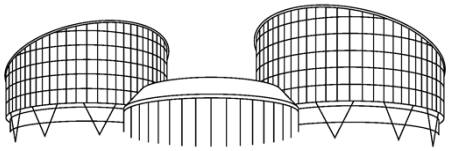

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BELEY v. UKRAINE

(Application no. 2705/20)

JUDGMENT

Art 46 • Binding force and execution of judgments • Applicant's complaints confined to a new period and new factual developments subsequent to those covered by a previous finding of procedural violation of Art 3 • Art 46 not precluding the Court from examining the new application
Art 3 (procedural) • Continued ineffective investigation into complaints of ill-treatment by the police

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 December 2024

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 Beley v. Ukraine,

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

Mattias Guyomar*, President*,
María Elósegui,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 2705/20) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Vitaliy Nikolayevich Beley ("the applicant"), on 12 December 2019;

the decision to give notice to the Ukrainian Government ("the Government") of the applicant's complaints under Article 3 of the Convention about the continued ineffective investigation into his allegations of ill-treatment;

the parties' observations;

Having deliberated in private on 26 November 2024,

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

INTRODUCTION

1. The application concerns the continued, and allegedly ineffective, investigation into the applicant's complaints of ill-treatment by the police after the Court's judgment in *Beley v. Ukraine* ([Committee], no. 34199/09, 20 June 2019), in which it found violations of the substantive and procedural limbs of Article 3 of the Convention.

THE FACTS

2. The applicant was born in 1977 and lives in the village of Chutove, in the Poltava Region. The applicant was represented by Mr V.F. Koval, a lawyer practising in Poltava.

3. The Government were represented by their Agent, Ms M. Sokorenko.

4. The facts of the case may be summarised as follows.

I. BACKGROUND INFORMATION

5. By a final judgment of 20 June 2019 in the case of *Beley v. Ukraine* (cited above – "the 2019 judgment"), the Court found, *inter alia*, a violation

of Article 3 of the Convention on account of the torture the applicant had been subjected to while in unrecorded detention in 2008 and the lack of an effective investigation into his complaints of ill-treatment.

6. In particular, as to the effectiveness of the investigation, the Court found that no full-scale investigation had been conducted into the applicant's complaints, which had been examined by way of a preliminary inquiry that had been very limited in means and in which the applicant had had no formal status. Furthermore, the decisions taken by the prosecutor to not open criminal proceedings had been set aside on numerous occasions by the as superficial and one-sided. The Court also noted serious delays in the conduct of investigative actions and court reviews of the decisions not to open criminal proceedings, as well as the lack of diligence in gathering evidence and establishing all the circumstances of the case (see paragraphs 74-76 of the 2019 judgment).

7. In view of the fact that the Government had failed to explain the nature and origins of the bodily injuries caused during the applicant's unlawful detention, the Court also found a violation of Article 3 of the Convention. Noting that the ill-treatment at issue had been intentional and aimed at obtaining a confession from the applicant, the Court concluded that it had amounted to torture (see paragraphs 80-87 of the 2019 judgment).

8. The Court awarded the applicant 25,000 euros (EUR) in respect of non-pecuniary damage in relation to the violations found.

9. The execution of the 2019 judgment is pending before the Committee of Ministers of the Council of Europe.

II. FACTS REGARDING THE PRESENT APPLICATION

A. The applicant's submissions

10. In November 2019 the applicant lodged requests with the Prosecutor General of Ukraine and with the Minister of Justice of Ukraine to investigate his ill-treatment complaints, following the Court's 2019 judgment.

11. By a letter of 3 December 2019, received by the applicant on 11 December 2019, the Kramatorsk Department of the State Bureau of Investigation – after receiving the information from the Deputy Minister of Justice of Ukraine – informed the applicant that on 6 August 2019 criminal proceedings had been initiated for the "infliction of minor bodily harm" and "abuse of power". He was further informed that his request had been joined to the case file.

