



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

FIFTH SECTION

**CASE OF LUTSENKO AND VERBYTSKYI v. UKRAINE**

*(Applications nos. 12482/14 and 39800/14)*

JUDGMENT

Art 2 and Art 3 (procedural and substantive) • Art 5 § 1 • Art 11 • Deliberate strategy to stop initially peaceful Maidan protest through excessive force resulting in escalation of violence • Abductions, ill-treatment and torture to death of Maidan protestors at hands of non-State agents hired by police • Lack of effective and independent investigation

STRASBOURG

21 January 2021

*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 Lutsenko and Verbytskyi v. Ukraine,**

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

Síofra O’Leary, *President*,

Yonko Grozev,

Ganna Yudkivska,

Mārtiņš Mits,

Gabriele Kucsko-Stadlmayer,

Lado Chanturia,

Angelika Nußberger,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 12482/14 and 39800/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Igor Viktorovych Lutsenko (“the first applicant”) and Mr Sergiy Tarasovych Verbytskyi (“the second applicant”), on 4 February and 8 April 2014 respectively;

the decision to give notice of the applications to the Ukrainian Government (“the Government”);

the decision to give priority to the applications (Rule 41 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 7 May 2019 and 9 December 2020,

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

## INTRODUCTION

1. These two applications are part of thirty-three applications against Ukraine lodged with the Court under Article 34 of the Convention by thirty-nine individuals in relation to the Maidan protests. They concern principally the abduction and ill-treatment of two individuals, the first applicant and the second applicant’s brother, in connection with the series of mass protests which took place in Ukraine between 21 November 2013 and 23 February 2014; protests commonly referred to as “Euromaidan” and/or “Maidan”. The second applicant’s brother was allegedly murdered in the course of those events. The applicants rely on Articles 2, 3, 5 § 1, 8, 10, 11, 13, 14 and 34 of the Convention and on Article 1 of Protocol No. 1. For the reasons stated in *Shmorgunov and Others v. Ukraine* (nos. 15367/14 and 13 others, § 5, 21 January 2021, not final), all thirty-three applications could not be joined and examined in a single judgment. The judgments in response to these applications should, however, be read as one whole.

## THE FACTS

2. The applicants were born in 1978 and 1958 and live in Kyiv and Lviv respectively. The applicants were represented by Ms Y. Zakrevska, a lawyer practising in Kyiv.

3. The Government were represented by their Agent, most recently Mr I. Lishchyna, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

### I. PRINCIPLE EVENTS AT ISSUE

5. At the material time, the first applicant, Mr I. Lutsenko was a well-known journalist and the leader of a civic organisation called Protect the Old Kyiv, whose aim was to preserve the historical architecture of Kyiv. He took an active part in the Maidan protests. Notably, on 22 December 2013 the council of the Maidan People's Union (see *Shmorgunov and Others*, cited above, § 12) gave him the position of deputy chief supervisor in charge of order within the protesters' camp on Maidan Nezalezhnosti. In that capacity, he helped to take care of wounded protesters by transporting them to various medical facilities.

6. The second applicant's brother, Mr Y. Verbytsky y, was originally from Lviv and worked as a seismologist at the Karpatske Department of the Institute of Geophysics in Lviv at the material time. In January 2014 he came to Kyiv and took part in the Maidan protests.

7. According to the parties' submissions and the information contained in the investigation files concerning the relevant events (see, in particular, paragraphs 19-20 below), in the early hours of 21 January 2014, Mr Y. Verbytsky y's eye was injured during a clash between protesters and the police. At about 3.45 a.m. Mr I. Lutsenko took him to a hospital. According to a copy of a police record submitted by the Government, at 4.33 a.m. a doctor from that hospital informed the police that Mr I. Lutsenko and Mr Y. Verbytsky y had been abducted from the hospital by several persons in plain clothes. In the relevant investigation files it was also stated that the abductors had used force against the applicants. In particular, the first applicant was kicked in the face, and consequently two of his teeth were broken. He and Mr Y. Verbytsky y were placed in a vehicle and taken to a remote area, where they were beaten and ill-treated by the abductors (see, in particular, paragraphs 19-20 below). On that day the outside temperature in Kyiv was around -10°C.

8. Subsequently, according to the information provided by the first applicant and the information contained in the investigation files concerning the relevant events (see, in particular, paragraphs 19-20 below), they were taken to a garage, where they were questioned by unidentified

Russian-speaking individuals about their involvement in the Maidan protests. The first applicant answered those questions in Russian, while Mr Y. Verbytskyi answered them in Ukrainian. During the questioning both men were subjected to repeated beatings and other forms of ill-treatment over the course of several hours.

9. In particular, the abductors put a plastic bag over the first applicant's head and tied it with duct tape. A small hole was made in the bag so that he could breathe. They also tied his hands and legs with duct tape and put him on the floor. While he was lying on his left side, they repeatedly kicked and punched him in the face, head, back, thighs, ankles and hands, particularly aiming to hit his joints. He was also beaten with wooden and metal sticks. During the beating Mr I. Lutsenko was threatened with death on a number of occasions. According to a forensic medical report established by an expert hired by the State and dated 20 February 2014, he had numerous haematomas and contusions on the trunk of his body, limbs, head and face. His injuries were, however, classified in that report as being minor.

10. In the meantime, at about 4.30 a.m. on 21 January 2014 a doctor from the hospital informed the police of the two men's abduction. At about 9.30 a.m. Mr I. Lutsenko's partner lodged a complaint with the police as regards his disappearance.

11. At about 6 p.m. on the same day Mr I. Lutsenko was taken to a public road near a village in the Boryspil District, about 50 kilometres away from central Kyiv, and was left there. From there he managed to get help. Subsequently, he was questioned by a police officer concerning the events.

12. In the meantime, Mr Y. Verbytskyi's wife lodged a complaint with the police as regards his abduction. On 21 January 2014 a criminal investigation was launched into that complaint.

13. On 22 January 2014 Mr Y. Verbytskyi's body was found in a forest in the Boryspil District. A preliminary medical report recorded that he had died of hypothermia. Multiple injuries were found on the trunk of his body, limbs, head and face.

