and the conduct of special measures for stabilising the operational situation" in the prison were entrusted to the Prisons Department's officials.

B. Events in Izyaslav Prison on 22 January 2007

1. As per official reports

18. According to a report of 22 January 2007 signed by twelve officials of the Prisons Department and Izyaslav Prison, the search and security operation was conducted from 10 a.m. to 6 p.m. by eighty-six staff members of Izyaslav Prison, eleven officers of a rapid reaction group from Zamkova Prison, eleven officers of a rapid reaction group from Shepetivka Prison, ten staff members of Khmelnytskyy Pre-Trial Detention Centre ("SIZO") and nineteen officers of the Prisons Department's interregional special forces unit.

19. The search resulted in the detection and seizure of two mobile phones, a handmade implement for piercing, a pair of scissors, seven razor blades, thirty-four metal bars (found in a toilet), a bottle of glue, a tattooing device, some keys (found in the yard), two packs of playing cards, twelve water boilers, three lighters, and some medicine.

20. As noted in the search report, "measures of physical influence", including handcuffing, were applied to eight prisoners, including the fourth and the eighteenth applicants. No complaints from prisoners were reported.

21. Following the search, separate reports were drawn up in respect of every case in which the use of force and handcuffing had been resorted to. All those eight reports were worded identically. According to them, the aforementioned measures had been necessitated by the "physical resistance [of the relevant prisoner] to the officers on duty during the search".

22. As per the medical examination reports signed by the chief of Izyaslav Prison's medical unit, seven of those eight prisoners had bruises on their buttocks and/or hips. One of them had a wound on his eyebrow and a bruise on his shoulder blade.

23. The fourth applicant had the following injuries documented: bruises on both buttocks measuring 3 x 7 cm and 3 x 6 cm respectively, and another bruise of 3 x 6 cm on the left hip.

24. According to a similar report regarding the eighteenth applicant, he had two bruises on his left shoulder blade and on his left buttock, measuring 4 x 8 cm and 3 x 7 cm respectively.

2. The applicants' account

25. The applications contained a summary of events based on individual statements by the first, the second, the third, the fourth, the fifth, the sixth, the tenth, the fifteenth, the sixteenth and the eighteenth applicants (see paragraphs 26-108 below). The applicants' lawyer noted the following in both applications:

> "All the applicants suffered the described treatment in one way or another. The absence of references to the names of specific applicants does not mean that the events did not touch them personally".

(a) The first applicant

26. On the morning of 22 January 2007 the first applicant was in the high security wing (*дільниця підвищеного контролю – ДПК*). At 10 a.m. the prison governor and several staff members, together with some officials from the Prisons Department, opened cells nos. 2 and 3 and announced to the inmates that they wanted to talk to them in the room normally used for social and psychological work. The prisoners followed as they were, wearing t-shirts and slippers. Once they took their seats, one of the officials started a speech. A minute later a group of about fifty officers with their faces covered by masks stormed into the room. They knocked the prisoners to the floor and started beating them with truncheons, punching and kicking them. There were three to four officers per prisoner. The beating continued for about fifteen minutes. The first applicant had his front teeth kicked out with the first blow.

27. The inmates were then handcuffed with their hands behind their backs. Those who cried out had their mouths scotch-taped shut. They were taken out to the yard, where they were put along the wall with their legs widely spread. A prison van arrived, and the inmates were loaded into it. Many of them had head injuries and were bleeding. Being handcuffed, they could not even wipe the blood away.

28. The van stopped near the disciplinary cell (*дисциплінарний ізолятор*), its door was opened and some more prisoners, also severely beaten and handcuffed, were thrown inside.

29. The van drove further and stopped near the checkpoint between the residential wing and the workshop, where the prisoners were taken out to the shower area. They had to walk through a corridor about fifty metres long, between two lines of officers who were kicking and beating them with truncheons.

30. In the shower area the prisoners were ordered to strip naked, after which they were beaten again and verbally humiliated. Three to four masked officers searched every prisoner. Many of the inmates preferred to leave their clothes behind in order to avoid continuous beating. Half-naked, barefoot (having lost their slippers by then) and tightly handcuffed, the prisoners were again loaded into the prison van.

31. Some time later an order was given to them to get out of the van one by one. The inmates were made to kneel along the wall. An official from the Prisons Department came forward with the files of the twenty-one prisoners who were present and announced that they would be transferred to Rivne SIZO. The handcuffs belonging to the special forces unit were taken off, and the applicants were handcuffed with the handcuffs belonging to the prisoner transport service. The handcuffing was so tight that it impeded the circulation of blood and caused severe pain.

32. The prison van was filled much beyond its capacity. Even before its departure, many inmates fainted. A medical attendant made them regain consciousness with the help of smelling salts.

33. The convoy had only a two-litre bottle of water for all the inmates. Although suffering from thirst, they could only take one or two sips through the bars.

34. The journey continued for over three hours.

35. On arrival at Rivne SIZO, the inmates were beaten again: first by officers near the van and later in the office to which they were taken. The handcuffs were taken off, and the first applicant saw that his hands were swollen and bluish. He was beaten by about six to eight officers present in the room. As if tired of hitting and kicking him, the officers put him on the floor face down, painfully stretching his arms and legs apart, with one officer pressing each limb against the floor. Others were beating him with truncheons. The first applicant’s skin on his legs and buttocks split from the blows. A medical attendant present poured some water on those injuries.

36. According to the first applicant, the level of cruelty inflicted on the prisoners in Rivne SIZO even exceeded that of their earlier ill-treatment in Izyaslav Prison.

37. The medical attendant gave him a blank waiver of any complaints to sign, which he did.

38. The aforementioned took place in the presence of Rivne SIZO's governor and the Head of the Rivne Regional Office of the Prisons Department.

39. The inmates were placed in four cells each holding five of them.

40. Prisoner O., who had initially been taken with them to Rivne SIZO, was taken back to Izyaslav Prison, as he was to be released five days later (see also paragraph 111 below).

41. The cell was very cold, and the inmates had no warm clothes or even any hot water to drink.

42. Several days later they received an insignificant part of their belongings from Izyaslav Prison.

43. The first applicant, as well as the other inmates, was questioned by the Rivne Prosecutor. Before the questioning, the SIZO administration warned them against raising any complaints.

44. Although seeing the prisoners' injuries, the prosecutor asked them whether they had been beaten and contented himself with their answers in the negative.

45. The inmates were also made to sign a request for their transfer from Izyaslav Prison to any other penal institution backdated 21 January 2007.

46. During the week after their arrival at the SIZO, they were subjected to beatings for the slightest wrongdoing or without any reason.

47. Thereafter, they were provided with intensive medical care with a view to eliminating any traces of ill-treatment.

48. The prisoners were transferred to different penal institutions across Ukraine.

(b) The second applicant

49. The second applicant was in block no. 7. At 10 a.m. he, together with the eighth applicant, was called to the prison's main block.

50. His description of the subsequent events prior to the prisoners' transfers to the SIZO is concordant with the account of the first applicant (see paragraphs 26-48 above).

51. In addition, the second applicant specified that they had been put naked against the wall with their legs widely spread.

52. He also submitted having witnessed the following: the fourth, the thirteenth and the eighteenth applicants (together with another prisoner), who were in the medical unit, were dragged from their wards and beaten. Then the officers threw them, one by one, into a sanitation vehicle, covered

them with a blanket and started kicking and beating them with rubber truncheons. Then the inmates were taken to the shower area.

53. At about 5 p.m. the second applicant, together with some other prisoners, was taken to Khmelnytskyy SIZO. On their arrival there, they were beaten again and placed in a cold underground cell.

54. The prisoners were afraid to tell the truth to the prosecutor who questioned them on 1 February 2007, as their questioning took place in the presence of SIZO administration officers who had been ill-treating them. They also signed papers stating that they had no complaints.

(c) The third applicant

55. The third applicant was in the high security wing at the time of the events in question. Together with the first applicant and some other prisoners, he was taken to a separate room.

56. His description of the events is similar to that of the first applicant. Additionally, he noted that after the group of masked officers stormed into the room, he received several blows with truncheons. Then several officers started kicking and punching him, and he fainted. Once he regained consciousness, he found himself being held by some officers in masks and being kicked by the prison governor.

57. The third applicant emphasised that, being handcuffed with their hands behind their backs, the prisoners were literally thrown into and out of the prison van. Unable to protect their heads, many of them were injured.

58. He refused to comply with the order to kneel (see paragraph 31 above). This triggered beating until he fainted again. During a subsequent body search he was lying on the floor, unable to get up.

59. When the inmates were being loaded into the van, they were surrounded by armed officers with dogs.

60. Given the lack of space and fresh air in the van, the third applicant had problems breathing and asked to be let out. This provoked a new round of beating.

61. The third applicant was in the group of prisoners taken to Rivne SIZO. His account of the events in the SIZO is concordant with that of the first applicant (see paragraphs 35-46 above).

62. He also submitted having been severely beaten there to the point of fainting. The officers present poured some water on him to make him come around.

63. At the SIZO he noticed that the first applicant had had his front teeth knocked out.

64. At Rivne SIZO the inmates had to sleep on a concrete floor for two nights before they were provided with mattresses.

65. Four days after their arrival they received some of their property from Izyaslav Prison. The third applicant provided a detailed list of his belongings which he had not received. It included, in particular, his shoes

and clothes, towels, linen and underwear, as well as some books and cigarettes.

66. According to him, he had numerous bruises and sores on his face, a broken nose and a split lip. Although his injuries were visible, the prosecutor ignored them during his questioning and discouraged him from raising any complaints (see also paragraph 133 below).

67. Being scared for his life and health, the third applicant also signed a waiver of any complaints.

(d) The fourth applicant

68. The fourth applicant had been an active organiser of the prisoners' hunger strike.

69. During the night on 13 January 2007 he was called to the main block of the prison where the governor, together with some other members of the administration, threatened him by saying that, if there was a hunger strike, he would risk severe beating or rape by a group of prisoners.

70. On the morning of 22 January 2007 the fourth applicant, together with the thirteenth and the eighteenth applicants and another prisoner, was in the medical unit. The four of them were called to the head of the medical unit's office, where there were about twenty administration employees present.

71. A few minutes later a group of about ten officers wearing masks stormed into the office, knocked the prisoners down onto the floor, handcuffed them and started hitting them with their faces pressed against the floor. Then the officers threw the inmates, one on top of another, into a van, where they kicked them for about twenty minutes. Thereafter the prisoners were taken to the residential wing where they had to pass between two lines of officers beating them with truncheons. The fourth applicant fainted.

72. He regained consciousness during the body search, which was also accompanied by severe beating. According to the fourth applicant, his beating resulted, in particular, in a permanent scar on his chin.

73. In Khmelnytskyy SIZO, where the fourth applicant was taken together with the other prisoners, there was a rapid reaction group under the leadership of an official from the Khmelnytskyy Regional Office of the Prisons Department (the fourth applicant indicated his name) waiting for them.

74. The prisoners had to "run the gauntlet" through a "corridor" of officers, once again being subjected to constant beating from the officers on either side of them. They were placed in a holding cell.

75. During the first week of their detention there, three to four times every day they were taken, one by one, to an office in the SIZO where the rapid reaction group beat them. Officers put wet towels on the prisoners'

faces and hit them with truncheons on various parts of their bodies. According to the fourth applicant, he fainted on many occasions.

76. The administration also threatened to plant drugs on his parents during their next visit to him and told him that they would also be thrown in jail.

77. Feeling physically and emotionally broken, the fourth applicant denied having any complaints.

78. During his questioning by the prosecutor on 30 January 2007 he started to describe the facts, but was interrupted by a SIZO administration officer present, taken out to the corridor and threatened with more beating. The prosecutor allegedly ignored the fourth applicant's request to continue their conversation without the presence of the SIZO officials (see also paragraphs 133-134 below).

79. As of end of March 2007 the fourth applicant had not yet received any of his personal belongings from Izyaslav Prison.

(e) The fifth applicant

80. The fifth applicant was among the prisoners taken from the high security wing to the room used for social and psychological work on the morning of 22 January 2007. His account of the events is similar to that of the first and the third applicants (see paragraphs 26-48 and 55-65 above).

81. He emphasised the cruelty of the prisoners' beating. According to him, many of them had their teeth knocked out and their ribs broken.

(f) The sixth applicant

82. At about 9 a.m. on 22 January 2007 the sixth applicant was taken out of cell no. 10 in the high security wing where he was being detained. Around twenty officers wearing masks beat him, along with some other prisoners, in the corridor. His further account is similar to that of the first, the third and the fifth applicants (see paragraphs 26-48, 55-65 and 80-81 above).

(g) The tenth applicant

83. The tenth applicant described the events of 22 January 2007 as follows:

> "On 22 January 2007 special forces unit officers wearing masks entered the prison. They brutally beat the prisoners and force-fed them".

84. He was transferred to Rivne SIZO. His description of the conditions of detention and their treatment there is similar to that given by the first and the third applicants (see paragraphs 35-46, 61 and 64-65 above).

85. According to the tenth applicant, the prosecutor saw their injuries, but ignored them.

(h) The fifteenth applicant

86. On the morning of 22 January 2007 the fifteenth applicant was in the high security wing. He supplemented the description of the events of that day given by the first, the third, the fifth and the sixth applicants with the following details.

87. After the special forces unit stormed into the room where the inmates were gathered, the fifteenth applicant was beaten by three officers. One officer stepped on his neck, while he was lying handcuffed on the floor, and beat him with a rubber truncheon on his head and face. Two other officers were kicking him in the kidneys. The fifteenth applicant fainted.

88. He regained consciousness when he was being dragged to the van. He could hardly see anything, as his face was bleeding and he could not wipe the blood away as his hands were handcuffed behind his back.

89. The beating continued before, during and after the body search of the prisoners. The prison governor hit the fifteenth applicant to the back of his head with such force that the applicant fell against a concrete fence, injuring his chin and having a tooth knocked out.

90. For the transfer, the prisoners were handcuffed so tightly that the blood could no longer circulate to their hands.

91. Their transportation to Rivne SIZO lasted for almost four hours.

92. The inmates suffered extremely cruel ill-treatment at the SIZO. Its description is similar to that given by the first applicant (see paragraphs 35-48 above).