12. The applicant alleged that he had not been invited to be questioned as a victim until July 2021. The questioning took place on 3 August 2021, during which he named three police officers, Mr S., Mr H. and Mr P., whom he believed to have been involved in his ill-treatment.

13. Subsequently, on 12 August 2021, the applicant asked the investigator to order an additional forensic medical examination to establish the nature of the injuries sustained in 2008 and the methods used to inflict them. That request was refused by the investigator, but on 10 November 2021 the investigator's decision was set aside by a court and an additional forensic medical examination was ordered.

14. According to the applicant, no other investigative actions have been undertaken.

15. On 17 January 2022 the applicant lodged a complaint with the Donetsk regional prosecutor's office regarding the investigator's failure to conduct the investigation in a timely manner. By a letter of 8 February 2022, the applicant was informed that it had been established that the investigation had "not fully complied with the requirements [of effectiveness]" and that instructions had been given to the investigator with regard to further actions.

16. On 1 March 2024 the investigator asked the Krasnogvardiyskyy District Court of Dnipro to terminate the proceedings owing to the impossibility of identifying the perpetrators and the expiry of the statutory limitation period for the alleged offence.

17. On 1 April 2024 the above-mentioned request was rejected by the District Court, which noted that the applicant had clearly mentioned the individuals who might have been involved in the commission of an offence against him, so it could not be maintained that the possible perpetrators were unknown. The court further noted, with reference to the case-law of the Supreme Court, that in situations where a victim named a particular person as a possible perpetrator, the investigation should first establish whether an offence had occurred and, if so, whether the actions of that person constituted a punishable act and whether there was enough evidence to prove his or her guilt in court or to release that person from criminal liability. The court emphasised that, given the context in the applicant's case, the grounds for terminating the proceedings on account of the expiry of the statutory limitation period and the impossibility of identifying the perpetrators were contradictory as in the former case the perpetrator had to have been identified. The applicant, who was present at the hearing, asked for the individuals he had named to be put on the wanted list. The prosecutor appealed against that decision, but the appellate court refused to open appeal proceedings.

B. The Government's submissions

18. The Government confirmed that in August 2019 a criminal case concerning "abuse of power coupled with violence" had been initiated in relation to the applicant's 2008 complaints of ill-treatment and the Court's 2019 judgment. The investigation was entrusted to the Kramatorsk Department of the State Bureau of Investigation (Donetsk Region).

19. In late August 2019 the investigator made requests to various authorities, including the local police and court, to obtain documents pertaining to the applicant's case. The authorities were unable to provide any documents in reply; for example, the local court could not provide any materials owing to their "destruction".

20. Between March and June 2020 several requests were also made in an attempt to establish the possible whereabouts of the three police officers who might have been involved in the applicant's ill-treatment, including, for example, to the State Border Guard Service, the Pension Fund and the Tax Service. Neither the Pension Fund nor the Tax Service had any information about the persons concerned; however, the State Border Guard Service stated that Mr P. and the applicant himself had crossed the border in 2018 and 2019.

21. In December 2020 and July 2021 several more requests for documents and information were made; they were all futile.

22. On 3 August 2021 the applicant was questioned as a victim.

23. On 21 December 2021, a forensic examination of the applicant's medical documents dating back to 2008 was ordered and the Donetsk Regional Bureau of Forensic Medical Expert Examinations was asked to carry it out. The forensic report has, however, not been obtained because of the Russian invasion of Ukraine.

24. On 19 January 2022 Mr. P., one of the police officers named by the applicant, was questioned as a witness.

25. On 4 September 2023 another forensic examination of the applicant's medical documents was ordered and entrusted, this time, to the Dnipropetrovsk Regional Bureau of Forensic Medical Expert Examinations.

26. As noted by the Government, in their report no. 247e/31 of 25 January 2024, the experts concluded that the location and the nature of the applicant's bodily injuries and the method of their infliction, as established during the 2008 forensic medical examination, had not contradicted the applicant's explanations in that regard when questioned on 29 May 2008 and 3 August 2021. The expert report itself has not been provided to the Court.