14. According to a forensic medical report of 12 March 2014, a copy of which was submitted to the Court, Mr Y. Verbytskyi's injuries included numerous haematomas all over the trunk of his body, limbs, head and face, fractured bones and ribs, and internal bleeding. It was considered that he had been hit by "blunt objects" at least thirty times. It was confirmed that he had died of hypothermia.

## II. OFFICIAL INVESTIGATIONS AND RELATED PROCEEDINGS

15. On 22 January 2014 the police started a criminal investigation into the death of Mr Y. Verbytskyi which was classified as murder<sup>1</sup>. The

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<sup>1</sup> Domestic case file no. 12014110100000089.

investigation into his abduction (see paragraph 12 above) was joined to that investigation. The second applicant took part in the proceedings as a victim. He was questioned as regards the relevant events and also took part in other investigative actions.

16. On 22 January 2014 the police also started a criminal investigation into the first applicant's abduction<sup>2</sup>. Eventually, that investigation was merged with the investigation into the murder of Mr. Y. Verbytskyi.

17. On 27 January 2014 Mr I. Lutsenko was questioned by the police about the events. He stated, *inter alia*, that while he had been in the hands of his abductors he had heard Mr Y. Verbytskyi being beaten more severely after the abductors had found out that he was originally from Lviv. Those beating Mr Y. Verbytskyi had repeatedly called him "*banderovets*" (*бандеровець*)<sup>3</sup>. Mr I. Lutsenko also heard the abductors discussing the possibility of taking him and Mr Y. Verbytskyi to a police station.

18. According to the case material, including the PGO's and the MoI's letters of 4 February, 19 May, 15 June and 29 November 2016, between February and April 2014 thirteen individuals were identified as suspects in the investigation. Two of them, T. and M., were suspected of having taken part in the abduction of Mr I. Lutsenko and Mr Y. Verbytskyi. T. and M. were alleged to have been the drivers of the vehicles used.

19. According to the official notifications of suspicion (*повідомлення про підозру*), issued by the investigators from the Chief Investigative Department of the MoI on 24 and 28 July 2014, informing T. and M. respectively that they were under suspicion, Mr I. Lutsenko's and Mr Y. Verbytskyi's abduction and ill-treatment were part of the authorities' attempt to suppress the Maidan protests. In particular, it was noted that different private individuals, including those with a criminal background, had been hired by unidentified law-enforcement officials to attack and intimidate the Maidan protesters. The group of suspects who had allegedly abducted and "tortured" Mr I. Lutsenko and Mr Y. Verbytskyi had been organised and directed by N., Ch. and Z., who had acted on the instructions of unidentified representatives of State bodies. Also, a number of other unidentified individuals were said to have participated in the ill-treatment of Mr I. Lutsenko and Mr Y. Verbytskyi.

20. It was also noted in those official documents that, having "tortured" Mr Y. Verbytskyi in the garage and discovered that he was from Lviv, the suspects and other unknown individuals had taken him to an isolated forest, where they had beaten him with the aim of killing him. They had considered him to be "a representative of the most radical part of Western Ukraine, rallying against the ruling party and senior government officials." Eventually, they had left him in the forest, exposed to freezing temperatures,

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<sup>2</sup> Domestic case file no. 12014100060000245.

<sup>3</sup> The term derives from the name of Mr S. Bandera, a leader of the Ukrainian independence movement between 1933 and 1959.

without any outer clothing. They had known that he could not leave that area by himself because of his injuries. Consequently, it was concluded that the suspects had assumed that Mr Y. Verbytskyi would die in those conditions and that they had wanted him to die in this way. His death had to be classified as murder. In that regard, in the official notifications of suspicion it was stated that, according to a forensic medical report of 3 February 2014, because of his injuries, Mr Y. Verbytskyi had not been able to move freely, which had increased the negative consequences of his exposure to freezing temperatures, ultimately resulting in his death. No copy of the report of 3 February 2014 has been submitted to the Court.

21. According to the information available to the Court, the trial of M. has been ongoing before the Pecherskyi District Court in Kyiv since June 2015, whereas proceedings concerning the remaining twelve suspects, including T., were suspended, as their whereabouts were unknown. Those suspects were put on a wanted list. According to the MoI's letter of 29 November 2016, one of the suspects was located in Russia, but his extradition was refused by the Russian authorities. The whereabouts of the other suspects, who absconded, were unknown.

22. According to the Government, in the course of the investigations into Mr I. Lutsenko's and Mr Y. Verbytskyi's abduction and the latter's murder, a number of investigative actions were performed, including the questioning of over 100 witnesses, suspects and victims, searches and forensic examinations. In addition, the first applicant took an active part in the investigations and made no complaints at domestic level regarding their effectiveness. The Government stated that no further details could be provided because this could harm the investigations which were still ongoing, without giving any further information or explanation in that regard.

23. In the course of the investigations into the abduction and ill-treatment of Mr I. Lutsenko and Mr Y. Verbytskyi and the latter's murder, it was established that between 12 and 28 January 2014 Mr I. Lutsenko's telephone conversations had been intercepted by the police as part of an investigation in another case relating to the Maidan protests. Also, according to a copy of the extract from the official Ukrainian electronic database of criminal proceedings provided by the applicants, the investigators also found evidence demonstrating that "during the commission of the crimes against Mr I. Lutsenko and Mr Y. Verbytskyi the organisers of those crimes maintained permanent contact with the leadership of the MoI" and that unidentified police officers "shared with the organisers of the abduction of the protesters information concerning Mr I. Lutsenko's telephone conversations and location, which had been obtained in the course of police surveillance operations".

24. In that connection, on 20 August 2014, the police launched a separate investigation into the possible involvement of agents of the police

in the crimes committed against Mr I. Lutsenko and Mr Y. Verbytskyi<sup>4</sup>. According to a letter from the PGO of 25 November 2016, on an unspecified date two police officers were charged with the unlawful interception of Mr I. Lutsenko's telephone conversations and falsification of official documents (Article 163 and Article 366 § 1 of the Criminal Code). Eventually, the case was referred to the Shevchenkivskyy District Court for trial. According to the information published on the PGO's dedicated website, the proceedings before that court were not concluded at the time of the adoption of this judgment.