93. The fifteenth applicant fainted three times and was brought around by cold water being poured on him.

94. During the initial four days of their detention in the SIZO, the former Izyaslav Prison inmates were subjected to regular beatings. They were all forced to sign backdated requests for their transfer to a different penal institution and waivers of complaints.

95. According to the fifteenth applicant, his health seriously deteriorated as a result of the ill-treatment suffered. There was blood in his urine for about a month. He had also suffered several broken ribs on the left side, a tooth had been knocked out and he had suffered cuts on the chin and an eye-brow.

96. As of November 2007 he had not received any of his personal belongings from Izyaslav Prison.

(i) The sixteenth applicant

97. As of 22 January 2007 the sixteenth applicant was held in the disciplinary cell in the high security wing.

98. His description of the events of that day is brief, but concordant with that given by the first, the third, the fifth, the sixth and the fifteenth applicants (see paragraphs 26-48, 56-67, 80-82 and 86-94 above).

99. The sixteenth applicant submitted, in particular, that together with some other prisoners he had been taken to the administrative premises, where they were subjected to cruel beatings by a group of masked officers.

100. The inmates were then handcuffed and thrown into a van.

101. At the prison check-point they were searched and beaten again.

102. The sixteenth applicant fainted at some point and only came around later in the van.

103. The inmates were taken to Rivne SIZO, where their ill-treatment continued. They were forced into waiving any complaints.

(j) The eighteenth applicant

104. On the morning of 22 January 2007 the eighteenth applicant was in the prison's medical unit because of a heart condition.

105. Like the other applicants whose accounts are provided above, he alleged having witnessed and suffered severe beatings.

106. As to him personally, he stated that his nose had been broken, his face seriously wounded, his jaw displaced, and his back bruised.

107. The eighteenth applicant was in the group of prisoners transferred to Khmelnytskyy SIZO.

108. According to him, their ill-treatment there continued for a week, until they signed waivers of any complaints and backdated requests for their transfer from Izyaslav Prison elsewhere.

3. Witnesses' statements

109. The applicants submitted to the Court the transcript of an interview conducted by the 1+1 national television channel (towards the end of January or the beginning of February 2007) with two former prisoners who had been serving sentences in Izyaslav Prison as of 22 January 2007 and had been released shortly thereafter.

110. Mr T. stated that at the time of the events he had been in block no. 7 together with some other inmates including the second and the eighth applicants. On the morning of 22 January 2007 the second and the eighth applicants were taken to the main block. Thereafter, the prison governor and an official from the Prisons Department entered the block and told the inmates that what was about to happen did not concern them and that they were not to pay attention to it. As to the inmates who had been taken to the main block, according to the officials, they had incited the hunger strike and would not be detained in that prison any longer. The remaining prisoners from block no. 7 were then taken to work in the workshop, from where they could see the entrance to the high security wing. They saw around fifty officers wearing masks running inside. The officers' appearance and equipment suggested that they belonged to a special forces unit. Some time later the officers were pushing the inmates out or carrying them in blankets, constantly kicking them and beating them with truncheons. Then the

prisoners were thrown into a prison van as they were, some of them with very little clothing on and barefoot, and afterwards the van left.

111. Mr O. described the events of 22 January 2007 as follows. He had been held in the high security wing. At about 11 a.m. the prison governor entered and told Mr O. and some other inmates to go to the room normally used for social and psychological work. In that room an official from the Prisons Department started a speech in general terms. About two minutes later special forces unit officers wearing masks stormed into the room and commanded everybody to lie on the floor with their faces down and with their hands behind their heads. Mass beating followed. According to Mr O., he witnessed the officers knock the ninth applicant's teeth out. The floor and the walls of the room were covered with blood. The inmates were handcuffed and dragged out to the corridor, where they had to pass between two lines of officers constantly hitting and kicking them. The prisoners were then loaded into a van and taken to the checkpoint. Once there they were taken to the shower premises and strip-searched. The beating continued. After a body search, the prisoners were again thrown into the van, with their hands still handcuffed, and taken to Rivne SIZO. Upon their arrival there, they were beaten again and forced to sign waivers of any complaints. Mr O. was released three days later, having served his sentence in full.

C. Prisoners' transfers to Khmelnytskyy and Rivne SIZOs and subsequent events

112. Twenty-one prisoners (including the second, the fourth, the seventh, the eighth, the thirteenth, the fourteenth and the eighteenth applicants) were transported to Khmelnytskyy SIZO; while twenty prisoners (including the first, the third, the fifth, the sixth, the ninth, the tenth, the eleventh, the twelfth, the fifteenth and the sixteenth applicants) were transported to Rivne SIZO. None of the prisoners was allowed to collect any warm clothes or other personal belongings. The seventeenth applicant remained in Izyaslav Prison.

113. On 22 January 2007 Khmelnytskyy SIZO's doctor examined the group of new arrivals. The examination reports documented the absence of any injuries on the second, the seventh, the eighth, the thirteenth and the fourteenth applicants. As to the fourth and the eighteenth applicants, the doctor reported the same injuries as those previously documented in Izyaslav Prison (see paragraphs 23-24 above).

114. There are no documents in the case file concerning any medical examinations of the applicants who were taken to Rivne SIZO.

115. On 30 January 2007 the Prisons Department informed the administrations of Mykolayiv Prison no. 50 and Derzhiv Prison no. 110 that the first, the fifth and the sixth applicants would be transferred to one of these two prisons from Rivne SIZO (along with some other prisoners).

According to the letter, they had been actively involved in the organisation of the mass hunger strike in Izyaslav Prison. The administrations were therefore requested "to ensure adequate individual preventive work" was undertaken with those prisoners and "to establish open and concealed control over their behaviour with a view to preventing any breaches of the prison rules" on their part.

116. In early February 2007 the applicants were transferred to different penal institutions across Ukraine (with the exception of the seventeenth applicant, who continued to serve his sentence in Izyaslav Prison).

D. Official inquiry by the Prisons Department in respect of the prisoners' hunger strike

117. On 24 January 2007 the Prisons Department completed its report following an official inquiry into the prisoners' hunger strike in Izyaslav Prison on 14 and 16 January 2007. It concluded that the incident had become possible owing to the following shortcomings or omissions on the part of the prison administration (the names and posts of the relevant officers were specified in the report, but are omitted from the translation below):

> "1. The failure of the prison administration to take comprehensive measures for complying with the requirements of the Department and its Regional Office as regards ensuring proper control over prisoners' behaviour, their respect for procedure and the conditions of serving sentences, as well as [measures] for the coordination of the law-enforcement activities of different services.
>
> 2. Low awareness of the operational officials of the prison concerning the ways in which prisoners coalesce into a group of insubordinate prisoners (*засуджені негативної спрямованості*).
>
> 3. Reduced control over the performance of the guard shifts on duty, inadequate supervision of prisoners' behaviour, poor organisation and conduct of searches of prisoners and premises, and inadequate isolation of prisoners.
>
> 4. Unsatisfactory educational and explanatory work with prisoners and inadequate familiarisation with their personalities, unbalanced application of incentives to prisoners [the increase of disciplinary measures by fifty-five percent in 2006 as compared to 2005; and the failure to apply legally envisaged incentives to sixty-seven percent of eligible prisoners: on only ten occasions had incentives been applied in 2006].
>
> 5. Inadequate organisation of the workshop activities, lack of control over the compliance with the requirements regarding the safety of and remuneration for prisoners' labour.
>
> 6. Inadequate medical and sanitary [facilities] and material conditions of detention.
>
> 7. Loosened requirements towards the subordinate services within the prison as regards prevention of unlawful preparations by groups of prisoners, and inadequate organisation of supervision over their behaviour.

8. Inadequate coordination of and cooperation among various prison services as regards preventive measures with prisoners.

9. Inadequate control and lowered requirements from the Department's Regional Office towards the prison administration in so far as law enforcement in the prison is concerned."

118. Overall, the Prisons Department concluded that the activities of the administration of Izyaslav Prison had been aimed at ensuring law and order in the prison, but that the measures undertaken had proved insufficient.

119. On the same date, 24 January 2007, the Prisons Department delivered an order "On significant shortcomings in the activity of Izyaslav Prison no. 31 and the disciplinary liability of those responsible", by which twenty-four officials were disciplined. In particular, two officials were given warnings about their incompetence in service, two others received severe reprimands and thirteen received ordinary reprimands, two were subjected to disciplinary sanctions which had previously been imposed on them but suspended, and two were not disciplined given their short period of service.

120. The case file also contains a copy of an "Extract from the conclusions of the internal investigation into the hunger strike by a group of prisoners in [Izyaslav Prison] on 14 January 2007" issued on an unspecified date after 24 January 2007 by the Prisons Department commission following its visit to the prison "with a view to studying the operational and financial situation in the prison, the conditions of detention therein, and the reasons for the refusal of prison food by a group of prisoners" (see also paragraph 9 above). The commission established that the prisoners explained their refusal to eat in the prison canteen (while they ate their own food received from outside) as resulting from their reaction to the allegedly biased attitude of the administration, the poor quality of the drinking water, inadequate welfare and sanitary facilities, unjustified disciplinary measures having been taken against certain prisoners, the absence of any remuneration for their work, and the unsatisfactory practices of the prison shop, which allegedly sold expired foodstuffs.

121. The Prisons Department commission concluded that the main reason that some prisoners, which it classed as insubordinate, had organised the refusal of prison food was their intention to have the new management of Izyaslav Prison dismissed. The commission stated that the prison's new management had attempted to restore the order and discipline loosened by the previous administration.

122. The commission reported, in particular, that the measures taken had stabilised the security situation and that forty organisers of the hunger strike had been transferred to different penal institutions.

123. On 5 February, 10 April and 2 May 2007 the Donetsk Memorial NGO asked the Deputy Head of the Prisons Department, who had visited Izyaslav Prison in January 2007, to provide a complete report on the investigation into the events there. The NGO enquired, in particular,

whether the prisoners' complaints had been investigated at all and, if so, what the results of that investigation had been, and how the substance of their complaints (regarding the allegedly inadequate drinking water and food in prison, the sale of expired goods by the prison shop, and so on) could have justified the search and security operation undertaken. It also requested information on any specific incidents of prisoners' disobedience or resistance to the administration.

124. By letters of 21 May and 6 June 2007, the Deputy Head of the Prisons Department replied to Donetsk Memorial stating that all the prisoners' complaints had been duly looked into, with no further details provided. The main reason for some prisoners having encouraged others to refuse prison food had been an attempt to establish illegal trafficking channels in the prison and to undermine the lawful prison regime. The search and security operation had been thoroughly prepared and conducted, without any unjustified resort to force. As to the involvement of civil society and the media in the investigation process, no NGOs had requested this, whereas some journalists had been allowed access to the prison.

E. Investigation into the prisoners' alleged ill-treatment

125. Following the events of 22 January 2007, the applicants' relatives had no information about the applicants' whereabouts and were not allowed to visit them.

126. Many of their relatives complained to various authorities – the Ombudsman, the Khmelnytskyy and Rivne Regional Prosecutor's Offices, the administration of Izyaslav Prison and the Prisons Department – about the alleged ill-treatment of the applicants, their arbitrary transfer to different penal institutions and the loss of the applicants' personal belongings. In particular, relatives of the second, the third, the fourth, the sixth, the eighth and the ninth applicants raised such complaints before the prosecution authorities.

127. On 26 January 2007 the Kharkiv Human Rights Protection Group ("the KHRPG") NGO wrote to the GPO, stating that it had become aware of the alleged beating of prisoners in Izyaslav Prison by masked special forces officers and requested an independent investigation without the involvement of the local prosecution authorities. The GPO forwarded this complaint to the Khmelnytskyy Regional Prosecutor's Office, which, in turn, referred it to the Shepetivka (a town in the Khmelnytskyy Region) Prosecutor in charge of supervision of compliance with the law in penal institutions ("the Shepetivka Prosecutor").

128. On 29 January 2007 some mass-media outlets (in particular, the 1+1 national TV channel and the Segodnia newspaper) disseminated information about the mass beating of inmates in Izyaslav Prison on 22 January 2007 (see also paragraphs 109-111 above).

129. On 30 January 2007 the Khmelnytskyy Regional Prosecutor's Office questioned the second, the fourth, the seventh, the eighth, the thirteenth, the fourteenth and the eighteenth applicants, who were detained at the time in Khmelnytskyy SIZO. Their statements are summarised in paragraphs 133-135 below.

130. On the same date the Khmelnytskyy Prosecutor asked the Khmelnytskyy Regional Bureau of Forensic Medical Examinations to carry out forensic medical examinations of the seven applicants detained in the Khmelnytskyy SIZO (see paragraph 112 above). As noted in the request, the examination was required "in connection with the investigation". The questions to the expert read as follows:

> "Does the convict have any bodily injuries? If so, what are they, what is their nature, location, seriousness, means [by which they were inflicted] and time of infliction?"

131. On 1 February 2007 the Khmelnytskyy Prosecutor's Office asked the Rivne Regional Prosecutor's Office, in charge of supervision of compliance with the law in penal institutions, to question the twenty former inmates of Izyaslav Prison (including the first, the third, the fifth, the sixth, the ninth, the tenth, the eleventh, the twelfth, the fifteenth and the sixteenth applicants) about the events of 22 January 2007 with a view to verifying the allegations of ill-treatment of prisoners.

132. On 2 February 2007 the Rivne Prosecutor's Office complied with this request.

133. The written explanations given by the applicants (with the exception of the seventeenth applicant, who was detained in Izyaslav Prison) to the Khmelnytskyy or Rivne Prosecutor can be summarised as follows:

- The first applicant stated that, although he had been disciplined several times in Izyaslav Prison, he considered the sanctions fair and justified. According to him, he had not personally refused to eat in the prison canteen and he did not know why the other prisoners had done so. The first applicant denied having seen or experienced any ill-treatment during the search operation on 22 January 2007. He stated that he had no complaints against the prison administration.
- The second applicant explained his refusal to eat canteen food as solidarity with the others and stated that he had no complaints to raise.
- The third applicant submitted that the disciplinary measures which had been applied to him on several occasions in Izyaslav Prison had been justified and that he had nothing to complain about either.
- The fourth applicant explained his refusal to eat in the canteen as a protest against the inappropriate treatment of prisoners by the administration, frequent beatings and arbitrary disciplinary sanctions. In reply to a question as to whether the officers conducting the search had been wearing masks, he replied that he had been made to lie on the floor with his face down and therefore had not been able to see anything. The

fourth applicant denied having been subjected to or having witnessed any beatings or other ill-treatment during the operation in question. He stated that he had no complaints. When asked about the medical examination report of 22 January 2007 stating that he had some injuries (see paragraphs 23 and 113 above), the fourth applicant submitted that he could not give any explanations in that regard.