27. With the beginning of the Russian invasion in Ukraine in February 2022, the town of Volnovakha, where the applicant had been placed in detention and ill-treated in 2008, was occupied and currently the Ukrainian authorities have no access to it, which also means that no access to the relevant documents or the persons involved is possible.

28. On 4 December 2023 Mr. P. was questioned again as a witness. He denied inflicting bodily harm on the applicant.

29. On 22 January 2024 a request was sent to the State Department of the National Police in the Donetsk Region to obtain information about the staff members of the Volnovakha temporary detention facility who, in 2008, had recorded the applicant's injuries upon his arrival, and to obtain the relevant medical documents, as well as information about the applicant's cellmates. No response has been received.

30. The Government noted that the investigation into the offence, classified as possible abuse of power under Article 365 § 2 of the Criminal Code, was still ongoing and that "the pre-trial investigation materials could not be disclosed". The Government provided no documents from the case file.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained, invoking Article 13 of the Convention about the State's continued failure to investigate his ill-treatment complaints even after the Court's 2019 judgment had been delivered. He submitted, in particular, that he had not been informed of the start of the investigation until he had asked about it and had not accordingly been granted victim status, and that no actual investigative measures had been undertaken.

32. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the applicant's complaints fall to be examined 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. Whether Article 46 of the Convention precludes the examination of the applicant's complaint

33. In examining the admissibility of the present application, the Court must first ascertain whether it has jurisdiction to consider the applicant's complaint without encroaching on the prerogatives of the respondent State and the Committee of Ministers under Article 46 of the Convention in the execution of the Court's 2019 judgment.

34. The Court notes at the outset that by Article 32 § 1 of the Convention, its jurisdiction extends "to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47". Article 32 § 2 provides that "[i]n the event of dispute as to whether the Court has jurisdiction, the Court shall decide" (see, for example, *Liu v. Russia (no. 2)*, no. 29157/09, § 64, 26 July 2011).

35. The Committee of Ministers is empowered, on the other hand, to examine whether the respondent State has taken individual measures to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention (Rule 6.2b of the Rules of the Committee of Ministers for the

supervision of the execution of judgments and of the terms of friendly settlements). In so doing the Committee takes into account the respondent State's discretion to choose the means necessary to comply with the judgment (see *Liu*, cited above, § 66).

36. It is not unusual that, following a judgment finding that a right has been violated during a certain period, the new proceedings at the domestic level give rise to new issues under the Convention (see, among other authorities, *Jurišić v. Croatia (no. 2)*, no. 8000/21, § 33, 7 July 2022, concerning the domestic proceedings to ensure the applicant's contact with his son; *Shabelnik v. Ukraine (no. 2)*, no. 15685/11, 1 June 2017, and *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, ECHR 2015, concerning the fairness of the review proceedings following the Court's judgment; *Ivanţoc and Others v. Moldova and Russia*, no. 23687/05, § 87, 15 November 2011, concerning the extension of detention; *Wasserman v. Russia (no. 2)*, no. 21071/05, §§ 36-37, 10 April 2008, concerning the non-enforcement of a final decision; and *Rongoni v. Italy*, no. 44531/98, § 13, 25 October 2001, concerning the length of proceedings). Indeed, in the absence of any assessment by the Court, those new issues may not have been resolved in the context of the Committee of Ministers' supervision (see *Liu*, cited above, § 67, and *Egmez v. Cyprus* (dec.), no. 12214/07, § 51, 18 September 2012).