25. According to the information published PGO's dedicated website, the relevant proceedings were ongoing at the time of the adoption of this judgment.

### III. PAYMENTS TO THE RELATIVES OF MR Y. VERBYTSKYI

26. In March 2014 and February 2015, under the Act on State Support for the Victim Participants in Mass Actions of Civil Protest and their Family Members of 21 February 2014 ("the Civil Protest Victims Aid Act" summarised in *Shmorgunov and Others*, cited above, §§ 214-15), the State Treasury paid the relatives of Mr Y. Verbytskyi a total of UAH 243,600, the equivalent of about EUR 13,300 at the material time, on account of his death.

### RELEVANT LEGAL FRAMEWORK

27. Summaries of and extracts from the domestic legal framework and international reports of relevance for the examination of all applications lodged in relation to the Maidan protests and their aftermath, including the present two applications, are to be found in *Shmorgunov and Others* (cited above, §§ 194-269).

28. Some of those international reports also contain information relating specifically to the events at issue in the present case.

29. In particular, in its 2015 report, which is summarised and partly reproduced in *Shmorgunov and Others* (cited above, §§ 237-49), the International Advisory Panel (IAP) made the following observations concerning the investigations relating to Mr I. Lutsenko and Mr Y. Verbytskyi (references omitted):

"...

338. 13 suspects, most of them *titushky*, as well as Messrs Zubrytskyi and Chebotariov, have been served with notices of suspicion on various charges related to these incidents [involving Mr I. Lutsenko and Mr Y. Verbytskyi].

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<sup>4</sup> Domestic case file no. 1201400000000338.

339. Two suspects were arrested, notified of suspicion and detained. On 20 August 2014 the indictments were submitted to the court. However, on 16 October 2014 the trial court returned the indictments citing certain shortcomings in them. The prosecutor's appeal was due to be heard on 12 December 2014. The Panel has not been informed of the outcome of the appeal.

340. The proceedings concerning the remaining 11 suspects have been suspended: ten suspects are on the wanted list and the eleventh is being pursued through international co-operation arrangements.

...”

30. Further information concerning the relevant investigations is also contained in the *Briefing Note on Accountability for Killings and Violent Deaths During the Maidan Protest*, published in February 2019 by the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU). The relevant extracts from the briefing note, a short summary of which is to be found in *Shmorgunov and Others* (cited above, § 256) read as follows (emphasis added by the HRMMU, with several exceptions, references omitted):

“I. EXECUTIVE SUMMARY

...

3. All victims from the Maidan protests died or sustained lethal injuries in January-February 2014, when the protests turned violent following the adoption by Parliament of a series of laws that limited freedom of peaceful assembly and expression, and introduced criminal responsibility for extremism and the seizure of administrative buildings. The internal troops of the Ministry of Internal Affairs (disbanded since and reformed into the National Guard) and Berkut special riot police units (disbanded shortly after the end of the Maidan protests and reformed into special units within regional police departments), who had been dispatched to restrain the protestors, were reinforced with civilian counter-protestors, so-called ‘titushky’<sup>4</sup> [4. ‘Titushky’ is a term used to refer to athletically-built civilians recruited and equipped by law enforcement to oppose protestors; their harassment and attacks against protestors enabled police to intervene and use force to disperse the protestors.] allegedly upon coordination with the former senior police officials.

4. Five years after the end of the Maidan protests accountability for the killings and violent deaths of 84 protestors, a man who did not participate in the protests, and 13 law enforcement officers is yet to be achieved. The investigation into the killing of 17 protestors and 13 law enforcement officers has still to identify individual perpetrators. Only one person has been found guilty of unintentional killing of a protestor. Two others were found guilty of hooliganism in relation to an incident that resulted in the killing of another protestor.

...

*Prosecution for the killing of Yurii Verbytskyi*

19. The SID identified 14 members of a ‘titushky’ group as being involved in the abduction, torture and killing of Yurii Verbytskyi. As of February 2019, 12 of them have absconded.

20. On 23 April 2014, police detained two male members of the ‘titushky’ group. The first man owned a garage in the outskirts of Kyiv where both abducted protestors

were tortured and interrogated. He absconded shortly after being indicted on charges of abduction, torture and intentional killing.

21. The second man who acted as a lookout is currently on trial facing abduction charges. On 17 July 2018, after almost three years of hearings on the merits of the case, the judge recused herself from the case. As of February 2019, the new judge has still to be appointed.

22. On 28 July 2017, SID investigators detained another member of the ‘titushky’ group on charges of the creation of a criminal organization, interference with public assemblies, abduction, torture and intentional killing of Yurii Verbytskyi. On 24 July 2018, he was indicted and his case was sent for trial. As of February 2019, the defendant remains in detention while the court hears testimonies of prosecution witnesses, including other members of ‘titushky’ groups.

23. HRMMU is concerned that not all aspects of the killing of Yurii Verbytskyi were fully investigated. For instance, in a separate case, the Department for Organized Crime Investigation indicted two police officers for unlawful surveillance over the man abducted together with Verbytskyi during Maidan protests. Given that the circumstances and the purpose of the abduction suggest coordination between the police and ‘titushky’ groups,<sup>18</sup> [18. A number of facts suggest that ‘titushky’ coordinated the abduction of actions with the police. The abductors knew the protestor whom they abducted together with Yurii Verbytskyi and came after him very fast. The police tracking his movement knew of his whereabouts and resorted to ‘titushky’ groups to unlawfully detain and interrogate him as an active protestor.] the criminal proceeding into the organization of unlawful surveillance is merged with the case of abduction, torture and killing of Yurii Verbytskyi.

24. The prosecution for the killing of Yurii Verbytskyi was marred by the failure of the Government to ensure the appearance at court of one of the key defendants. Failure to ensure the trial without undue delay of the second member of the group is also concerning.

...”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

31. Having regard to the common factual and legal background of the two applications under examination, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

### II. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 14 OF THE CONVENTION

32. The applicants complained of a violation of Article 3 of the Convention on account of Mr I. Lutsenko’s and Mr Y. Verbytskyi’s abduction and ill-treatment on 21 January 2014, which they alleged amounted to torture (see paragraphs 7-9 above). Relying on Article 2 of the Convention, Mr S. Verbytskyi further complained that his brother,

Mr Y. Verbytskyi, had been murdered. The applicants also complained that no effective official investigation had been conducted into those events.