- The fifth applicant also considered the disciplinary measures against him in Izyaslav Prison to have been merited. He explained his refusal to eat in the canteen as reflecting the fact that he had just received a food parcel from relatives. The fifth applicant denied any knowledge of the reasons for the prisoners' hunger strike or his involvement in its organisation. Likewise, he denied any allegations of ill-treatment or having seen officers wearing masks.

- The sixth applicant refused to give any explanations, making reference to Article 63 of the Constitution (see paragraph 196 below). At the same time, he noted that he had no injuries or complaints. He also refused to undergo a medical examination. The ninth, the eleventh, the twelfth and the fifteenth applicants took a similar position.

- The seventh applicant submitted that he had been hit (or kicked – it is not clear from the wording used) during the search, with no trace having been left. He denied having witnessed any ill-treatment.

- The eighth applicant explained his refusal to eat canteen food as solidarity with other prisoners and stated that he had no complaints. A similar statement was made by the eighteenth applicant.

- The tenth and the fourteenth applicants denied any allegations of ill-treatment of prisoners and stated that they had no complaints.

- The thirteenth applicant submitted that he had refused to eat in the canteen in protest at searches in the prison's living areas and the inadequate quality of the drinking water. He also denied having any complaints.

- The sixteenth applicant referred to some problems with correspondence and parcels in Izyaslav Prison as the reasons for his participation in the hunger strike. Like the other applicants, he stated that he had no complaints to report. He refused to undergo a medical examination.

134. According to the applicants' submissions before the Court, the aforementioned questioning sessions took place in the presence of SIZO administration officers and following threats of ill-treatment. Their visible injuries were allegedly disregarded (see also paragraphs 44, 66 and 85 above).

135. In addition to a written waiver of any complaints, the applicants submit that they were made to sign requests for their transfer from Izyaslav Prison to any other penal institution backdated 21 January 2007.

136. On 2 February 2007 an expert from the Khmelnytskyy Regional Bureau of Forensic Medical Examinations issued identically worded reports

in respect of the second, the seventh, the eighth, the thirteenth and the fourteenth applicants, which read as follows:

> "Circumstances of the case: not indicated in the assignment.
>
> The examinee has not indicated the circumstances of the case.
>
> **Examination**
>
> Complaints: none.
>
> Objectively: no external bodily injuries discovered.
>
> Conclusion: As of 30 January 2007 no bodily injuries have been discovered on [the name of the relevant applicant]."

The expert noted that the chief of the SIZO medical unit had been present during the examinations.

137. According to the examination report regarding the fourth applicant, he had a bruise of 5 x 4 cm on the left buttock, which could have been inflicted by a blunt hard object with a small surface area, that had developed as a result of a blow some eight or nine days prior to the examination (carried out on 30 January 2007). The expert concluded that the nature and the age of the bruise were in conformity with the fourth applicant's submission that he had been hit with a rubber truncheon on 22 January 2007. No other injuries were reported.

138. A similar report in respect of the eighteenth applicant stated that the only injury he had was a bruise of 4 x 3.5 cm on his left buttock. It could have been inflicted at the time and in the circumstances described by the eighteenth applicant (a blow by a rubber truncheon on 22 January 2007).

139. There is no information in the case file as to whether the applicants held in Rivne SIZO were also examined by forensic medical experts.

140. In the end of January and in early February 2007 the prosecution authorities also questioned the officials involved in the search and security operation on 22 January 2007.

141. The acting governor of Izyaslav Prison and several special forces and rapid reaction unit officers stated that the operation had been conducted according to the duly approved plan and in compliance with the law, without any resort to violence (with the exception of physical force having been applied to eight prisoners following their resistance).

142. The chief of the interregional special forces unit submitted that his subordinates had been instructed not to take, and had not taken, any special means of restraint with them to the prison. According to him, the search had been orderly and had been conducted without any resort to coercion.

143. The chiefs of the rapid reaction groups made a similar statement.

144. The Izyaslav Prison guards who had participated in or witnessed the use of force against the fourth and the eighteenth applicants stated that those applicants had been using obscene language regarding the prison

administration. As a result, a rubber truncheon and handcuffing had been used against them.

145. On 5 February 2007 the Shepetivka Prosecutor initiated disciplinary proceedings against the acting governor of Izyaslav Prison, who had been required (under paragraph 58 of the Internal Regulations of Penal Institutions approved by Order no. 275 of 25 December 2003 – see paragraph 200 below) to inform the prosecutor in charge of supervision of compliance with the law in penal institutions about the search of 22 January 2007 in advance, but who had failed to do so. As a result, the due prosecutorial supervision had not been in place with a view to ensuring the legality of the search operation and to investigate the use of force and special means of restraint on the eight prisoners (see paragraphs 20-24 above), as well as to assess the legality of the transfer of the forty-one prisoners to Khmelnytskyy and Rivne SIZOs (see paragraph 112 above). The ruling was referred to the Khmelnytskyy Regional Office of the Prisons Department for it to impose disciplinary liability on the acting governor of Izyaslav Prison.

146. On 7 February 2007 the Shepetivka Prosecutor delivered a ruling refusing to institute criminal proceedings against the prison administration and the other authorities concerned regarding the events in Izyaslav Prison on 22 January 2007. As noted in the ruling, the investigation had been triggered by information disseminated by the media (in particular, on 29 January 2007 by the 1+1 TV channel and in the Segodnia newspaper – see paragraphs 109-111 and 128 above) about the mass beating of inmates in Izyaslav Prison during the search and security operation on 22 January 2007. The prosecutor concluded that physical force had only been used against eight prisoners (with the fourth and the eighteenth applicants being among them) in response to their resistance. As confirmed by the explanations given by the prison administration, the special forces and rapid reaction units' officers, and by the prisoners themselves, the allegations of a mass beating had proved unsubstantiated.

147. According to the applicants, they were not notified of this ruling.

148. By letter of 13 March 2007, the GPO informed the KHRPG (see paragraph 127 above) that a thorough investigation had been undertaken and that no violations had been found. As noted in that letter, the involvement of the special forces unit and the rapid reaction groups had been necessitated by the complicated security situation in Izyaslav Prison, unruly prisoners inciting other inmates to refuse prison food, displays of disobedience, insolent behaviour, and resistance to the administration's attempts to seize prohibited items. The general search had resulted in the identification and seizure of sixty-four prohibited items. The use of force had been limited to eight prisoners and had been legitimate. Given overcrowding in Izyaslav Prison, some prisoners had been transferred, via Khmelnytskyy and Rivne SIZOs, to other penal institutions.

149. On 10 April 2007 the Prisons Department wrote to the mother of the second applicant, in reply to her complaints about his alleged ill-treatment and his transfer to a different prison, stating that these complaints had been found to be unsubstantiated. The official noted that the second applicant had had a bad reputation and had been inciting other prisoners to take part in a hunger strike. He had himself denied having any complaints. As for his transfer to a different prison, it had been in compliance with the law.

150. On 12 April 2007 the KHRPG asked the Ombudsman to provide information about the visit of her representatives to Izyaslav Prison in January 2007.

151. On 17 April 2007 the mother of the second applicant complained to the Izyaslav Prison's governor that her son's belongings had been left behind in that prison after his transfer. As she found out, his cellmates had packed them, but the belongings had probably been expropriated by the prison staff members. She submitted a detailed list of the missing items.

152. On 27 April 2007 the governor of Izyaslav Prison replied that the second applicant had been transferred to another prison at his own request and that all his belongings had been collected and sent on to him. The allegation that his property had been taken by prison staff members was dismissed as unsubstantiated.

153. On 27 April 2007 the Ombudsman's office replied to the KHRPG that it was under no obligation to report on investigations in progress.

154. According to an information note issued by the Prisons Department on an unspecified date, starting from 3 January 2007 the following complaints had been registered by the Khmelnytskyy Regional Office of the Prisons Department in respect of the loss of personal belongings by prisoners in Izyaslav Prison: complaints from the relatives of the second, the third, the fourth, the fifth and the sixth applicants. No other complaints had been received.

155. According to an information note issued by the house-keeping unit of Izyaslav Prison on an unspecified date, as of 22 January 2007 there was no property in the prison warehouse belonging to the first, the third, the fifth, the seventh, the eighth, the ninth, the twelfth, the thirteenth, the sixteenth, the seventeenth and the eighteenth applicants.

156. On 30 April, 4 and 11 May 2007 the Khmelnytskyy Regional Office of the Prisons Department announced that it had completed its inquiry into the complaints made by the sixth, the second and the third applicants, respectively (introduced on unspecified dates), regarding the events of 22 January 2007. These reports relied on the prosecutor's decision of 7 February 2007 (see paragraph 146 above) and were approved by the Prisons Department's officials directly involved in the organisation and implementation of the operation in question (see paragraph 17 above).

157. On 4 May 2007 the Rivne Prosecutor wrote to the mother of the ninth applicant in reply to her complaints that her son had been transferred

to Rivne SIZO together with twenty other prisoners, stating that this had occurred following his resistance to lawful requirements of the prison administration and the mass hunger strike. The prosecutor pointed out that the ninth applicant had himself refused to give any statements, making reference to Article 63 of the Constitution. He and the other new arrivals had been examined by a doctor at the SIZO, with no injuries or health-related complaints having been documented.

158. On 7 May 2007 the mothers of the second and the third applicants complained to the GPO once again about the alleged beating of their sons and the loss of their property. They also noted that their earlier complaints had been forwarded to the Prisons Department and dismissed by officials who had been directly involved in the events complained of.

159. On 17 May 2007 the Khmelnytskyy Regional Office of the Prisons Department delivered a report completing its inquiry into the complaints made by the mother of the fourth applicant about the alleged loss of his property and money. It held that he had received his personal belongings in full following his transfer to a different prison and that he had himself withdrawn the money he had in his personal account (200 Ukrainian hryvnias, the equivalent of about 30 euros). Accordingly, the complaints were dismissed as unfounded. The report was signed by one of the Department's officials involved in the organisation of the search operation in Izyaslav Prison (see paragraph 17 above).

160. On 22 May 2007 the Khmelnytskyy Prosecutor wrote to the sixth applicant with the results of the investigation into his allegation that his personal belongings had been lost or destroyed. The investigation had found that all his belongings had been sent to Rivne SIZO following his transfer there.

161. On 30 May 2007 the Khmelnytskyy Regional Office of the Prisons Department declared that it had completed its inquiry into the complaints made by the fourth applicant's mother concerning his ill-treatment during the search operation. With reference to the prosecutor's ruling of 7 February 2007 (see paragraph 146 above), the inquiry concluded that force had legitimately been applied against the fourth applicant. As to her complaint regarding the conditions of detention in Izyaslav Prison, those conditions were found to be in compliance with legal requirements. The inquiry report was approved by a Prisons Department official who had been among those in charge of the organisation of the search operation of 22 January 2007 (see paragraph 17 above).

162. On 31 May 2007 the Khmelnytskyy Prosecutor also wrote to the mothers of the third, the fourth and the ninth applicants informing them that their complaints had been investigated and dismissed as unsubstantiated.

163. On 5 July 2007 the sixth applicant injured himself with a metal hanger in protest at the allegedly inadequate investigation of the events in Izyaslav Prison on 22 January 2007.

164. On 6 July 2007 the GPO wrote to the mothers of the second and the eighth applicants, making reference to the ruling of 7 February 2007, stating that the allegations of their sons' ill-treatment had been groundless. As to the conditions of their detention, the prosecutor's office had already intervened and the prison administration had taken measures to improve the situation.

165. On 10 July 2007 the Lviv Regional Prosecutor (who became involved following the sixth applicant's transfer to a penitentiary in the Lviv region) questioned the sixth applicant in respect of his self-harming on 5 July 2007 and regarding his alleged beating on 22 January 2007.

166. On 11 July 2007 the prosecutor also questioned the fifth applicant as part of the investigation into the sixth applicant's self-harming and the prisoners' alleged ill-treatment in Izyaslav Prison. The fifth applicant mentioned having been beaten with truncheons on 22 January 2007.

167. On 18 July 2007 the Khmelnytskyy Regional Office of the Prisons Department declared that it had completed its inquiry into the complaints made by the fifth applicant regarding his and other prisoners' ill-treatment. The allegations were dismissed as unsubstantiated, with reference being made to the prosecutor's ruling of 7 February 2007. The same conclusion was drawn in respect of the fifth applicant's complaint about the alleged loss of his property following his transfer from Izyaslav Prison. The inquiry report was signed by one of the officials involved in the search operation in question (see paragraph 17 above).

168. On 30 July 2007 the sixth applicant stated during his questioning by the Shepetivka Prosecutor that he and some other prisoners, including, in particular, the first and the fifth applicants, had been beaten during the search operation on 22 January 2007.

169. On 31 July 2007 the fifth applicant made another statement to the prosecution authorities about the beatings of prisoners, including himself, in the course of and after the search operation on 22 January 2007.

170. In August 2007 the Shepetivka Prosecutor also questioned officials from the administration of Izyaslav Prison and some prisoners about the events of 22 January 2007, all of whom denied that there had been any ill-treatment.

171. On 29 August 2007 the Shepetivka Prosecutor issued a ruling refusing to open a criminal case in respect of the officials of Izyaslav Prison, the special forces unit under the Zhytomyr Regional Office of the Prisons Department and the members of the rapid reaction units of Zamkova Prison, Shepetivka Prison and Khmelnytskyy SIZO for a lack of *corpus delicti* in their actions. The ruling was delivered following an investigation of the sixth applicant's complaints in respect of the events of 22 January 2007. The prosecutor noted that on 19 January 2007 the sixth applicant had been placed in a solitary confinement cell for three months "for resistance to the administration and inciting prisoners to commit unlawful acts". During the search operation no force had been applied to him, which had been

confirmed by the written statements of the officials involved and the prisoners. Furthermore, on 7 February 2007 the prosecution authorities had already refused to open a criminal case in the matter.