37. The relevant principles have been set out by the Court in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, §§ 47-48, 11 July 2017) and, as regards the follow-up complaints as to the effectiveness of an investigation under Article 3 of the Convention, in *Egmez,* cited above, §§ 48-56). In particular, when assessing such complaints, the Court must ascertain whether they concern only the execution of the initial application without raising any relevant new facts or whether they contain relevant new information possibly entailing a fresh violation of the Convention, for the examination of which the Court is competent *ratione materiae*. That approach has been applied by the Court in a number of cases under Article 3 so far (see, for example, *V.D. v. Croatia (no. 2)*, no. 19421/15, § 54, 15 November 2018; *Gheorghe Cobzaru v. Romania*, no. 21171/16 [Committee], § 31, 7 May 2020; and *Bikbulatova and Others v. Ukraine* (dec.), no. 47107/14, 7 April 2022, all finding no violation). A similar approach has also been adopted in Article 2 cases relating to the effectiveness of an investigation (see, for recent examples, *Gribben v. the United Kingdom* (dec.), no. 28864/18, § 121, 25 January 2022, and *Ştefan-Gabriel Mocanu and Others v. Romania*, nos. 34323/21 and 8 others, §§ 42-43, 12 December 2023, finding a violation).

38. At the same time, it must be borne in mind that according to the Court's case-law, the effectiveness of an investigation must be assessed as a whole (see, *mutatis mutandis, Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015, and *Gribben,* §§ 117-18, cited above). In some cases, serious flaws in the early period of an investigation or very

lengthy periods of inactivity, adversely affecting the very possibility of establishing the facts and holding the perpetrators responsible, may result in a situation where the effectiveness of the investigation has been irretrievably lost once and for all (see, *mutatis mutandis*, *Finucane v. the United Kingdom*, no. 29178/95, §§ 84 and 89, ECHR 2003-VIII, and, for example, *Danilov v. Ukraine*, no. 2585/06, § 70, 13 March 2014). Therefore, where the Court has made a global assessment of the effectiveness of an investigation in a judgment finding a violation in that regard, it may not always be called upon to reassess the effectiveness of the investigation into the same events, in the framework of a new application, simply because there were subsequent factual developments: in some cases doing that would be futile and at the same time encroach on the role of the Committee of Ministers in the supervision of the execution of the Court's judgments. Whether that is the case in a given application will very much depend on its specific circumstances (see *Finucane*, cited above, § 89 *in fine*, and, *mutatis mutandis*, *Jordan v. the United Kingdom* (dec.), no. 48066/21, §§ 12 and 14, 31 May 2022).

39. Turning to the present case, the Court observes that following its judgment of 20 June 2019, the investigation into the applicant's ill-treatment was restarted in August 2019 and certain investigative actions took place (although there were also some alleged omissions). It also notes that despite the serious shortcomings of the investigation, as established in its 2019 judgment (see, in particular, paragraphs 74-76 of that judgment), it cannot be considered that any post-2019 investigative actions, even if exemplary, should be seen as incapable (owing to the passage of time or other reasons) of affecting the question whether the authorities complied with their obligation to investigate the torture to which the applicant was subjected in 2008. The Court observes in that connection that the applicant's complaints in the present case concern the adequacy and effectiveness of specific actions and/or omissions that occurred after 2019 and that, as is apparent from the material in the case file, the prosecution of the perpetrators was not time-barred under domestic law (see paragraph 17 above). Even though the execution of the 2019 judgment is pending before the Committee of Ministers of the Council of Europe, the Court considers that it can deal with the present application which is based on new factual developments and therefore gives rise to new legal issues.

2. Otherwise as to admissibility

40. The Government argued that the applicant had abused his right of application to the Court as he had "pursued aims other than those envisaged by the Convention". They noted that he had submitted his complaint to the Court the day after he had found out that criminal proceedings had been opened, without having taken any procedural steps of his own within the domestic system before being questioned in August 2021.

41. The Government further stated that the applicant had failed to exhaust domestic remedies as, despite finding out about the institution of the criminal proceedings in response to his complaints, he had failed to lodge a request to be involved in those proceedings as a victim in order to be able to enjoy a wide range of rights guaranteed to victims.