33. Relying on Article 14 of the Convention taken in conjunction with Articles 2 and 3, Mr S. Verbytskyi complained that his brother, Mr Y. Verbytskyi, had been tortured and murdered because he was from Lviv and had spoken Ukrainian.

34. The applicants argued that the perpetrators had been either agents of the State or had acted on the instructions of the authorities, with a view to persecuting Mr I. Lutsenko and Mr Y. Verbytskyi on account of their involvement in the Maidan protests.

35. Articles 2, 3 and 14 of the Convention read as follows:

#### **Article 2**

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

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

#### **Article 3**

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

#### **Article 14**

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

### **A. Admissibility**

#### *1. Exhaustion of domestic remedies*

##### **(a) The parties’ submissions**

36. The Government argued that the applicants’ complaints under Articles 3 of the Convention and Mr S. Verbytskyi’s related complaints under Article 2 were inadmissible for non-exhaustion of domestic remedies.

37. In particular, the Government stated that the applicants’ complaints were premature, as the relevant investigations and related court proceedings

were still ongoing. Those investigations were effective for the purposes of the Convention, as they had been launched promptly after the events at issue, had not been protracted, involved a number of investigative actions, including the questioning of a number of witnesses, suspects and applicants, searches and forensic examinations, and the applicants were actively participating in the relevant proceedings. The relevant circumstances had been established, the suspects had been identified, and one of them was being tried by a first-instance court. Also, the authorities were investigating whether agents of the police had been involved in the crimes at issue.

38. The Government further argued that the applicants had not raised their complaints of ineffective investigation at domestic level.

39. The applicants disagreed.

40. They argued that the investigations launched by the Ukrainian authorities into the relevant events had not been effective. According to them, the investigations and the court proceedings had been protracted, those who had ordered the crimes had not been identified, almost all suspects had left Ukraine, and the authorities had failed to establish their whereabouts and seek their extradition. According to Mr I. Lutsenko, eleven of those suspects had left Ukraine for Russia.

41. Furthermore, although there was sufficient information that police officers had been involved in the crimes and Mr I. Lutsenko had been under police surveillance at the time the crimes had been committed, no police officer linked to the actions of the so-called “titushky” had been identified (see paragraphs 19-24 above). The investigators had refused to take into consideration the applicants’ submissions based on findings in similar criminal cases concerning the abduction and ill-treatment of protesters by titushky, which demonstrated that those investigators had been under police control and acting under their instructions. The applicants considered that this was because the investigations in their case had been conducted by the police.

**(b) The Court’s assessment**

42. The Court notes that the Government raised objections as to the non-exhaustion of domestic remedies that were similar to those raised in other Maidan-related applications. The applicable general principles and a detailed assessment of the Government’s objections are to be found in *Shmorgunov and Others* (cited above, §§ 283-85 and 291-303).

43. In particular, in so far as the Government’s objections concerned those applicants’ compliance with the rule of exhaustion of domestic remedies, the Court pointed to numerous domestic and international reports which identified various shortcomings in the investigations undertaken. It found that because the complaints of ineffective investigations into the applicants’ alleged ill-treatment did not appear completely unfounded, they did not have to wait for those investigations to be completed before lodging

their complaints under Article 3 with the Court (see *Shmorgunov and Others*, cited above, §§ 301-302).

44. The Court considers that those findings are equally relevant for the complaints relating to Mr I. Lutsenko's and Mr Y. Verbytskyi's abduction and ill-treatment and Mr Y. Verbytskyi's murder, having regard to the fact that the relevant domestic proceedings have been ongoing for more than six years and so far there has been no final and comprehensive domestic assessment of all the relevant circumstances (see paragraphs 15-25 above).

45. As to the Government's argument that the applicants in this case lodged no complaint with the domestic authorities concerning specific investigative actions or inactivity on the part of the investigators, the Court finds nothing in the Government's submissions or generally in the file which would demonstrate that such a complaint might have led to any improvement in the proceedings, either by expediting them or rectifying the shortcomings of which the applicants concerned complained (see *Shmorgunov and Others*, cited above, §§ 285 and 303).

46. Accordingly, the Court dismisses the Government's objections as to non-exhaustion of domestic remedies as regards the applicants' complaints under Articles 2 and 3 of the Convention.

## 2. *Victim status (Mr S. Verbytskyi)*

### (a) **The parties' submissions**

47. The Government argued that Mr S. Verbytskyi had been paid compensation on account of the alleged violation of Articles 2 and 3 of the Convention (see paragraph 26 above) and that he had not challenged the amount of compensation. Thus, he could no longer be considered a victim in that regard.

48. The second applicant disagreed. In particular, he contended that neither he nor his brother's other relatives had been paid the full amount of UAH 1,000,000 – the equivalent of about EUR 55,000 at the material time – to which they were entitled under the Civil Protest Victims Aid Act of 2014 (see the summary of the Act in *Shmorgunov and Others*, cited above, §§ 214-15). The Government did not contest this.

### (b) **The Court's assessment**

49. The Court notes that the domestic investigations in question have so far not led to the establishment of all the relevant circumstances pertaining to Mr Y. Verbytskyi's abduction, ill-treatment and death. Therefore, the relevant payment of financial assistance to the latter's relatives cannot be regarded as sufficient redress for the related complaints under Article 2 and/or Article 3 of the Convention (see the Court's findings regarding the Government's similar objections in other Maidan-related applications (*Shmorgunov and Others*, cited above, §§ 313-14 and 397-401)).

50. Furthermore, the Court reiterates that the regulations pursuant to which the payment was made contained no provision acknowledging that injuries had been inflicted on Mr Y. Verbytskyi or on any other protester in violation of the guarantees protecting against torture and inhuman or degrading treatment or punishment (see paragraph 26 above and *Shmorgunov and Others*, cited above, §§ 399-400). Thus, contrary to what the Government argued, that payment can hardly be considered sufficient “compensation” on account of the alleged violation of Articles 2 and 3 of the Convention.