172. On 3 September 2007 the Khmelnytskyy Prosecutor quashed the ruling of 29 August 2007 as premature and not based on a comprehensive investigation. He noted, in particular, that not all the prisoners involved had been questioned. Furthermore, a similar allegation by the fifth applicant remained unverified.

173. On 10 September 2007 the Shepetivka Prosecutor again refused to initiate the criminal prosecution of the prison administration and the special units' staff involved in the operation in Izyaslav Prison.

174. On 26 January 2008 the tenth applicant complained to the GPO about the mass beating of Izyaslav Prison's inmates by masked special forces unit officers on 22 January 2007 and about the prisoners' hasty transfers to the SIZOs without any personal belongings. He submitted that all his earlier statements had been given under duress and should be disregarded. The tenth applicant also noted that, after his transfer to Pervomaysk Prison no. 117, he had been placed, allegedly without reason, in solitary confinement for three months.

175. On 14 May 2008 the Khmelnytskyy Prosecutor, to whom the above complaint had been referred, replied to the tenth applicant stating that the allegations raised by him had already been dismissed as unfounded by the prosecutor's ruling of 7 February 2007 (see paragraph 146 above). It was open to the tenth applicant to challenge that ruling if he wished to do so.

176. On 16 July 2008 the sixth applicant's lawyer (Mr Bushchenko, who also represented the applicants in the proceedings before the Court) challenged the refusal of 7 February 2007 before the Shepetivka City Court ("the Shepetivka Court"). He submitted that the sixth applicant had been among the prisoners beaten in Izyaslav Prison on 22 January 2007. According to him, the sixth applicant had only received a copy of the ruling of 7 February 2007 on 11 July 2008. The lawyer contended that the Shepetivka Prosecutor could not be regarded as an independent and impartial authority, because according to paragraph 58 of the Internal Regulations of Penal Institutions approved by Order no. 275 of 25 December 2003 (see paragraph 200 below), he had been supposed to be notified of the search of 22 January 2007 and to supervise its implementation. The lawyer also claimed that the investigation had been superficial. He noted, in particular, that the first, the third, the fourth, the tenth, the sixteenth and the eighteenth applicants had also complained to various authorities about the alleged mass beating on 22 January 2007, but that their complaints, as well as the complaints of the sixth applicant, had remained without due consideration. He further submitted that the impugned ruling of 7 February 2007 had been based on statements by the prisoners which had later been retracted by them as having been obtained under duress (such as, for example, that of the tenth applicant). The

prosecution authorities had failed to ensure the safety of the prisoners in question, who had continued to be intimidated and ill-treated after the events of 22 January 2007. He noted that the fourth applicant had been so scared that he had denied any force having been applied to him, even though there was a medical certificate in the file proving the opposite. The investigation had not covered the alleged ill-treatment of all the prisoners concerned, including the first, the third, the fourth, the tenth, the sixteenth and the eighteenth applicants, who had also raised similar complaints.

177. On 24 July 2008 the Shepetivka Court ruled that this complaint should be left without examination, as it had been submitted in Russian and not all the annexes listed had actually been enclosed with the filing.

178. On 29 August 2008 the Khmelnytskyy Regional Court of Appeal ("the Court of Appeal") quashed the ruling of 24 July 2008 as having been delivered in excess of the first-instance court's powers under the Code of Criminal Procedure.

179. On 30 December 2008 the Shepetivka Court rejected the complaint brought by the sixth applicant's lawyer and upheld the contested ruling of 7 February 2007. The court dismissed as unsubstantiated the lawyer's submission that the prosecution authorities had not ensured the safety of the prisoners, who had initially been intimidated and discouraged from raising any complaints, but had later complained to various authorities. In particular, the first, the third, the fourth, the sixth, the tenth, the sixteenth and the eighteenth applicants were referred to. The court concluded that the allegations had been duly investigated and that they had rightly been dismissed as unfounded. It also referred to the ruling of the Shepetivka Prosecutor of 29 August 2007 (see paragraph 171 above).

180. On 16 March 2009 the Court of Appeal upheld that decision.

181. On 22 December 2009 the Supreme Court quashed the ruling of 16 March 2009 on the grounds that it had been delivered following a hearing in the absence of the sixth applicant's lawyer.

182. On 24 March 2010 the Court of Appeal quashed the decision of 30 December 2008 as being devoid of adequate reasoning. It remitted the case back to the Shepetivka Court.

183. On 14 October 2010 the Shepetivka Court rejected the complaint brought by the sixth applicant's lawyer as unsubstantiated. It noted that the ill-treatment allegations were not corroborated by evidence. In any event, there had been a thorough investigation into the matter.

184. The sixth applicant's lawyer appealed. He submitted, in particular, that not all the victims of the alleged ill-treatment had been questioned in the course of the investigation. Furthermore, the first-instance court had selectively relied on the statements of the prisoners denying any ill-treatment while ignoring the numerous eye-witness statements supporting that allegation. Thus, the sixth applicant's allegations had been supported by detailed accounts of the events by the first, the third, the fourth, the sixteenth, and the eighteenth applicants, whose written

statements were in the case file but which had remained without assessment. The allegation that the prisoners had been intimidated had not been considered at all. No attempts had been made to clarify whether the prisoners who had been injured according to the official reports had actually demonstrated any resistance to the authorities as stated in those reports. According to the search reports, no forbidden items had been discovered on those persons. So, there had been no apparent reasons for them to show any resistance. Furthermore, while it was acknowledged that some prisoners had been injured, the information in the official reports about the use of physical force and the nature of the injuries in question did not reconcile. Thus, for example, according to the reports regarding the fourth and the eighteenth applicants, physical force and handcuffing had been applied to them. At the same time, the medical examination reports had noted that the fourth applicant had suffered bruises on the right and the left buttocks and on one thigh; the eighteenth applicant had suffered a bruise on the left shoulder blade and the left buttock. The nature of the physical force applied had never been analysed. Lastly, the lawyer contended that the court had ignored the fact that the prosecution authorities had relied exclusively on the documents issued by the prison administration.

185. On 15 December 2010 the Court of Appeal quashed the ruling of 14 October 2010 and remitted the case to the first-instance court for fresh examination. It noted that, according to the transcript of the hearing, the Shepetivka Court had pronounced the judgment on 13 October, but for unknown reasons it was dated 14 October 2010. Furthermore, the ruling of 7 February 2007 had not directly concerned the interests of the sixth applicant, whose complaint had later been examined by the prosecution authorities and rejected on 29 August 2007. This last-mentioned ruling had not been duly examined by the court at all. The appellate court also noted some irregularities and inconsistencies in the case file. It further held that the first-instance court had acted in breach of the law, having heard the case in the absence of the sixth applicant or his lawyer. In sum, a fresh examination of the case in compliance with criminal procedural legislation was required.

186. On 29 March 2011 the Shepetivka Court rejected, once again, the sixth applicant's complaint. It noted that the impugned ruling of 7 February 2007 had not directly concerned his interests and that his complaint had been separately investigated by the prosecution authorities. As a result, on 10 September 2007 the Shepetivka Prosecutor had refused to open a criminal case in the matter (see paragraph 173 above). A copy of that ruling had been sent to the governor of Derzhiv Prison, to which the sixth applicant had been transferred in the meantime. However, the sixth applicant had not challenged the refusal.

187. The sixth applicant appealed. He submitted that he had been among the victims of the mass beating in Izyaslav Prison on 22 January 2007. Accordingly, he considered that the prosecutor's ruling of 7 February 2007

had directly concerned his interests. As to the ruling of 10 September 2007 referred to by the first-instance court, neither the sixth applicant nor his lawyer had ever been notified of it and had only found out about its existence in the course of the latest proceedings.

188. On 25 May 2011 the Court of Appeal allowed the appeal of the sixth applicant in part and quashed the decision of 29 March 2011. At the same time, it discontinued the proceedings on the basis that on 10 September 2007 the prosecution authorities had issued a ruling refusing to institute a criminal investigation into the matter which had not been challenged by the sixth applicant. It noted that a copy of the aforementioned ruling had been sent to the governor of Derzhiv Prison.

189. On 8 June 2011 the sixth applicant challenged the ruling of 10 September 2007 before the Shepetivka Court.

190. On 8 July 2011 the Shepetivka Court quashed the contested ruling in allowing his complaint, and ordered additional investigation.

191. On 2 August 2011 an official of the Shepetivka Prosecutor's Office again refused to open a criminal case in respect of the administration of Izyaslav Prison and the special forces and the rapid reaction units' officials for a lack of *corpus delicti* in their actions. The sixth applicant challenged that ruling before the Shepetivka Court too.

192. On 20 September 2011 another official of the Shepetivka Prosecutor's Office quashed the ruling of 2 August 2011 as having been based on an incomplete investigation.

193. On 22 September 2011 the Shepetivka Court discontinued its examination of the sixth applicant's complaint, as the contested ruling of 2 August 2011 had already been quashed in the meantime.

194. On 20 December 2011 the Higher Specialised Court for Civil and Criminal Matters quashed the ruling of the Court of Appeal of 25 May 2011 (see paragraph 188 above) and remitted the case for fresh appellate examination. It criticised the reasoning of the appellate court as being too general and lacking an adequate legal basis.

195. The parties have not submitted to the Court any information on further developments in the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine 1996

196. The relevant provisions read as follows:

Article 3

"An individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value.

Human rights and freedoms, and the guarantees thereof shall determine the nature and course of the State's activities. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State. ..."

Article 28

"Everyone shall have the right to have his dignity respected.

No one shall be subjected to torture, cruel, inhumane, or degrading treatment or punishment that violates his dignity. ..."

Article 63

"A person shall not bear responsibility for refusing to testify or to provide explanations about himself/herself ... .

... A convicted person shall enjoy all human and civil rights, with the exception of restrictions determined by law and established by a court verdict."

B. Code on the Enforcement of Sentences 2003

197. Article 18 lists the types of penal institution in operation. Those convicted for the first time for negligent, minor or medium-severity crimes serve their sentences in minimum security institutions.

198. Article 106 sets out the rules governing the use of force in prisons. Prison officers are entitled to use force with a view to putting an end to physical resistance, violence, rowdiness (*буйство*) and opposition to lawful orders of the prison administration, or with a view to preventing prisoners from inflicting harm on themselves or on those around them. The use of force should be preceded by a warning if the circumstances so allow. If the use of force cannot be avoided, it should not exceed the level necessary for fulfilment by the officers of their duties, should be carried out so as to inflict as little injury as possible and should be followed by immediate medical assistance if necessary. Any use of force must be immediately reported to the prison governor.

C. Code of Criminal Procedure 1960

199. The relevant provisions concerning the obligation to investigate crimes can be found in the judgment concerning the case of *Davydov and Others v. Ukraine* (nos. 17674/02 and 39081/02, § 112, 1 July 2010).

D. The Internal Regulations of Penal Institutions (*Правила внутрішнього розпорядку установ виконання покарань*) approved by Order no. 275 of the State Prisons Department of 25 December 2003

200. Paragraph 58 of the Internal Regulations provides for the possibility of the Prisons Department's special forces units and human resources from other penal institutions being involved in the conduct of search and security operations. Prior notification of and monitoring by the prosecutor in charge of supervision of compliance with the law in penal institutions are required.

201. Section XII "Grounds for the use of measures of physical coercion, means of special restraint and arms" reads as follows in the relevant part:

59. Use of physical force and means of special restraint

"The personnel of a penal institution shall be entitled to resort to measures of physical coercion, including martial arts techniques, with a view to putting an end to offences by prisoners or overcoming their resistance to legitimate requirements of the prison administration, if other methods have failed to ensure compliance with their duties.

The type of special restraint [used], the time of the commencement and the intensity of its application shall be defined with regard to the situation, the nature of the offence and the personality of the perpetrator.

The application of force or of a means of special restraint shall be preceded by a warning about the intention [to use it], if the circumstances so allow. This does not apply to situations in which it is necessary to counter a sudden attack against the institution's personnel or to free hostages. The warning should be announced verbally. Where there is a significant distance [involved] or where the warning is addressed to a large group it should be given with the help of a loudspeaker. In any case it is desirable that it be given in the mother tongue of the persons against whom the measures in question would apply.

Every case of handcuffing, resort to a straitjacket or application of other measures of restraint or arms shall be reported in the change of shift logbook."

60. Procedure of and grounds for handcuffing

"Handcuffing may be applied to prisoners upon an order of the institution's governor, his/her deputies or assistants on duty.

Handcuffing may be applied to prisoners in the following cases:

(a) physical resistance to the administration personnel on duty or guards, or manifestations of rowdiness;

(b) refusals to be taken to a disciplinary or solitary confinement cell or [an ordinary] cell;

(c) an attempt to commit suicide, self-harm or assault of others;

(d) return of a prisoner apprehended following an escape.

Handcuffing is applied to prisoners in the position "hands behind the back".

The state of health of a handcuffed prisoner should be checked every two hours.

Handcuffing shall be ceased following an order of those who gave a direction about its application or following an order of a higher-ranked official.

A report shall be drawn up about [the use of] handcuffing.

Persons who have applied handcuffing without grounds [to do so] shall be held responsible."

61. Procedure of and grounds for the use of teargas, rubber truncheons and physical force

"The personnel of a penal institution shall have the right to use teargas, rubber truncheons or physical force at their discretion in the following cases:

(a) defence of the institution's personnel, or self-defence from attacks or other actions jeopardising their lives or health;

(b) putting an end to a mass riot or grouped disobedience by prisoners;

(c) countering an attack on premises or transport vehicles, or their liberation in case of occupation;

(d) apprehension or taking of prisoners who have committed gross violations of the prison rules to a disciplinary or solitary confinement cell or [an ordinary] cell, if they resist the guards on duty or if there are reasons to believe that they might cause harm to themselves or others;

(e) putting an end to resistance to personnel on duty or guards or the prison administration;

(f) apprehension of prisoners following an escape from prison; (and)

(g) liberation of hostages.

A special report shall be drawn up about the application of teargas, rubber truncheons or physical force. The institution's governor or his replacement shall study the report and register it in a special logbook. A copy shall be kept in the prisoner's personal file. ...