42. Lastly, the Government alleged that the applicant's complaints were ill-founded, as the authorities had undertaken all possible measures in the circumstances, particularly given the lapse of time after the alleged date of the events, the unknown whereabouts of some of the witnesses and the ongoing military actions. They also noted that the authorities had acted with due diligence and that, in the initial stages, they had had to take preparatory measures, such as finding the case file, which had taken time.

43. The Court considers that the Government's arguments are closely related to the merits of the case and therefore joins them to the examination on the merits.

B. Merits

1. The applicant's submissions

44. The applicant argued that he had not been informed of the initiation, in August 2019, of the criminal proceedings in relation to the ill-treatment he had been subjected to by the police in 2008 and that he had only found out about the proceedings after his request in November 2019. He emphasised in that connection that he had not been granted formal victim status, either in August or in December 2019. In fact, his victim status had not been granted until he was first questioned two years later, in August 2021. In that connection, the applicant referred to the Court's findings in the 2019 judgment as to the authorities' failure to promptly initiate a full-scale investigation into his complaints and the use, instead, of a preliminary inquiry procedure, which was limited, including as regards the actual victim's rights and participation in the proceedings. The applicant also alleged that it had been the Minister of Justice who had been mentioned as a "complainant" in the respective documents pertaining to the 2019 proceedings, and not him as a victim.

45. The applicant further stated that although the Government had provided detailed information about all the requests for information and documents sent by the investigator, those requests – nineteen in total – had been prepared over the course of two years but could have been prepared "in one working week". The applicant also maintained that during that period, not a single actual "investigative action" had been undertaken and that the first such action had been to question him in August 2021.

46. In that connection the applicant further noted that after he had named the individuals he suspected while being questioned, the investigator must have had the grounds to serve notifications of suspicion on them and proceed

with other investigative actions, such as face-to-face confrontation or an investigative experiment, none of which had been done. Also, despite the applicant's explicit request for an additional forensic medical examination, made when he was questioned in 2021, this had initially been refused and the expert examination had only been ordered after the court had set aside that refusal. The applicant also noted that the investigator had never attempted to call and question his lawyer at the time of the events, Ms T., or the medical personnel who had examined him in 2008 and whose names had been available in the case file.

47. As to the availability of the materials from the 2008 proceedings, the applicant noted that the investigator had sent requests to various authorities in order to obtain them, which had proved futile. However, the investigator had never sent a request to the applicant himself or to the Court, for that matter.

48. Lastly, the applicant stated that the Government had concealed from the Court the fact that in March 2024 the investigator had attempted to have the proceedings terminated. According to the applicant, it was for that reason that the Government had actually requested an extension for the submission of their observations, which had initially been due on 8 March 2024.

49. In view of the above, the applicant believed that the investigation in his case had been incomplete, one-sided and completely ineffective.

2. The Government's submissions

50. The Government, as noted above, maintained that a few measures had been undertaken in the applicant's case immediately after the opening of the criminal proceedings. All those actions had taken time to complete, and the Government submitted that the timing and progress of the investigation had been reasonable and justified. They noted, in that context, that as the proceedings had been opened "on the basis of the relevant communications" (meaning, apparently, the information from the Minister of Justice), the investigator had first had to establish the facts and circumstances of the offence. They also noted that "a number of interviews with witnesses and police officers, and other investigative actions" had been carried out.

51. The Government further emphasised the difficulties posed by the military actions taking place in the relevant territories and the impossibility of accessing the documents and finding the individuals allegedly involved.

52. Overall, the Government maintained that no obvious omission to collect relevant evidence could be attributed to the authorities and that the investigation in question had met all the criteria established by the Court. The fact that the applicant was not satisfied with the circumstances established during that investigation could not be viewed as entailing a violation of Article 3 of the Convention under its procedural aspect.

3. The Court's assessment

53. As already stated, the present case concerns the alleged ineffectiveness of the continued investigation into the applicant's ill-treatment complaints during a new period which falls within the Court's jurisdiction *ratione materiae*, that is to say from June 2019 onwards.