51. Accordingly, the Court rejects the Government’s objections as to Mr S. Verbytskyi’s victim status.

*3. Submissions regarding the admissibility of Mr S. Verbytskyi’s complaint under Article 14 taken in conjunction with Articles 2 and 3*

**(a) The parties’ submissions**

52. The Government contended that Mr S. Verbytskyi had not raised that complaint at domestic level, and in any event the circumstances of his brother’s abduction, ill-treatment and murder were being investigated by the authorities. For those reasons, the Government stated that it should be rejected for non-exhaustion of domestic remedies.

53. The Government further argued that there was little or no evidence demonstrating that his brother’s language or origins had had any bearing on his attackers’ perception of him. Even if Mr I. Lutsenko’s testimony in that regard was true, Mr Y. Verbytskyi’s abduction and ill-treatment was the subject of an ongoing investigation, and since the perpetrators were private individuals, Ukraine had discharged its obligations in that regard.

54. Mr S. Verbytskyi disagreed.

**(b) The Court’s assessment**

55. Having regard to Mr I. Lutsenko’s testimony and the information contained in the domestic investigation material, the Court considers it plausible that Mr Y. Verbytskyi might have been subjected to violence motivated by hatred because of his origins or language, an issue which was duly raised before the authorities (see paragraphs 17 and 20 above). The Court leaves, in any event, to an examination of the merits whether this question falls to be determined under Articles 2 and 3 or separately under Article 14 of the Convention in conjunction with those articles (see paragraphs 60, 72 and 74 below).

56. Thus, the Government’s objections to the admissibility of this part of the case should be rejected.

#### 4. Conclusion as to the admissibility

57. In sum, the Court finds that this part of the applicants' applications is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It should therefore be declared admissible.

### B. Merits

#### 1. Alleged violation of the procedural limb of Articles 2 and 3 of the Convention

##### (a) General principles

58. Having regard to the applicants' allegation that those responsible for the abduction and ill-treatment of Mr I. Lutsenko and Mr Y. Verbytskyi had been under the control of the authorities or had acted on the authorities' instructions, in the present case regard must be had to the Court's well-established case-law setting out the obligation to carry out an effective official investigation into arguable allegations of treatment infringing Article 3 suffered at the hands of State agents. The relevant general principles are to be found in *Shmorgunov and Others* (cited above, §§ 327-36).

59. In so far as this part of the case also concerns Mr Y. Verbytskyi's death, for which the State was also allegedly responsible, the Court reiterates that the principles regarding the procedural obligation to investigate under Article 3 of the Convention apply similarly to the procedural obligation to investigate under Article 2 (see, among many other authorities, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 314, ECHR 2014 (extracts) and *Jeronovičs v. Latvia* [GC], no. 44898/10, § 107, 5 July 2016).

60. The Court also reiterates that the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 161, ECHR 2005-VII). The same is true regarding investigation of possible racist attitudes in cases of ill-treatment contrary to Article 3. Owing to the interplay of those provisions, such issues may fall to be examined under one of them only, with no separate issue arising under the other relevant provision, or may require examination under Articles 2 or 3 and, separately, also under Article 14. This is a question to be decided in each case on its facts and depending on the nature of the allegations made (*ibid.*, see also

and *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 70, ECHR 2005-XIII (extracts)).

**(b) Application of those principles to the present case**

61. The Court finds it justified to examine the applicants' complaints under Article 3 of the Convention and Mr S. Verbytskyi's complaint under Article 2 together, in so far as they concern the allegedly ineffective investigation.

62. The Court notes that the authorities launched several criminal investigations into Mr I. Lutsenko's and Mr Y. Verbytskyi's abduction and ill-treatment and the latter's death straight after the incidents, on 22 January 2014 (see paragraphs 15-16 above).

63. Several important steps in the investigations in question, including the questioning of Mr I. Lutsenko and the securing of forensic medical evidence, took place within days of the incidents. By April 2014 thirteen individuals had been identified as suspects, and three months later two of them were officially notified that they were suspects (see paragraphs 9-20 above).

64. However, only one of those suspects has stood trial (from June 2015 onwards), while the other twelve absconded (see paragraph 21 above).

65. This inevitably slowed down the pace of the investigations, which had initially been progressing relatively quickly.

66. Although the material with which the Court has been provided indicates that the authorities found one of the suspects in Russia and tried, unsuccessfully, to have him extradited, it remains unclear whether they took any further steps to establish the whereabouts of all the other suspects who had absconded and ensure their availability for the investigations.

67. The Court is also aware that another suspected member of the *titushky* who had been allegedly involved in the incidents at issue was arrested in July 2017 and his case was committed for trial in July 2018, but it notes that as of February 2019 his trial was still ongoing and there is no information that it has been concluded (see paragraph 30 above). Likewise, the Court notes that the court proceedings concerning the suspect who was committed for trial in June 2015 (see paragraphs 21, 25 and 30 above) are also still ongoing at first instance.

68. More importantly, although the investigating authorities acknowledged in the relevant official notifications of suspicion that the suspects had been hired by law-enforcement officials and the crimes against Mr I. Lutsenko and Mr Y. Verbytskyi had been part of the authorities' attempt to suppress the Maidan protests (see paragraphs 19 and 20 above), there is no information that any meaningful efforts were made to identify the law-enforcement officials concerned. Nor was it suggested that this had been impossible, in particular having regard to the fact that the police officers who had intercepted Mr I. Lutsenko's telephone conversations were

identified (see paragraphs 23 and 24 above). In this connection, the Court reiterates that the procedural obligation under Article 3 of the Convention requires authorities to investigate both those with command responsibility and those who are direct perpetrators (see *Jelić v. Croatia*, no. 57856/11, § 94, 12 June 2014).

69. On the whole, there is no information that any other substantial progress has been made in the investigations in order to shed light on all the circumstances of Mr I. Lutsenko's and Mr Y. Verbytskyi's abduction and ill-treatment and Mr Y. Verbytskyi's death. The Government's submissions regarding the investigative actions lack important details and are mostly couched in general terms (see paragraph 22 above).

70. The Court also notes that the Government provided no sufficiently reasoned justification for withholding any information as regards the investigations in question (see paragraph 22 above, and, for instance, *Amuyeva and Others v. Russia*, no. 17321/06, §§ 81-82, 25 November 2010).