Blows with rubber truncheons to the head, the neck, the collarbone, the stomach and the genitals are prohibited. Blows with a side-handle (tonfa) plastic truncheon to the head, the neck, the solar plexus, the collarbone, the lower part of the stomach, the genitals, the kidneys, and the coccyx are prohibited. These prohibitions are not however applicable to situations in which there is a real danger to the life or health of the institution's personnel or prisoners.

Application of these means of restraint in excess of the power [granted] shall call for the legally envisaged liability."

E. Instruction "On supervision of prisoners serving sentences in penal institutions" (*Інструкція з організації нагляду за засудженими, які відбувають покарання у кримінально-виконавчих установах*), approved by Order no. 205 of the State Prisons Department of 22 October 2004 (restricted document, submitted by the Government at the Court's request)

202. Pursuant to paragraph 27.4 of the Instruction, physical force, means of special restraint, a straitjacket or arms may be used on prisoners under the Code on the Enforcement of Sentences, the Police Act and the Internal Regulations of Penal Institutions in the event of physical resistance to prison personnel, malicious disobedience to their lawful orders, rowdiness (*буйство*), participation in rioting, hostage-taking or other violent actions, or with a view to preventing prisoners from inflicting harm on themselves or on those around them. A report in that regard should be drawn up.

203. The Instruction also establishes a procedure for searching prisoners, the residential wings and workshop premises inside penal institutions.

204. According to paragraph 35 of the Instruction, searches of prisoners and premises are to be conducted on the basis of a schedule approved by the prison governor. The search is to be conducted with the participation of the institution's personnel, special forces units of the Prisons Department, and additional forces from other penal institutions.

205. Searches and inspections are to involve technical equipment and, if necessary, specially trained dogs. It is prohibited to damage clothes, property, prison equipment and other objects in the course of the searches or inspections (paragraph 36).

206. Personal searches of the prisoners may be "full" (that is, with the removal of all clothing) or "partial" (without the removal of clothing). Personal searches are to be conducted by a person of the same sex as the prisoner. The staff members who conduct a search must be careful and rigorous and must act properly. They must also comply with security measures and not allow any kind of inhuman or degrading treatment of the searched prisoner (paragraph 37).

207. According to paragraph 38 of the Instruction, a full search of a prisoner is to be carried out upon his or her arrival at or departure from the prison, upon placement in a disciplinary or isolation cell, upon transfer to a solitary confinement cell or to the high security wing and upon release from there. Such a search is also to be conducted after the apprehension of a prisoner following an attempted escape or other offence, before and after a long-term meeting with third parties from outside the institution, and in other cases when it might be necessary. Inmates who are subjected to a full search are asked to hand in any prohibited items, and must then remove their hat, clothes, shoes and undergarments. After these demands are complied with, separate parts of the prisoner's body and his clothes and shoes are inspected according to the standard procedure. Full searches are to

be carried out in specialised premises or rooms near the prison's entry checkpoint or in other separate premises. Partial searches are to be conducted when prisoners leave for work and return from it, or in other specially designated places.

208. Under paragraph 40, a prisoner who violates the prison rules or commits an offence is to raise his hands above his head and stretch out his legs. The searching person is to stay behind him. In certain instances, if the prisoner is likely to possess weapons he is to be invited to lean against the wall facing forward and stretch out his legs. The search is to be conducted by at least two staff members for security reasons.

209. Paragraph 41 of the Instruction provides that a search of the premises and inspection of the residential wings and workshop is to be conducted when they are empty, according to the timetable envisaged by the calendar of searches. Every section shall be searched as required, but not less than at least once a month. Searches are to be supervised by the first deputy prison governor or by the head of the supervision and security division on the instructions of the first deputy.

210. According to paragraph 43 of the Instruction, a general search shall be conducted on the basis of a decision by and under the leadership of the prison governor and under the supervision of the territorial office of the Prisons Department at least once per month or in response to a complication in the operational situation. During a general search, all prisoners, the residential wings and the workshop, and all premises and installations on their grounds, are to be inspected. A search is to be conducted on the basis of the plan prepared jointly by the first deputy governor and the head of the supervision and security division. If additional forces and resources are involved, the plan must be approved by the Head of the relevant Regional Office of the Prisons Department and the prosecutor responsible for supervision of the legality of enforcement of sentences must be notified.

211. As specified in paragraph 50, in the course of a general search prisoners must be gathered in special separate premises and subjected to an individual search. The residential premises must also be searched, in the usual manner, and with the participation of the head of the department of social and psychological services. Furniture and items contained in the wing, sleeping places, including linen, pillows and mattresses, and various personal objects shall also be inspected. The walls, floor, windows and ceiling are to be inspected for secret storage places and manhole hatches. All the utility rooms (*підсобні приміщення*) in the residential wing shall be searched, with mandatory replacement and inspection of all the items there. Unnecessary everyday clothes or other items that should not be there shall be seized and stored in premises designated for that purpose.

212. The residential and administrative buildings, their interior and exterior, the cellars and garrets, different communication channels, barriers, toilets, sports grounds, underground tunnels and other places where there

could possibly be secret storage areas are also to be inspected (also paragraph 50).

213. Every disciplinary or solitary confinement cell shall be inspected meticulously. All walls, ceilings and floors are to be knocked on for the purpose of finding secret storage areas and passages. The grating shall be inspected too, with special attention paid to cuts, score marks and other evidence of deterioration. The operational capacity of the doors, bolts and locks, and the reliability of the fixings of beds, tables and other furniture shall also be checked. Inmates held in those cells shall be subjected to a full personal search and their clothing shall also be inspected (still paragraph 50).

214. The heads of the search groups are to report to the officer supervising the search, and general statements are to be drawn up noting the basis of the search and signed by the supervising officer and the heads of the search groups. Such statements are to be forwarded to the supervision and security division (paragraph 50.1).

215. Pursuant to paragraph 50.2, representatives of the territorial office of the Prisons Department together with the prison management shall make a tour of the residential wings and the workshop after the search and shall question the prisoners in respect of any complaints or statements. The results are to be reflected in the general search report.

216. The prison administration must take measures aimed at establishing the owners and traffickers of any prohibited items identified by the search and punishing them accordingly. Official inquiries should be carried out in respect of the seized items (paragraph 50.3).

F. The Special Forces Units Regulations (*Положення про підрозділ спеціального призначення*) approved by Order no. 167 of the State Prisons Department of 10 October 2005 (in force until 14 January 2008)

217. The Regulations replaced the previous Regulations established by Order no. 163 of 8 September 2003 "On the creation of special units of the Prisons Department, approval of staffing needs and Regulations governing these units" (not publicly accessible).

218. Section 1.1 of the Regulations of 2005 defined a special forces unit as follows:

> "A special forces unit ... is a paramilitary formation created under a territorial office of the State Prisons Department."

219. Section 2 defined the tasks of a special forces unit as follows:

> "2.1. Prevention of, and putting an end to, terroristic criminal offences in penal institutions; and
>
> 2.2. prevention of, and putting an end to, actions disrupting the work of prisons and pre-trial detention centres."

220. Section 3 listed, *inter alia*, the following functions of a special forces unit:

> "3.4. Ensuring law and order [through the] introduction of a special regime in [a prison] ... in case of ... manifestation of mass disobedience by prisoners ..., or in case of a real danger of armed attack on [a prison's] property, with a view to termination of illegal activities of a group of prisoners ... and elimination of their consequences.
>
> 3.5. Conduct of inspections and searches of prisoners ... and their belongings ..., of transport vehicles on the grounds of [a prison] ..., as well seizure of prohibited items and documents.
>
> A personal search shall be carried out by persons of the same sex as the person searched."

221. The provisions regulating the organisation of a special forces unit's activities (section 4) read as follows in the relevant part:

> "4.4. The unit's personnel shall carry out their professional duties wearing everyday clothes or a special uniform with distinctive signs or symbols. ...
>
> 4.6. During the fulfilment of their duties the unit's personnel shall have the right to resort to physical coercion, to keep and wear special means of restraint and arms, to use and apply them independently or within the unit, in compliance with the procedure and in the cases envisaged by the Code on the Enforcement of Sentences, the Police Act, and other laws of Ukraine. ...
>
> 4.8. Actions of the unit's personnel during special operations must be based on strict compliance with the laws of Ukraine, respect for the norms of professional ethics, and a humane attitude towards prisoners and detainees."

222. On 26 December 2007 the Ministry of Justice of Ukraine repealed the Order of 2005 with effect from 14 January 2008, making reference to Expert Opinion no. 15/88 of the Ministry of Justice, relying, in turn, on the Opinion of the Secretariat of the Agent of the Government of Ukraine before the European Court of Human Rights of 21 November 2007 (not available in the case file before the Court), according to which those Regulations did not comply with the European Convention on Human Rights and Fundamental Freedoms and the Court's case-law.

G. Extracts from the Report of the Parliamentary Commissioner for Human Rights of Ukraine ("the Ombudsman") for 2006 and 2007 (presented to Parliament on 24 June 2009)

223. The relevant extracts provide as follows (emphasis in the original):

> "The Ombudsman assessed the situation in **Izyaslav Prison (no. 31)**, where in January 2007 there had been an extraordinary event, namely a mass refusal [to eat] food by prisoners. In such a manner they protested against their degrading treatment and humiliation by the prison administration. Having visited the prison, the Ombudsman's representatives discovered numerous violations of the prisoners' rights. In particular, only one in six prisoners could exercise his right to work, the predominant majority of the prisoners did not have any funds on their personal accounts, [and] there were inadequate living conditions because of the dormitories'

overcrowding. Entitlement to any incentives was preconditioned on at least three purchases in the prison shop with money earned in the prison. At the same time, any prisoner risked heavy punishment if he failed to bare his head upon encountering a staff member, regardless of the season or weather conditions. All this greatly struck the Ombudsman's representatives. The Ombudsman is investigating the matter.

At the same time, the Ombudsman would state that, as compared with the earlier visit to that prison, the material conditions of detention have been improved. Namely, the baths have been repaired, three additional long-distance pay telephones have been installed, the stock of essential commodities and foodstuffs on sale in the shop has been increased, the sanitary conditions in the dormitories' premises have been improved, and so on. ...

Carrying out regular monitoring of the respect for prisoners' rights, the Ombudsman has reached the conclusion that **the practice of the use of special forces units in prisons and detention centres calls for fundamental revision**.

The primary task of these units is to take measures for the prevention of or putting an end to terrorist crimes or actions disrupting the work of penal institutions and to conduct related training. Given that these measures imply the application of special means of restraint and arms, as well as the use of force, an issue arises as regards the [authorities'] strict adherence to human rights.

As transpires from the numerous applications to the Ombudsman from prisoners and their relatives and the ensuing investigations, human rights are not always respected during operations [involving such units]. Furthermore, there is no official information about the tasks and the real practical activities of these units. Therefore, the Ombudsman emphasised in her 2005 Annual Human Rights Report that **the practice of the use of special forces units is in fact systematic resort to torture**.

Presently, the situation has somewhat changed, albeit not drastically, as envisaged by laws and regulations. In spite of the Ombudsman's numerous statements about the prohibition of prisoners' ill-treatment, this negative phenomenon took place in Izyaslav Prison (no. 31) ... and in some other penal institutions. It is the [Prisons Department] that bears the responsibility for this ... .

The modus operandi of antiterrorist units in penal institutions also raised the concerns of the UN Committee against Torture ... . In particular, this concerned the wearing of masks by antiterrorist units inside prisons, which was considered as resulting in intimidation and ill-treatment of inmates.

It is noteworthy that the Ministry of Justice of Ukraine repealed the Regulations establishing such units as running counter to the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms."

H. Written Submission of the Ukrainian Helsinki Human Rights Union (NGO) for the OSCE Human Dimension Implementation Meeting on Freedom from Torture and Ill-treatment (HDIM.NGO/327/07, September 2007)

224. The relevant extract reads as follows:

"On 14 January 2007 all prisoners at the Izyaslav Penal Colony No. 31 (more than 1,200 men, first time offenders, and in the main young men from 18 to 22) declared a hunger strike. They were protesting against beatings and degrading treatment by staff, arbitrary punishments (each prisoner who wrote a statement gave glaring examples),

infringements of working conditions (only a small percentage of those working, not more than 10%, had wages paid, the others received nothing), bad conditions and medical care (one telephone for everybody, and you had to earn the right to a call; food and medicines beyond their sell by date – there were even some cans of food from 1979), as well as the complete lack of any chance of sending complaints against administration behaviour. One of the prisoners' demands was the removal of the head of the colony.

On the same day a commission from the State Department for the Execution of Sentences arrived at the colony. It was led by the Deputy Head of the Department ... who listened to the prisoners' grievances and promised to rectify the situation. That evening already the prisoners went to supper.

The Department explains the events at No. 31 differently. They say that the young head of the institution ... was unable to cope with the problems of the colony, and "the informal management of the colony" got out of hand and wanted to determine themselves who would manage the institution and what the rules of behaviour would be. They therefore organized the protest action. Supposedly it was no hunger strike since none of the prisoners wrote a personal statement refusing to eat. The prisoners had received very good parcels from home coming up to New Year, and could afford to put such pressure on the administration. Such behaviour was a threat to order in the colony and the organizers of the action needed to be punished.

The punishment was not long in coming.

On 22 January 2007 a special anti-terrorist unit was brought into the colony, with men in masks and military gear. They brutally beat more than 40 prisoners and took them away, half-dressed, some of them without even house shoes (all their things were left in the colony), beaten and covered in blood, with broken noses, ribs and bones, and with teeth knocked out, to the Rivne and Khmelnytskyy SIZO where they were again brutally beaten. In the SIZO they used torture to extract signed statements that they didn't have any grievances against the administration of Penal Colony No. 31, against the SIZO, the convoy, and also a statement backdated to 21 January asking to be moved to another colony to serve out their sentence. The prisoners say that they were urinating blood for some time, and for more than a month, they couldn't move their wrists properly because of the handcuffs used on them.

Try as the Department did to hush the story up, publicly asserting that there'd been no hunger strike, no special forces nor beatings, the mass media reported both the events of 14 and 22 January and later. The parents of the prisoners approached human rights organizations, journalists from TV Channels 5 and "1 + 1", and other media outlets. The human rights organizations and parents wrote statements to various bodies demanding that a criminal investigation be instigated in connection with the unlawful actions of the Department.