54. The Court also notes that at the time the applicant lodged his application on 12 December 2019, that is, one day after he had received a reply to his requests for information about the progress of the investigation, it was clearly too early to draw any conclusions as to the effectiveness of the investigation and hence to initiate proceedings before the Court alleging ineffectiveness. However, the Court has consistently held that when examining a complaint, it can take into account facts which have occurred after the lodging of the application but are directly related to those covered by it (see for example, *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 302, 21 January 2021 with further references). In the present case, in 2021 the applicant supplemented his initial application, and the parties later made detailed submissions referring to further developments after the lodging of the application. The Government relied on documents and information relating to the ongoing investigation. The Court is therefore not prevented from examining the effectiveness of the investigation with reference to events which occurred after the application was lodged.

55. The Court refers to the general principles regarding the procedural obligation under Article 3 of the Convention concerning the complaints of police ill-treatment as set out, for example, in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 114-23, 28 September 2015). In particular, several parameters are essential for the assessment of compliance with the procedural requirement of Article 3: the adequacy of the investigative measures, the promptness and reasonable expedition of the investigation, the involvement of the victim, and the independence of the investigation. In order to be effective, the investigation must be capable of leading to the identification and punishment of those responsible. Although this is not an obligation of results to be achieved but of means to be employed, 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 the required standard of effectiveness. It is also important to reiterate that the authorities must act of their own motion (ibid.).

56. The Court is satisfied that no issues as to the independence of the investigation have been raised in the present case.

57. With regard to the issue of the victim's participation in the proceedings, the Court would stress that the procedural obligation under the Convention requires that the investigation must be accessible to the victims to the extent necessary to safeguard their legitimate interests (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 303, ECHR 2011 (extracts)). Victims should be able to participate effectively in the investigation in one

form or another, in particular by having access to the materials of the investigation. Moreover, following an investigation there should be a reasoned decision available to reassure a concerned public that the rule of law has been respected (see *Buntov v. Russia*, no. 27026/10, § 125, 5 June 2012, with further references).

58. In that connection, the Court notes that the applicant had not been informed about the start of the investigation in August 2019 and its progress until he expressly asked the authorities for information. Moreover, it appears that even after the applicant contacted the relevant authorities in November 2019, he was merely informed that his request "had been added to the file" and, apparently, he was not formally involved in the proceedings as a victim before he was first questioned in August 2021, that is, two years after the start of the proceedings. As can be seen from an extract from the Unified Register of Pre-Trial Investigations, it was, indeed, not the applicant who was mentioned as a victim or a person submitting a complaint (a complainant), but the Minister of Justice, apparently because it was he who had informed the prosecution authorities of the Court's 2019 judgment (see paragraph 11 above). It also appears that there have been no other investigative actions in which the applicant has participated – except for his questioning.

59. In the context of the Government's argument that the applicant had not undertaken any actions between December 2019 and August 2021 to show his interest in the investigation, the Court reiterates the obligation of the State authorities to act of their own motion in cases of ill-treatment by State agents, and considers that it was incumbent on the authorities to ensure the applicant's involvement in the proceedings from its early stages (contrast *V.D. v. Croatia*, cited above, § 74).

60. Furthermore, by submitting his requests in November 2019 the applicant took proper and sufficient action to demonstrate his interest in the continuation of the investigation and cannot be said to have been required to exhaust any possible remedies (see, *mutatis mutandis*, *V.D. v. Croatia*, cited above, §§ 60-61). In that context the Court also notes the proceedings which the applicant brought to challenge the investigator's refusal to order a forensic medical examination in 2021 and his complaint about the lengthy and ineffective investigation in 2022, attesting to the genuine interest the applicant had in the proceedings. In that connection, the Court also fails to see what other hidden aims or reasons the applicant could have had regarding that investigation, contrary to the Government's assertion under the head of "abuse of petition" (see paragraph 40 above).