71. It is to be noted that those investigations, along with various other investigations into incidents of ill-treatment, deaths and serious injuries during the Maidan protests, were also referenced by the IAP, which considered that they had fallen short of the requirements of promptness, reasonable expedition, effectiveness, independence, public scrutiny and involvement of victims (see, principally, paragraphs 416-418 and 434 (in so far as the investigations into the alleged engagement of titushky by law-enforcement officials are concerned) and paragraphs 399, 420, 431, 436, 445, 451, 465, 489, 502, 508 and 536-540 (regarding the investigations as a whole into the incidents of ill-treatment, death and serious injury during the Maidan protests) of the IAP report partly reproduced and summarised in *Shmorgunov and Others*, cited above, §§ 237-49). The Court pays particular attention to the IAP's findings in so far as they concern the investigations into Mr I. Lutsenko's and Mr Y. Verbytskyi's abduction and ill-treatment and the latter's death, up until 23 February 2015. It also notes that in the present case the Government did not demonstrate that the deficiencies in those investigations which were identified by the IAP had been resolved or remedied after that date.

72. Finally, the second applicant alleged that there had been a discriminatory motive behind the ill-treatment and murder of his brother (see paragraph 33 above). In line with the Court's well-established case-law (see paragraph 60 above), and given the available information and events in Ukraine at the time, this allegation called for a careful investigation as to whether Mr Y. Verbytskyi's Western Ukraine origin had been a contributing factor in his ill-treatment and death. However, no such considerations appear to have featured during the investigation.

73. The foregoing is sufficient for the Court to find that, so far, no effective investigation has been conducted into Mr I. Lutsenko's and

Mr Y. Verbytskyi's abduction and ill-treatment and that therefore there has been a procedural violation of Article 3 of the Convention (applications nos. 12482/14 and 39800/14). For the same reasons, the Court further finds that no effective investigation has been conducted into Mr Y. Verbytskyi's murder and that there has been a violation of the procedural limb of Article 2 of the Convention also on that account (application no. 39800/14).

74. In the circumstances, the Court finds that it is not necessary to examine separately whether there has been also a violation of Article 14 of the Convention taken in conjunction with Articles 2 and 3 on account of the authorities' failure to conduct an effective investigation into Mr Y. Verbytskyi's abduction, ill-treatment and death (see *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, §§ 102-103, 30 January 2020).

## 2. *Alleged violation of the substantive limb of Articles 2 and 3 of the Convention*

### (a) **General principles**

75. In so far as this part of the case concerns the applicants' complaints under the substantive limb of Article 3 of the Convention, the relevant principles are to be found in *Shmorgunov and Others* (cited above, §§ 359-63).

76. In so far as this part of the case also concerns the complaint under the substantive limb of Article 2 of the Convention relating to Mr Y. Verbytskyi's death, for which the State was allegedly responsible, the Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention, one which in peace time admits of no derogation under Article 15. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among many other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 174, ECHR 2011 (extracts)).

77. Article 2 contains two substantive obligations of the State: the general obligation to take appropriate steps to safeguard the lives of those within its jurisdiction, and the obligation to refrain from intentional deprivation of life, delimited by a list of exceptions (see, among many other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 130, ECHR 2014). The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324).

**(b) Application of those principles to the present case**

78. Turning to the applicants' complaints of a substantive violation of Article 3 of the Convention, the Court has available to it forensic medical information concerning Mr I. Lutsenko and Mr Y. Verbytskyi which certified the presence of multiple injuries on their bodies as well as information about how those injuries were inflicted contained in Mr I. Lutsenko's submissions and in certain documents from the investigation file which were provided to the Court (see paragraphs 7-20 above). Although the relevant proceedings have not yet been concluded, the Court considers that the information contained in the relevant investigation files may, to a certain extent, be taken into account in its examination of this part of the case (see, for instance, *Izci v. Turkey*, no. 42606/05, § 57, 23 July 2013). Based on the available information, Mr I. Lutsenko and Mr Y. Verbytskyi were clearly subjected to ill-treatment contrary to Article 3 of the Convention.

79. From that information, it can also be deduced that the ill-treatment at issue was aimed at causing them the maximum possible pain and making them feel debased and frightened. This was done in order to obtain information relating to Mr I. Lutsenko's and Mr Y. Verbytskyi's involvement in the Maidan protests and/or to intimidate and/or punish them in that connection. Thus, there are strong indications that the treatment inflicted on Mr I. Lutsenko and Mr Y. Verbytskyi might have involved serious and cruel suffering, both physical and psychological, that may be characterised as torture within the meaning of Article 3 of the Convention.

80. In the circumstances of the present case, the Court does not find it necessary to adopt a position on the particular classification of the ill-treatment to which Mr I. Lutsenko was subjected, it being sufficient to note that it was very serious - he had numerous haematomas and contusions on the trunk of his body, limbs, head and face. As regards Mr Y. Verbytskyi, however, it is clear from the available evidence and the forensic medical report that the ill-treatment inflicted on the second applicant's brother must have caused severe pain and suffering and that it was particularly serious and cruel. His injuries included numerous haematomas all over the trunk of his body, limbs, head and face, and also fractured bones and ribs and internal bleeding. It is impossible, in addition, based on that evidence, to overlook indices regarding the intentional and premeditated nature of the ill-treatment inflicted (see paragraphs 90 and 91 below and, in relation to the substantive limb of Article 2, paragraph 93 below). Accordingly, the Court finds that Mr I. Lutsenko was subjected to ill-treatment on 21 January 2014 and that prior to his death, probably on the same day, Mr Y. Verbytskyi was tortured.

81. The Court further notes that there is no dispute between the parties that those suspected of being responsible for the ill-treatment at issue had been under the control of the authorities or had acted on the authorities'

instructions in relation to Mr I. Lutsenko and Mr Y. Verbytskyi in connection with their involvement in the Maidan protests. Furthermore, this version of events also has considerable basis in the relevant domestic and international material available to the Court.