The State Department for the Execution of Sentences has still not admitted that the prisoners were beaten and that their belongings disappeared. The Secretariat of the parliamentary Human Rights Ombudsperson sent the complaints received from parents and the prisoners themselves to the prosecutor's office and to the selfsame Department (!), although personnel from the Secretariat had themselves been in Colony No. 31. All prosecutor's offices at different levels have refused to launch a criminal investigation and have maintained that the behaviour of Department staff was lawful. With regard to the loss of belongings, the prosecutor's office in the Khmelnytskyy region claimed that the belongings had been moved together with the prisoners, that the money in their personal accounts had been handed over and used for the needs of Izyaslav Penal Colony No. 31 on the written authorization of the

prisoners themselves. The Prosecutor General, in contrast, has acknowledged that on 22 January methods of physical influence were applied to prisoners – but says this was as the result of resistance from the prisoners to a search. It also maintains that since not one of the prisoners has made a complaint alleging unlawful behaviour, there are no grounds for launching a criminal investigation.

The events of 22 January were subjected to scrutiny by the UN Committee against Torture which reviewed Ukraine's Fifth Periodic Report at its 38th session on 8 and 9 May. When asked by one of the Committee's experts what had happened at Izyaslav, the Government Delegation responded that a special purpose unit had been brought in to quell a riot. Nonetheless, in their "Conclusions and Recommendations" on 18 May, the Committee directly stated that: "The State party should also ensure that the anti-terrorist unit is not used inside prisons and hence to prevent mistreat and intimidation of inmates."

The Head of the Department ... often repeats that the Department is a law enforcement body which is in the frontline of the fight against crime. Yet throughout the world the penal system is a civilian service. In Ukraine this system requires radical reform. Conditions must really be created which ensure respect for prisoners' dignity, minimize the adverse effects of imprisonment, eliminate the enormous divide between life in penal institutions and at liberty, and support and consolidate those ties with relatives and with the outside world which best serve the interests of the prisoners and their families.

In our view, a shocking crime was committed. It remains however unpunished since there is effectively no system of investigating allegations of torture. After all the prosecutor's office on the one hand only agrees to launch a criminal investigation where there are statements from victims of torture, while on the other, fails to take any effort to ensure those people's safety. They are thus under the total control of their torturers which simply leaves no chance for complaints. Other mechanisms are therefore needed to prevent torture and to investigate these crimes."

III. RELEVANT INTERNATIONAL MATERIALS

225. Relevant provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, read as follows:

Article 1

"1. For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...

..."

Article 16

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not

amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...

..."

226. In its "Conclusions and Recommendations on Ukraine", issued on 3 August 2007, the UN Committee against Torture (CAT/C/UKR/CO/5), expressed its concern regarding the events of January 2007 in Izyaslav Prison:

"13. ... The Committee is ... concerned at the reported use of masks by the anti-terrorist unit inside prisons (e.g. in the Izyaslav Correctional Colony, in January 2007), resulting in the intimidation and ill-treatment of inmates."

It made the following recommendation in that connection:

"The State party should also ensure that the anti-terrorist unit is not used inside prisons so as to prevent the mistreatment and intimidation of inmates."

227. The 2007 US Department of State Country Report on Human Rights Practices in Ukraine, released on 11 March 2008, touched upon the matter too:

"Media and human rights organizations reported on January 14 that over 1,000 inmates at the Izyaslav correctional facility No. 31 in Khmelnytskyy Oblast went on a hunger strike to protest unsatisfactory conditions, including poor food and medical care, and mistreatment by prison personnel. According to human rights groups, a [State Prisons Department] commission inspected the facility and found expired medicine and canned food dating back to 1979. A day after the commission's visit, the facility's chief ... denied there was a protest in a televised interview, which was followed by another wave of protests. On January 22, antiriot personnel entered the prison to conduct searches and proceeded to beat the inmates. According to the [KHRPG], guards forced inmates to sign backdated statements that they had no complaints. Several prisoners were later transferred to eight facilities across the country, the [State Prisons Department] threatened to extend their prison sentences, and family members of protest leaders received threats. Human rights groups have appealed to the GPO for an investigation, but there were no reports of action taken at year's end. On December 17, inmates announced a hunger strike to protest against unsatisfactory detention conditions including wet, cold, and poorly ventilated cells, limited running water, and vermin infestation."

228. The 2008 US Department of State Country Report on Human Rights Practices in Ukraine, released on 25 February 2009, briefly continued the subject:

"During the year the [State Penal Department] denied allegations by human rights groups that it had improperly transferred 40 inmates out of Izyaslav correctional facility no. 1 in Khmelnytskyy Oblast, following hunger strikes and the beating of prisoners at the facility in January 2007. Human rights groups called for an investigation of these incidents."

THE LAW

I. JOINDER OF THE APPLICATIONS

229. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

II. *LOCUS STANDI* OF THE FIRST APPLICANT'S MOTHER

230. The Court notes that the first applicant died after having lodged his application under Article 34 of the Convention (see paragraph 5 above). It is not disputed that his mother is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see *Toteva v. Bulgaria*, no. 42027/98, § 45, 19 May 2004, and *Yakovenko v. Ukraine*, no. 15825/06, § 65, 25 October 2007). However, reference will still be made to the first applicant throughout the ensuing text.

III. THE SEVENTEENTH APPLICANT'S VICTIM STATUS

231. The Court considers it necessary to decide on the victim status of the seventeenth applicant. It reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see, among other authorities, *Vatan v. Russia*, no. 47978/99, § 48, 7 October 2004).

232. In the present case, it appears that the ill-treatment complained of, as well as the alleged loss of property, concerned forty-one inmates of Izyaslav Prison who were transferred to Khmelnytskyy and Rivne SIZOs (see paragraphs 25-112 above).

233. The Court notes that the seventeenth applicant was not among those prisoners. Neither did he make any submissions elucidating the facts pertaining to his personal situation.

234. The Court therefore considers that the application, in so far as it concerns the seventeenth applicant, is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

235. The Court will therefore limit its examination of the complaints raised in the application to those which concern the remaining seventeen applicants, whom – for the sake of simplicity – it will henceforth refer to as "the applicants", without specifying every time that they do not include the seventeenth applicant.

IV. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

236. The applicants complained under Article 3 of the Convention of ill-treatment during and after the search and security operation conducted in Izyaslav Prison on 22 January 2007. They also complained, relying on Article 13 of the Convention, that there had been no effective domestic investigation into the matter.

237. The Court considers it appropriate to examine both these complaints under 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

1. The Government's objection

238. The Government submitted that none of the applicants could be regarded as having exhausted the domestic remedies available to them under domestic law as required by Article 35 § 1 of the Convention.

239. They contended, in particular, that the sixth applicant had erroneously sought to challenge before the domestic courts the ruling of the prosecution authorities of 7 February 2007, which had not concerned him personally. According to the Government, it would have been more appropriate for him to challenge the prosecutorial decision of 10 September 2007 delivered in reply to his individual complaint of ill-treatment.

240. After the sixth applicant subsequently did so (see paragraph 189 above), the Government considered his complaint before the Court premature given the ongoing domestic investigation (see paragraphs 190-195 above).

241. The Government further argued that, although the fifth and the seventh applicants had mentioned to the prosecutor in passing that they had been beaten on 22 January 2007 (the fifth applicant did so on 11 and 31 July 2007 – see paragraphs 166 and 169 above, and the seventh applicant on 2 February 2007 – see paragraph 133 above), they had failed to show sufficient interest in the investigation into those allegations. The Government referred in this connection to the seventh and the fifth applicants' failure to challenge the prosecutor's rulings of 7 February and 10 September 2007, respectively.

242. Once both these rulings were quashed, the Government maintained their non-exhaustion objection on the grounds that, like in the case of the sixth applicant, the domestic investigation was not yet completed (see paragraphs 190-195 above).

243. Similarly, in respect of the remaining fifteen applicants, the Government first argued that they should have challenged the prosecutor's

ruling of 7 February 2007 and later referred to the ongoing domestic investigation into the matter.

2. The applicants' reply

244. The applicants maintained that they had done everything that could reasonably be expected of them to exhaust domestic remedies.

245. They noted that the prosecutor's ruling of 7 February 2007 had been delivered following the investigation of the information disseminated in the media regarding the alleged mass beating in Izyaslav Prison on 22 January 2007 (see paragraph 146 above). Accordingly, it had concerned all the applicants equally. The sixth applicant's later individual complaint had been rejected on 2 August 2011 primarily on the grounds that similar allegations had already been investigated and dismissed by the aforementioned ruling of 7 February 2007. The applicants therefore found the differentiation by the Government between the situation of the sixth applicant and that of the other applicants inexplicable.

246. They contended that, from the procedural point of view, the legal effect of a single complaint against the ruling in question was the same as the effect of complaints from each of the eighteen applicants. At the same time, the existence of several complaints concerning the same subject-matter would have caused complications and delays.

247. The applicants further submitted that the domestic investigation of their alleged ill-treatment had been ongoing for years without any meaningful attempt to establish the truth and to punish those responsible. Referring to their complaint concerning the ineffectiveness of that investigation, they argued that they were under no obligation to await its completion. In any event, the Government's objection as to the admissibility of their complaint under the substantive limb of Article 3 of the Convention could only be examined together with the examination of the merits of their complaint under its procedural limb.

3. The Court's assessment

248. The Court notes certain factual developments in the case posterior to the Government's initial observations of 20 June 2011 (see paragraphs 190-195 above). It further observes that the Government maintained their objection as to the admissibility of this complaint on the grounds that the domestic investigation was ongoing and therefore the State could still respond to the applicants' complaints at the national level.

249. The Court considers that the questions of whether the applicants' complaint of ill-treatment is premature in view of the pending investigation and whether they have exhausted domestic remedies in respect of this complaint are closely linked to the question of whether the investigation into their allegations of ill-treatment was effective. This issue should therefore be joined to the merits of the applicants' complaint under Article 3

of the Convention (see, for example, *Yaremenko v. Ukraine* (dec.), no. 32092/02, 13 November 2007, and *Muradova v. Azerbaijan*, no. 22684/05, § 87, 2 April 2009).

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

B. Merits

251. The Court notes from the outset that the Government did not submit any observations on the merits of the case. As regards the factual account of the events under consideration, they relied on the findings of the domestic investigation in their objection regarding the admissibility of the applications (see paragraphs 238-243 above). The applicants, from their side, criticised the domestic investigation, contested its findings and advanced their own version of what had happened to them on 22 January 2007 in Izyaslav Prison and subsequently in the SIZOs to which most of them had been transferred (for a more detailed summary of their arguments see paragraphs 254-257, 312 and 323 below).

252. The Court is mindful of the necessity of establishing the facts of the case as an indispensable element of its examination of the applicants' complaint of ill-treatment under the substantive limb of Article 3 of the Convention. Before embarking on this exercise, it appears important for the Court to reach an opinion about the genuineness and thoroughness of the domestic authorities' efforts to establish the truth in this case. Only having made an assessment of the domestic investigation will the Court know whether it can rely on its findings.

253. Accordingly, the Court will first deal with the applicants' complaint under the procedural limb of Article 3 of the Convention and then with their complaint under its substantive limb.

1. Alleged inadequacy of the investigation

(a) The parties' submissions

254. The applicants contended that the domestic investigation into their allegations of ill-treatment could not be considered independent as it had been entrusted to the Shepetivka Prosecutor, who had been supposed to supervise the legality of the search and security operation in Izyaslav Prison. They also noted in this connection that the prosecution authorities had relied on the inquiry undertaken by the Prisons Department, whose officials had been directly involved in the events complained of. Moreover, some of the documents dismissing the applicants' complaints of ill-treatment had been signed by officials who had participated in that ill-treatment.

255. The applicants further submitted that the investigation had failed to ensure their and the witnesses' security. Fearing reprisals by the prison administration, inmates of Izyaslav Prison had preferred to keep silent or to deny having witnessed any ill-treatment. So had the prisoners, including the applicants, who had been transferred to SIZOs, as their ill-treatment and intimidation had continued.

256. The applicants next criticised the domestic investigation for its superficiality. They referred, in particular, to the following shortcomings: the lack of comprehensive questioning of both the prisoners moved from Izyaslav Prison and those staying there after the events in question; the absence of thorough forensic medical examinations of the applicants, including an examination of their internal organs and X-raying; and the failure to carry out any on-site examination in Izyaslav Prison.

257. Lastly, the applicants contended that the investigation had not been open to any public scrutiny.

258. As noted in paragraph 251 above, the Government did not submit any observations on the merits of this complaint.

(b) The Court's assessment

(i) General principles

259. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This obligation "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports of Judgments and Decisions* 1998-VIII, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006).

260. The Court further notes that, for an investigation into torture or ill-treatment by agents of the State to be regarded as effective, the general rule is that the persons responsible for making inquiries and those conducting the investigation should be independent hierarchically and institutionally of anyone implicated in the events, in other words that the investigators should be independent in practice (see *Batı and Others v. Turkey*, nos 33097/96 and 57834/00, § 135, ECHR 2004-IV (extracts)).

261. A requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as critical for maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *McKerr v. the United Kingdom*, no. 28883/95, § 114, ECHR 2001-III). While there may be obstacles or difficulties which prevent progress in an investigation of a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly (see *Batı and Others*, cited above, § 136).

262. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to ensure accountability in practice as well as in theory, which may well vary from case to case. In all cases, however, the complainant must be afforded effective access to the investigatory procedure (see *Aksoy v. Turkey*, 18 December 1996, § 98, *Reports* 1996-VI).

(ii) Application of these principles to the present case

263. Having regard to the magnitude of the events complained of and the fact that these events unfolded under the control of the authorities and with their full knowledge, the several acknowledged instances of the use of force against the prisoners, the seriousness of the allegations raised and the public attention involved, the Court finds that all the applicants had an arguable claim that they had been ill-treated and that the State officials were under an obligation to carry out an effective investigation into the matter.