61. As regards promptness and adequacy, the Court observes that the proceedings were resumed rather swiftly, less than two months after the delivery of the Court's 2019 judgment, and preliminary requests to find the case file of the 2008 investigation were sent to various authorities. The objective circumstances outside the authorities' control made these efforts more complicated. In particular, the relevant territories where the documents

were stored were either affected by military actions or, later, occupied by the Russian forces. The same events frustrated the authorities' efforts to locate most of the alleged perpetrators and other persons involved. These objective difficulties still persist to this day. Nevertheless, the Court considers that the circumstances required more promptness and proactiveness on the part of the authorities, particularly in order to secure the documents.

62. The Court further notes that the Government have not argued that Mr P., whom the applicant named as one of the possible perpetrators, could not be contacted by the authorities for any reason. However, he was questioned for the first time in January 2022, without there being any explanation for such an unreasonable delay. It is also noteworthy that, as is apparent from the Government's submissions, Mr P. denied inflicting any bodily harm on the applicant and the investigation accepted those statements without further questions and did not attempt to conduct any other investigative actions involving Mr P. and possibly the applicant, including a face-to-face confrontation.

63. The Court also notes that the 2019 investigation has been conducted under Article 365 § 2 of the Criminal Code, which provides for liability in cases of abuse of power coupled with violence (see paragraphs 11 and 30 above). This choice of legal classification appears surprising, having regard to the Court's finding that the ill-treatment inflicted on the applicant in 2008 amounted to torture, a crime which is punishable under another provision of the Criminal Code – Article 127. Although the Court accepts that the initial classification of the acts in question can be different and can change as the investigation proceeds, in the absence of a plausible explanation, it considers that the above may be seen as indicative of a lack of understanding of the importance of the authorities' duty to investigate acts of such gravity as alleged torture and, therefore, as undermining the effectiveness of the investigation in its entirety (see, *mutatis mutandis, Skorokhodov v. Ukraine*, no. 56697/09, § 36, 14 November 2013).

64. In that connection the Court also notes the authorities' attempt, in early 2024, after the Government were given notice of the application in the present case, to have the proceedings terminated on the grounds that it was impossible to establish the perpetrators and the statutory limitation period (fifteen years for the offence under Article 365 § 2 of the Criminal Code) had expired. Their request to that effect was rejected by the courts, which found no grounds for such termination because the applicant had clearly named the persons he suspected. Although the domestic courts did not examine the issue regarding the expiry of the statutory limitation period as such, the Court nevertheless observes that had the case been classified as torture, no statutory limitation period would have applied under Ukrainian legislation (Article 49 § 5 of the Criminal Code).

65. Lastly, the Court cannot overlook the fact that the domestic authorities themselves, namely the Donetsk regional prosecutor's office, already

acknowledged in February 2022 that the investigation in the applicant's case had been lengthy and ineffective (see paragraph 15 above). As noted in the relevant letter to the applicant, the investigator had been given instructions on how to proceed with the case. No information is, however, available concerning what those instructions were and whether they were complied with during the subsequent period. The proceedings have been pending for approximately five years.

66. The foregoing considerations are sufficient to enable the Court to conclude that it has not been demonstrated that, during the period in question, the domestic authorities acted with due diligence to ensure an effective investigation into the applicant's allegations of ill-treatment.

67. The Court therefore dismisses the Government's preliminary objections as to the admissibility of the applicant's complaints and considers that there has been a violation of Article 3 of the Convention under its procedural limb having regard to the developments that occurred since June 2019.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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."

69. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage, by analogy with the award in the 2019 judgment. He did not raise any claims in respect of pecuniary damage or costs and expenses.

70. The Government objected, considering that claim excessive and unsubstantiated.

71. Having regard to the particular circumstances of the case, the Court awards the applicant EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's preliminary objections as to admissibility and, having examined them, *dismisses* them;

2. *Declares* the application admissible;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement**,** plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

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

Done in English, and notified in writing on 19 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Mattias Guyomar President