82. In particular, in the domestic investigation file it was noted, on a general level, that various private individuals (titushky), including those with a criminal background, had been hired by unidentified law-enforcement officials to attack and intimidate the Maidan protesters. As regards this specific case, the group of suspects who had abducted and ill-treated Mr I. Lutsenko and Mr Y. Verbytskyi had been organised and directed by N., Ch. and Z., who had acted on the instructions of unidentified representatives of State bodies (see paragraph 19 above).

83. According to the related investigation files concerning other suspected crimes committed by or with the engagement of titushky, the PGO investigators considered that Ch. and Z. had been key organisers of the titushky operations from 30 November 2013 to 20 February 2014 and that the MoI had organised, paid, given instructions and armed hundreds of titushky (see paragraphs 291-99 of the IAP Report summarised in *Shmorgunov and Others*, cited above, § 246, which referenced to those investigation files).

84. Furthermore, in the present case the investigators found evidence demonstrating that during the events at issue police officers had carried out surveillance operations in respect of Mr I. Lutsenko. Notably, they had intercepted his telephone conversations and had tracked his location. According to the investigators, the police shared the information they had obtained in the course of those surveillance operations with the organisers of the abduction of Mr I. Lutsenko and Mr Y. Verbytskyi (see paragraphs 23 and 24 above).

85. The IAP, which expressed views on the compliance with the procedural requirements of Articles 2 and 3 of the Convention of the investigations as a whole, including the investigations into the events at issue (see extracts from the IAP report summarised and partly reproduced in *Shmorgunov and Others*, cited above, §§ 237-49), noted that “serious allegations [had] existed from the outset as to the involvement of the former MoI leadership in engaging, supporting, organising and arming titushky for the purpose of intimidating and using violence against the Maidan participants”. The IAP also referred to a public statement of the Minister of the Interior in February 2015 “that irrefutable evidence had been obtained that the titushky were armed by former MoI officials” (see paragraph 416 of the IAP report summarised and partly reproduced in *Shmorgunov and Others*, cited above, § 246).

86. In a report to the Ukrainian Government on a visit to Ukraine carried out by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 24 February 2014,

published on 13 January 2015 (see paragraph 39 of the report partly reproduced in *Shmorgunov and Others*, cited above, § 250) it was stated that:

“... [I]t clearly emerged from the delegation’s findings that, no matter how they were referred to (‘*Titushky*’, anti-*Maidan* activists, citizen volunteers, etc.), a large number of unidentified private individuals apprehended protesters with the authorisation, support or acquiescence of Internal Affairs officials or assisted law enforcement officials in the apprehension of protesters during the public order operations in Kyiv and Dnipropetrovsk in January and February 2014. They were also said to have been involved in a partial ‘outsourcing’ of the illtreatment of ‘*Maidan*’ protesters during or shortly after apprehension and to have stopped the alleged beating whenever they were instructed to do so by uniformed law enforcement officials or before handover to Internal Affairs special forces.”

87. According to the publication of 10 February 2014 by the Council of Europe Commissioner for Human Rights regarding his visit to Ukraine (Kyiv, Vinnytsia, Dnipropetrovsk and Zaporizhzhya) from 4 to 10 February 2014, the Commissioner and his delegation “encountered allegations and other evidence of police cooperation with civilians popularly designated by the catch-all term ‘*titushki*’ who were frequently armed with truncheons, bats or ‘traumatic’ (riot-control) firearms and wearing masks” (the publication is summarised and partly reproduced in *Shmorgunov and Others*, cited above, § 235). In his report of 4 March 2014, the Commissioner stated that there were “credible reports of several abductions – in some instances, from hospitals - by groups allegedly working with the police” and referred to the case of Mr Y. Verbytskyi. Also, the Commissioner noted that higher governmental officials, whom he had met at the material time, had acknowledged that there had existed such ‘cooperation’ between civilians and the police and that it had had no legal basis (see paragraphs 12, 35 and 36 of the report summarised and partly reproduced in *Shmorgunov and Others*, cited above, § 236).

88. Furthermore, the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), which was deployed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on 14 March 2014 at the invitation of the Ukrainian Government, comprehensively researched and analysed court decisions and other domestic material relating to the cases of Mr I. Lutsenko and Mr Y. Verbytskyi. In its *Briefing Note on Accountability for Killings and Violent Deaths During the Maidan Protest*, published in February 2019, the HRMMU noted that “the circumstances and the purpose of the abduction suggested coordination between the police and ‘*titushky*’ groups” (see paragraph 30 above).

89. Evidence of coordination between the authorities and *titushky* during the Maidan protests was also found by the OHCHR in its report of 19 March 2018 (see paragraph 51 and other parts of the report partly reproduced and summarised in *Shmorgunov and Others*, cited above, § 254).

90. Accordingly, in the circumstances and in particular having regard to the fact that the Government did not disclose any further details which might be contained in the files concerning the official investigations at issue (see paragraph 22 above), the Court can draw inferences from the available information and finds it sufficiently established that the abduction and ill-treatment of Mr I. Lutsenko and Mr Y. Verbytskyi were committed either upon the instructions and/or under the control of law-enforcement authorities or at least with their acquiescence or connivance.

91. In the light of the foregoing considerations, the Court finds that there has been a violation of Article 3 of the Convention in its substantive aspect on account of the ill-treatment of Mr I. Lutsenko and the torture of Mr Y. Verbytskyi on 21 January 2014, for which the State should be held responsible.

92. Considering the complaint under the substantive limb of Article 2 of the Convention, the Court observes that despite over 100 protest-related deaths and the deaths of at least thirteen law-enforcement officials (see *Shmorgunov and Others*, cited above, § 16), it has been seized of only a few Article 2 complaints, that concerning Mr Y. Verbytskyi and some other applicants whose cases have not yet been examined. It notes that the domestic authorities classified Mr Y. Verbytskyi's death as murder.

93. The Court further notes that, having been subjected to the torture described above, Mr. Y. Verbytskyi was left in a remote location by the suspects who had been hired by law-enforcement officials, in weather conditions which were particularly harsh, where he was unlikely to survive for long if left unattended (see paragraph 20 above). Having regard to its findings concerning the applicants' related complaints under Article 3 of the Convention (see paragraphs 90 and 91 above), the Court finds that the responsibility for Mr Y. Verbytskyi's death rests with the respondent State. Accordingly, there has been a violation of Article 2 of the Convention on that account.