(α) Thoroughness

264. The Court emphasises that whenever a number of detainees have been injured as a consequence of a special forces operation in a prison, the State authorities are under a positive obligation under Article 3 to conduct a medical examination of inmates in a prompt and comprehensive manner (see *Mironov v. Russia*, no. 22625/02, §§ 57-64, 8 November 2007, and *Dedovskiy and Others v. Russia*, no. 7178/03, § 90, ECHR 2008 (extracts)). As the Court has held on many occasions, proper medical examinations are an essential safeguard against ill-treatment. A forensic medical examiner must enjoy formal and de facto independence, have been provided with

specialised training and have a mandate which is broad in scope (see *Akkoç v. Turkey*, nos 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X).

265. The Court notes that in the present case a forensic medical examination was only arranged for the group of former Izyaslav Prison inmates who were transferred to Khmelnytskyy SIZO (including seven applicants), while those in Rivne SIZO (including ten applicants) did not undergo any such examination (see paragraphs 130 and 136-139 above).

266. As to the examination of the seven applicants, it is true that it was undertaken by a forensic expert. However, his reports in respect of all these applicants (with the exception of the fourth and the eighteenth applicants) were worded identically and were confined to a mere statement that "no external injuries" had been discovered. Apparently, only a visual examination took place, without any serious attempt to establish all the injuries and determine their cause using forensic methods (see, *mutatis mutandis*, *Rizvanov v. Azerbaijan*, no. 31805/06, § 47, 17 April 2012).

267. The Court further notes that, when a doctor writes a report after a medical examination of a person who alleges having been ill-treated, it is extremely important that he states the degree of consistency with the allegations of ill-treatment. A conclusion indicating the degree of support for the allegations of ill-treatment should be based on a discussion of possible differential diagnoses (see *Barabanshchikov v. Russia*, no. 36220/02, § 59, 8 January 2009).

268. In the present case, the expert who examined the applicants in Khmelnytskyy SIZO was not informed of the nature of the investigation in the course of which the examinations had been ordered, and made no efforts to establish the circumstances of the case (see paragraphs 130 and 136 above). This, at least, transpires from the examination reports in respect of five applicants on whom no injuries were discovered (see paragraph 136 above). Such lack of awareness, or indifference, on the part of the expert is even more striking given that the use of force was acknowledged in respect of two applicants (the fourth and the eighteenth). Accordingly, the expert could hardly have been unaware of the comparable circumstances of the other applicants.

269. As regards the forensic medical examination of the fourth and the eighteenth applicants, the Court observes that the expert report of 2 February 2007 documented fewer injuries than those reported a week before. Namely, in so far as the fourth applicant was concerned, it did not mention the bruise of 3 x 7 cm on his right buttock and the bruise of 3 x 6 cm on his left hip. Neither did it indicate the bruise of 4 x 8 cm on the eighteenth applicant's left shoulder blade (see paragraphs 137-138 above).

270. While it appears unlikely that the aforementioned bruises had disappeared over the course of a week without any trace, the Court cannot rule out such a possibility altogether.

271. The Court emphasises that the applicants, being imprisoned, were entirely reliant on the prosecution authorities to assemble the evidence

necessary for corroborating their complaints. The prosecutor had the legal powers to interview the officers involved, summon witnesses, visit the scene of the events, collect forensic evidence and take all other steps crucial for establishing the truth of the applicants' account.

272. According to the applicants, in the present case the prosecutorial authorities not only failed to make those efforts, but also turned a blind eye to their visible injuries and continuous intimidation.

273. While the Court has no means of verifying the circumstances of the applicants' questioning by the Khmelnytskyy and Rivne Prosecutors on 30 January and 2 February 2007, it discerns certain indications in the facts of the case in favour of the applicants' account. Namely, there is no evidence showing that the questioning sessions took place in private, without the presence of SIZO administration officers. Furthermore, the Court finds it striking that the prosecutor accepted the waiver by some of the applicants of a medical examination, on which he should have insisted as an essential element of the investigation (see paragraph 133 above). The Court is also struck by the prosecutor's indifference and passivity as regards the confirmed injuries of the fourth applicant and his denial of any ill-treatment, combined with a refusal to give any explanations (ibid.).

274. The Court next observes that, although the Shepetivka Prosecutor initiated disciplinary proceedings against the governor of Izyaslav Prison for failure to ensure the prosecutorial supervision of the search and security operation of 22 January 2007 as required by law, no further action apparently followed (see paragraph 145 above).

275. The Court further notes that the investigation was reopened on several occasions and was criticised by the authorities as being incomplete (see paragraphs 172, 190 and 192 above). The Court has no reasons to consider it otherwise.

276. Overall, the Court discerns the following significant omissions undermining the reliability and effectiveness of the domestic investigation: (a) incompleteness and superficiality of the applicants' medical examination; (b) failure to ensure the applicants' and witnesses' safety as regards any fears of retaliation or intimidation; and (c) a formalistic and passive attitude on the part of the prosecution authorities. It therefore cannot consider the investigation to be thorough.

(β) Independence

277. The Court notes that both the applicants' relatives and domestic NGOs insisted on an independent investigation of the matter (see paragraphs 127 and 158 above).

278. The investigation was, however, entrusted to the Shepetivka Prosecutor, who was in charge of supervision of compliance with the law in penal institutions located in the Khmelnytskyy region (where Izyaslav Prison was located). While the Khmelnytskyy and Rivne Prosecutors, as

well as the Lviv Regional Prosecutor, were involved in separate investigation activities, it was the Shepetivka Prosecutor who took decisions concerning the applicants' allegations (see, in particular, paragraphs 129-132, 145-146, 165-166, 171-173 and 191-192 above).

279. As the Court held in *Melnik v. Ukraine* (no. 72286/01, § 69, 28 March 2006) and further reiterated in *Davydov and Others v. Ukraine* (nos. 17674/02 and 39081/02, § 251, 1 July 2010), the status of such a prosecutor under domestic law, his proximity to prison officials with whom he supervised the relevant prisons on a daily basis, and his integration into that prison system did not offer adequate safeguards such as to ensure an independent and impartial review of prisoners' allegations of ill-treatment on the part of prison officials.

280. The fact that the Shepetivka Prosecutor did not monitor the particular operation in Izyaslav Prison complained of, even though the prison administration was required by law to inform him in advance but failed to do so (see paragraphs 145 and 200 above), does not change the above considerations as to the lack of his independence in practice.

281. The Court also observes that on many occasions the applicants' (or their relatives') complaints were dismissed by officials of the Prisons Department who had been directly involved in the events complained of.

282. In sum, there was no independent investigation into the applicants' allegations of ill-treatment.

(γ) Promptness

283. The Court notes that the General Prosecutor's Office became aware of the grave allegations of mass beating of Izyaslav Prison inmates on 26 January 2007 at the latest (see paragraphs 127 above).

284. The Court observes that within the following week, on 30 January and 2 February 2007, the applicants were questioned by local prosecutors in Khmelnytskyy and Rivne SIZOs (see paragraphs 129 and 131-133 above). In addition, the group of applicants in Khmelnytskyy SIZO were examined by a forensic medical expert, who completed his report on 2 February 2007 (see paragraphs 136-138 above). Also, at about the same time, the investigator questioned the officers from the administration of Izyaslav Prison, the special forces unit and the rapid reaction groups involved in the operation of 22 January 2007.

285. As a result, on 7 February 2007, two weeks after the events complained of, the prosecutor delivered a decision dismissing the applicants' complaints as unfounded.

286. The above-mentioned investigative steps might give an impression of a prompt response to the complaints in question, which consisted of medical examinations and questioning of the supposed victims and the alleged perpetrators. However, where examinations are incomplete and superficial, the victims are intimidated and the alleged perpetrators' denial

of any wrongdoing is taken at face value, as it was in the present case (see paragraphs 266, 268 and 273-276 above), these steps cannot be considered as a prompt and serious attempt to find out what happened, but rather as a hasty search for any reasons for discontinuing the investigation.

287. The Court further notes that, following several remittals of the case for additional investigation, four years and nine months after the events complained of, the authorities acknowledged that the investigation undertaken had been incomplete (see, in particular, paragraph 192 above).

288. In such circumstances the Court is bound to conclude that the authorities failed to comply with the requirement of promptness (see *Kişmir v. Turkey*, no. 27306/95, § 117, 31 May 2005, and *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007).

(δ) Public scrutiny

289. The Court notes that, according to the applicants' lawyer, he only received a copy of the prosecutor's ruling of 7 February 2007 refusing to open a criminal case in respect of the ill-treatment allegations on 11 July 2008 (see paragraph 176 above). In the absence of any evidence to the contrary, the Court has no reason to question the veracity of this submission. The authorities' earlier references to the existence of this ruling in their correspondence with the applicants' relatives (see paragraphs 164 and 175 above) were not enough to enable the applicants to effectively challenge its findings and reasoning.

290. In fact, there is no evidence in the case file showing that any of the decisions taken in respect of the applicants' alleged ill-treatment were duly served on them. While some judicial rulings were sent to the governor of Derzhiv Prison, where the sixth applicant was serving his sentence at the time, it remains unclear whether they were eventually passed on to him (see paragraphs 186 and 188 above).

291. Accordingly, the Court considers that the applicants' right to participate effectively in the investigation was not ensured.

292. It notes that the Ombudsman was apparently involved. According to the documents, however, her representatives visited the Izyaslav Prison before the events complained of, namely on 17 January 2007 (see paragraph 11 above). Although the issue of the alleged mass beating there was brought to the Ombudsman's attention, it appears that she remained passive and only condemned, doing so in general terms in her report to Parliament, any use of special forces units in prisons as amounting to acts of torture more than two years later (see paragraphs 126, 150, 153 and 223 above).

293. Lastly, the Court notes the formalistic replies from the authorities to the NGOs' enquiries about the investigation (see paragraphs 123-124, 127 and 148 above).

294. In the light of the foregoing, the Court concludes that the domestic investigation lacked the requisite public scrutiny.

(ε) Conclusions

295. Having regard to the above failings of the Ukrainian authorities, the Court finds that the investigation carried out into the applicants' allegations of ill-treatment was not thorough or independent, failed to comply with the requirement of promptness and lacked public scrutiny. It was therefore far from an adequate investigation.

296. The Court therefore dismisses the Government's objection as to the exhaustion of domestic remedies previously joined to the merits (see paragraph 249 above), and finds that there has been a violation of Article 3 of the Convention under its procedural limb.

2. Alleged ill-treatment of the applicants

(a) Scope of the Article 3 prohibition

297. As the Court has stated on many occasions, Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Saadi v. Italy* [GC], no. 37201/06, § 127, ECHR 2008).

298. The Court has also consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

299. In respect of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Vladimir Romanov v. Russia*, no. 41461/02, § 57, 24 July 2008, with further references). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336, and *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006).

(b) Establishment of the facts

300. The applicants insisted on their account of the events as outlined in paragraphs 25-108 above. They maintained that, during and/or following the search and security operation conducted in Izyaslav Prison on 22 January 2007, they had suffered: extensive and cruel beatings; humiliation and degrading treatment, including but not limited to being ordered to strip naked and adopt humiliating poses; application of special means of restraint, including handcuffs, unnecessarily and in a particularly painful manner; being deprived of access to water or food for a long period of time during their transfer to the SIZOs; exposure to low temperatures without adequate clothing upon their arrival at the SIZOs; a lack of adequate medical examinations and assistance. They insisted that the ill-treatment complained of had amounted to torture.

301. The Government did not submit any observations on the merits of the case.

(i) General case-law principles concerning evidence and the burden of proof

302. According to the Court's case-law, allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

303. The Court understands that allegations of ill-treatment are extremely difficult for the victim to substantiate if he or she has been isolated from the outside world, without access to doctors, lawyers, family or friends who could provide support and assemble the necessary evidence (see *Batı and Others*, cited above, § 134).

(ii) Undisputed facts

304. In the present case it is common ground between the domestic authorities and the applicants that on 22 January 2007 an operation was carried out in Izyaslav Prison, where the applicants were serving sentences at the time. That operation included, in particular, searches of the premises within the prison, body searches of a group of forty-one detainees, unspecified "preventive security measures for enhancing order" and training drills (see, in particular, paragraph 15 above).

305. As acknowledged by the authorities, the aforementioned operation took place without the legally envisaged monitoring by the regional prosecutor in charge of supervision of compliance with the law in penal institutions (see paragraph 145 above).

306. The Court next observes that the applicants' account and the official reports are concordant in terms of the human resources involved in the operation in question. Namely, one hundred and thirty-seven officers were involved, twenty-two of whom were from rapid reaction groups deployed from two other prisons and nineteen of whom belonged to the Prisons Department's interregional special forces unit (see paragraph 18 above).

307. Furthermore, as admitted by the Ukrainian authorities, the involvement of the special forces unit was based on a regulatory framework running contrary to the Convention and the Court's case-law principles (see paragraphs 217-222 above).

308. The Court also observes that, while prior to the operation complained of, nearly one hundred percent of the prison population went on hunger strike to convey their complaints to higher authorities, not a single complaint was reported from prisoners during the final stage of the operation, which was stated to be dedicated to recording the prisoners' complaints and resolving the issues raised (see paragraphs 8, 10, 16 and 20 above).

309. As to the use of force against prisoners, it is undisputed that several blows with rubber truncheons were inflicted on and handcuffing was applied to the fourth and the eighteenth applicants, along with six other prisoners (see paragraphs 20-24 and 137-138 above).

310. Another established fact is that forty-one prisoners (including seventeen of the eighteen applicants), whom the administration regarded as the organisers of the hunger strike, were transferred to different detention facilities in a rushed manner immediately after the search, without having been given the opportunity to get prepared or to collect their personal belongings.

(iii) Disputed facts and their assessment by the Court

311. The Court notes that the major point of argument between the applicants and the domestic authorities concerned the use of force by the officers conducting the search and security operation in Izyaslav Prison on 22 January 2007, its nature and scope.

312. The applicants alleged indiscriminate and large-scale brutality against them. Ten of them gave a detailed account of the events of 22 January 2007, describing the chain of events, indicating the time, location and duration of the beatings, and explaining the methods used by officers (see paragraphs 25-108 above). While the seventh, the eighth, the ninth, the eleventh, the twelfth, the thirteenth and the fourteenth applicants

did not provide separate accounts of the events, they relied on those submitted by the aforementioned applicants. Given that they were all in the same group of prisoners separated from the others by the special forces unit's officers, subjected to a body search and immediately transferred to the SIZOs, the Court accepts that all seventeen applicants were subjected to comparable treatment in the same factual setting.

313. The authorities, however, only acknowledged two incidents involving the fourth and the eighteenth applicants (see paragraphs 20-24 and 137-138 above).

314. The Court notes that the medical records in the case file confirm some injuries of those two applicants, the absence of any injuries to five other applicants (the second, the seventh, the eighth, the thirteenth and the fourteenth applicants) and are non-existent in respect of the remaining ten applicants.

315. The Court notes that although medical evidence plays a decisive role in establishing the facts for the purpose of Convention proceedings, the absence of such evidence cannot immediately lead to the conclusion that the allegations of ill-treatment are false or cannot be proven. Were it otherwise, the authorities would be able to avoid responsibility for ill-treatment by not conducting medical examinations and not recording the use of physical force or special means of restraint (see *Artyomov v. Russia*, no. 14146/02, § 153, 27 May 2010).

316. The Court is not convinced by the medical records noting the absence of any injuries to five of the applicants for the following reasons. It notes that their initial examination took place in Khmelnytskyy SIZO, whose staff had been directly involved in the search and security operation complained of (see paragraphs 18, 129 and 134 above). Furthermore, the applicants alleged that they had been subjected to continuous ill-treatment in that SIZO and their complaints in that regard were never investigated. As to the forensic medical examination of 30 January 2007, the Court has already concluded that it was superficial and cannot be fully relied on (see paragraphs 266-270 and 276 above). Even assuming that those five applicants indeed had no visible injuries on 30 January 2007, as stated in their forensic medical examination reports (see paragraph 136 above), more than a week had elapsed since the impugned operation, meaning that, depending on their severity, the injuries could have healed in the interval. In any event, the Court is well aware that there are methods of applying force which do not leave any traces on a victim's body (see *Boicenco v. Moldova*, no. 41088/05, § 109, 11 July 2006). For example, blows with truncheons do not automatically leave visible marks on the body, even though they do cause substantial pain (see *Selmouni v. France* [GC], no. 25803/94, § 102, ECHR 1999-V). And, of course, the consequences of any intimidation, or indeed any other form of non-physical abuse, would in any event have left no visible trace (see *Hajnal v. Serbia*, no. 36937/06, § 80, 19 June 2012).

317. Thus, the Court concludes that it does not have complete or conclusive medical evidence before it that would either support or detract from the reliability of the applicants' allegations. That being so, it must establish the facts on the basis of all the other materials in the case file.

318. First of all, the Court takes note of the difference between the declared and the real purpose of the operation complained of in Izyaslav Prison. It observes that it was planned and reported as comprising a general search and some unspecified preventive security measures, together with practical drills, without any reference being made to the ongoing protests by the prisoners. However, as was later acknowledged by the authorities, it was the prisoners' mass hunger strike in protest at the conditions of their detention and the administration's wrongdoing that prompted this operation (see paragraphs 115, 122, 149 and 157 above).

319. Secondly, the Court has regard to the involvement of the special forces unit in the operation complained of. It considers credible the applicants' submission that its officers had been wearing masks. The Court notes that it was a paramilitary formation equipped and trained for carrying out, in particular, antiterrorist operations. The Court has already established, including through a fact-finding mission, in the case of *Davydov and Others*, cited above, that a similar security operation had earlier been carried out in Zamkova Prison (neighbouring Izyaslav Prison) with the involvement of officers from special forces units wearing masks. There is no indication, be it in the legislative framework in place or in administrative developments, of a change in that practice. Moreover, the legal provisions providing a basis for the existence of such a special forces unit were eventually repealed as running contrary to the Convention and the Court's case-law (see paragraph 222 above). In addition, the Court attaches weight to the categorical statement of the Ukrainian Ombudsman that "the practice of the use of special forces units [was] in fact systematic resort to torture" (see paragraph 223 above).

320. Thirdly, the Court notes that, while before the impugned operation nearly one hundred percent of prisoners in the jail had united in expressing their quite specific complaints against the administration, not a single complaint was recorded after this operation took place. It is noteworthy that the search did not result in the discovery of any major breaches of the rules on the prisoners' part (the prohibited items discovered and seized, such as razor blades, medicines, water boilers, etc., could not have suggested that preparations for a riot or anything of the kind were under way). In the Court's opinion, such a drastic change, in a matter of hours, from explicitly manifested unanimous dissent to complete acceptance could only be explained by indiscriminate brutality towards the prisoners having taken place.

321. Lastly, the Court does not lose sight of the circumstances in which the applicants were transferred to Khmelnytskyy and Rivnenskyy SIZOs following the operation. They were not given any chance to prepare for

those transfers, to collect their personal belongings or even to dress appropriately for the weather conditions (the events taking place in January). Such a course of events is conceivable against a background of violence and intimidation rather than following a well-organised and orderly search and security operation which, as noted above, failed to reveal any serious breaches.

322. In the light of all the foregoing inferences and having regard to the Government's silence as to the applicants' factual submissions, the Court finds it established to the standard of proof required in Convention proceedings that the applicants were subjected to the treatment of which they complained.

(c) Assessment of the severity of the ill-treatment

323. The applicants insisted that they had suffered ill-treatment amounting to torture.

324. The Government did not comment.

325. The Court is mindful of the potential for violence that exists in penal institutions and of the fact that disobedience by detainees may quickly degenerate into a riot (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006). The Court has previously accepted that the use of force may be necessary to ensure prison security, to maintain order or to prevent crime in penal facilities. Nevertheless, as noted above, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007).

326. Turning to the present case, the Court notes that the prison authorities resorted to large-scale violent measures under the pretext of a general search and security operation, which was in fact targeted against the most active organisers of the prisoners' mass hunger strike (see paragraphs 115, 122, 149 and 157 above). Furthermore, the operation in question took place without the legally obliged prosecutorial supervision (see paragraph 145 above).

327. It was a commonly accepted fact that the aforementioned protests by the prisoners were confined to peaceful refusals to eat prison food, without a single violent incident having been reported (see paragraphs 8-11 above). As eventually acknowledged by the Prisons Department, the prisoners' claims were not without basis as regards both the conditions of their detention and the unbalanced and arbitrary resort of the prison administration to various penalties and sanctions (see paragraphs 117 and 119 above). The Court next observes that the prisoners demonstrated willingness to cooperate with and trust towards the Prisons Department's officials, having terminated the hunger strike immediately after the creation of the special commission tasked with the investigation of their allegations (see paragraph 9 above). It is also noteworthy that the events took place in a minimum security level prison, where all the inmates were serving a first

sentence in respect of minor or medium-severity criminal offences (see paragraphs 7 and 197 above).

328. The Court notes that the operation in question took place following prior preparations, with the involvement of specially trained personnel. The officers involved outnumbered the prisoners by more than three times (forty-one prisoners versus almost 140 officers). Furthermore, the prisoners did not receive the slightest warning of what was about to happen to them, having complied with the administration's order to come to certain premises. Having regard to the presence of the Prisons Department's officials who had previously started a dialogue with prisoners regarding their complaints, the inmates apparently expected the continuation of that dialogue (see paragraphs 9, 11 and 26 above). Instead, a group of masked paramilitaries stormed into the premises and "convinced" the prisoners to waive any complaints altogether. As to the manner in which this was likely achieved, the Court has already held that it considers the applicants' account credible (see paragraph 322 above).

329. As regards the only two instances of the use of force – against the fourth and the eighteenth applicants – acknowledged by the domestic authorities, the Court notes that no efforts were taken by the officials concerned to show that it had been necessary in the circumstances. Thus, all eight reports (in addition to the two applicants, force was reported to have been used against six other prisoners) had an absolutely identical formalistic wording and referred to unspecified "physical resistance [by the prisoners] to the officers [conducting] the search" (see paragraph 21 above). Furthermore, it can be seen from the medical reports that all the prisoners in question (save one) were beaten on their buttocks (see paragraph 22 above). The Court considers that beating of this kind appears to be demeaning and retaliatory, rather than aiming at overcoming any physical resistance.

330. It is impossible for the Court to establish the seriousness of all the bodily injuries and the level of the shock, distress and humiliation suffered by every single applicant. However, it has no doubt that this unexpected and brutal action by the authorities was grossly disproportionate in the absence of any transgressions by the applicants and manifestly inconsistent with even those artificial goals they declared they were seeking to achieve. As suggested by all the facts of the case, violence and intimidation were used against the applicants, along with some other prisoners, simply in retaliation for their legitimate and peaceful complaints.

331. In so far as the seriousness of the acts of ill-treatment is concerned, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has

been treatment which could only be described as torture (see *Shishkin v. Russia*, no. 18280/04, § 87, 7 July 2011, with further references).

332. As noted above, the gratuitous violence resorted to by the authorities was intended to crush the protest movement, to punish the prisoners for their peaceful hunger strike and to nip in the bud any intention of raising complaints. In the Court's opinion, the treatment the applicants were subjected to must have caused them severe pain and suffering, within the meaning of Article 1, paragraph 1, of the United Nations Convention again Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see paragraph 225 above), even though it did not apparently result in any long-term damage to their health. In these circumstances, the Court finds that the applicants were subjected to treatment which can only be described as torture (compare with *Selmouni v. France*, cited above, §§ 100-105*)*.

333. There has therefore been a violation of Article 3 of the Convention, in that the Ukrainian authorities subjected the applicants to torture.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

334. The applicants complained that the investigation into their allegations of ill-treatment had been ineffective and thus contrary to Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

335. The Court observes that this complaint concerns the same issues as those examined in paragraphs 254 to 296 above under the procedural limb of Article 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention (see, for example, *Polonskiy v. Russia*, no. 30033/05, §§ 126-127, 19 March 2009, and *Teslenko v. Ukraine*, no. 55528/08, §§ 120-121, 20 December 2011).

VI. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

336. The applicants complained that the administration of Izyaslav Prison had failed to return all their personal belongings to them following their hasty transfer to different detention facilities on 22 January 2007. They relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows in the relevant part:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law. ...”

A. Admissibility

337. The Government submitted that the seventeenth applicant had not been transferred from Izyaslav Prison. Accordingly, he could not claim to be a victim of the alleged loss of property associated with such a transfer.

338. The applicants’ lawyer did not comment on this submission.

339. The Court notes that it has already declared inadmissible the entire application, in so far as it concerns the seventeenth applicant, as being incompatible *ratione personae* with the provisions of the Convention (see paragraph 234 above).

340. The present objection of the Government has therefore already been responded to.

341. The Court further notes that the remaining applicants’ complaint under Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 §§ 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

342. The applicants contended that they had not received in full their property from Izyaslav Prison.

343. The Government did not comment.

344. The Court accepts that prisoners are bound by certain restrictions on their right to the enjoyment of their possessions.

345. In the present case, however, it considers that the applicants’ right to property was infringed, even if taken within those boundaries. Thus, the chaotic and hasty manner in which they were transferred from Izyaslav Prison to Khmelnytskyy and Rivne SIZOs is corroborated by sufficient evidence. The applicants were deprived of any chance to collect their personal belongings and to prepare for the transfer.

346. It was therefore for the Government to prove that they did eventually receive their property which they had rightfully possessed in Izyaslav Prison. In the absence of any conclusive evidence in that regard, the Court concludes that at least some of the applicants’ property must have indeed been lost or misplaced.

347. The Court notes that this interference with the applicants’ rights was not lawful and did not pursue any legitimate aim.

348. That being so, the Court holds that there has been a violation of Article 1 of Protocol No. 1.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

349. 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

350. The applicants claimed 50,000 euros (EUR) each in respect of non-pecuniary damage.

351. The Government contested this claim as unsubstantiated and exorbitant.

352. The Court observes that it has found particularly grievous violations in the present case. It accepts that the applicants suffered pain and distress which cannot be compensated by a finding of a violation. Nevertheless, the particular amounts claimed appear excessive. Making its assessment on an equitable basis, the Court awards each applicant (with the exception of the seventeenth applicant) 25,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

353. The applicants' lawyer claimed, on behalf of his clients, EUR 15,390 for costs and expenses incurred before the domestic courts and in the proceedings before the Court. In substantiation, he submitted two legal assistance contracts signed by him and the sixth applicant on 18 June 2009 and 29 March 2011. The first contract empowered Mr Bushchenko to represent the sixth applicant in the domestic proceedings challenging the prosecutorial decision of 7 February 2007 in respect of the events in Izyaslav Prison at the end of January 2007. It stipulated an hourly charge-out rate of EUR 100. Under the second contract, Mr Bushchenko was to represent the sixth applicant's interests in the proceedings before the Court at a rate of EUR 130 per hour. Both contracts stipulated that payment would be made after completion of the proceedings in Strasbourg and within the limits of the sum awarded by the Court in costs and expenses.

354. Mr Bushchenko also submitted four time-sheets and expense reports completed by him in respect of work done under the aforementioned contracts over the period of June 2009 – August 2011. According to him, he spent 69.5 hours asserting the applicants' rights before the domestic courts and 68 hours in the proceedings before the Court.

355. The Government contested the claim as unsubstantiated and excessive.

356. 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 only the sixth applicant is contractually bound to pay fees vis-à-vis Mr Bushchenko. Having regard to the documents submitted, 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 – to the sixth applicant – partially, in the amount of EUR 10,000, plus any tax that may be chargeable to this applicant on that amount.

C. Default interest

357. 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 application in the part pertaining to the seventeenth applicant inadmissible as being incompatible *ratione personae*;

2. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicants' complaint under Article 3 of the Convention concerning their alleged torture, and dismisses it after having examined the merits of that complaint;

3. *Declares* the remainder of the application admissible;

4. *Holds* that the applicants (with the exception of the seventeenth applicant) have been subjected to torture in violation of Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicants' allegation of torture (with the exception of the seventeenth applicant);

6. *Holds* that there is no need to examine the complaint in that regard under Article 13 of the Convention;

7. *Holds* that there has been a violation of Article 1 of Protocol No. 1 on account of the failure of the Izyaslav Prison's administration to return to

the applicants, with the exception of the seventeenth applicant, all their personal belongings;

8. *Holds*

(a) that the respondent State is to pay, 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 at the date of settlement:

(i) to each of the applicants, with the exception of the seventeenth applicant, EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) to the sixth applicant EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to this applicant, 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.

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President