### III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

94. The applicants complained of a violation of Article 5 §§ 1 and 2 of the Convention on account of Mr I. Lutsenko's and Mr Y. Verbytskyi's abduction and detention on 21 January 2014 and of the authorities' failure to conduct an effective investigation into that matter (see paragraphs 7-9 above). According to them, they were abducted and detained in connection with their involvement in the Maidan protests and no lawful grounds were put forward for their detention.

95. The Court considers that the applicants' above complaints should be examined solely under Article 5 § 1 of the Convention, which reads, insofar as relevant, as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

### **A. Admissibility**

96. The Government argued that the applicants’ complaints under Article 5 § 1 of the Convention were premature, as the relevant investigations and related court proceedings were still ongoing.

97. The applicants stated that the investigations concerning Mr I. Lutsenko’s and Mr Y. Verbytskyi’s abduction and detention had been ineffective and that the related court proceedings had been protracted.

98. The Court reiterates its findings under the procedural limbs of Articles 2 and 3 of the Convention that the relevant investigations in the applicants’ cases were ineffective (see paragraph 73 above).

99. The Court sees no reason to reach a different finding regarding those same investigations in relation to the applicants’ complaints under Article 5 § 1 of the Convention and whether or not they were premature as alleged. The investigations, which have been ongoing for more than six years, have so far not led to a final domestic assessment of all the relevant circumstances. On the whole, it has not been demonstrated that the investigations at issue were capable of providing the applicants with adequate redress in respect of the alleged violation of that provision. Accordingly, the Court finds that the fact that those investigations have not yet been concluded does not preclude it from examining the applicants’ complaints under Article 5 § 1 of the Convention concerning Mr I. Lutsenko’s and Mr Y. Verbytskyi’s abduction and detention. The Court therefore rejects the Government’s objection in this regard.

100. The Court further finds that the present complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor are they inadmissible on any other grounds. Therefore, the Court declares them admissible.

**B. Merits**

101. The Court refers to the general principles in relation to Article 5 § 1 of the Convention outlined in *Shmorgunov and Others* (cited above, §§ 459-61). It reiterates that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 233, ECHR 2012; *Al Nashiri v. Poland*, no. 28761/11, § 529, 24 July 2014; and *Belozorov v. Russia and Ukraine*, no. 43611/02, § 113, 15 October 2015). The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible, *inter alia*, with the very purpose of Article 5 of the Convention (*Kurt v. Turkey*, 25 May 1998, § 125, *Reports of Judgments and Decisions* 1998-III). It is also incompatible with the requirement of lawfulness under the Convention (*Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV).

102. Having regard to its findings in the context of the applicants' related complaints under Articles 2 and 3 of the Convention that Mr I. Lutsenko and Mr Y. Verbytskyi were abducted either upon the instructions and/or under the control of law-enforcement authorities or at least with their acquiescence or connivance (see paragraph 90 above), the Court finds that they were arbitrarily deprived of their liberty on 21 January 2014, for which the authorities were responsible and which is a complete negation of the guarantees of Article 5 § 1 (see among other authorities, *Medova v. Russia*, no. 25385/04, §§ 123-125, 15 January 2009; *Alikhanov v. Russia*, no. 17054/06, § 103, 28 August 2018; and *Tsakoyevy v. Russia*, no. 16397/07, § 142, 2 October 2018).

103. Accordingly, there has been a violation of Article 5 § 1 of the Convention regarding Mr I. Lutsenko's and Mr Y. Verbytskyi's abduction and detention on 21 January 2014.

**IV. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION**

104. The applicants complained of a violation of Articles 10, 11 and 14 of the Convention on the grounds that Mr I. Lutsenko and Mr Y. Verbytskyi had been abducted and ill-treated and that the latter had been murdered for exercising their right to freedom of peaceful assembly and expression (see paragraphs 7-9 above).

105. In the circumstances of the case, the Court considers that the applicants' above complaints should be examined under Article 11 of the Convention (see *Ezeli v. France*, 26 April 1991, § 35, Series A no. 202; *Kasparov and Others v. Russia*, no. 21613/07, §§ 82-83, 3 October 2013;

and *Navalnyy and Yashin v. Russia*, no. 76204/11, § 49, 4 December 2014), which reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

### **A. Admissibility**

106. The Government contended that the applicants’ complaints under Article 11 of the Convention were premature, for the same reasons that their complaints under Article 2 and/or Article 3 of the Convention were to be regarded as premature (see paragraph 37 above).

107. The applicants concerned disagreed, relying essentially on their arguments concerning the admissibility of their related complaints under Articles 2 and 3 of the Convention (see paragraphs 40-41 above).

108. The Court notes that it has already dismissed the Government’s similar objection of non-exhaustion in the context of the admissibility of the applicants’ complaints under Articles 2 and 3 of the Convention (see paragraph 46 above). It finds no reason not to do so as regards the objection concerning the admissibility of the applicants’ complaints under Article 11. The Court therefore rejects the Government’s objection in this regard.

109. The Court further finds that the present complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor are they inadmissible on any other grounds. Therefore, the Court declares them admissible.

### **B. Merits**

110. The Court reiterates its findings that Mr I. Lutsenko and Mr Y. Verbytskyi were abducted, Mr I. Lutsenko was ill-treated and Mr Y. Verbytskyi was tortured and eventually murdered in connection with their participation in the Maidan protests and that the authorities were responsible for those abuses (see, notably, paragraphs 81-93 above).

111. It is not disputed that Mr I. Lutsenko’s and Mr Y. Verbytskyi’s participation in the Maidan protests was protected under Article 11 of the Convention.

112. The Court is mindful of the fact that the specific events at issue took place while there were violent clashes ongoing between some of the

protesters and the police in central Kyiv (see, in this regard, *Shmorgunov and Others*, cited above, §§ 33-35, 499, 500 and 503). These circumstances clearly called for the authorities to take appropriate measures in order to ensure the peaceful conduct of the rallies and the safety of all citizens (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 159, ECHR 2015, with further references). In this connection, it reiterates that “the intentional serious disruption, by demonstrators, to ordinary life and to the activities lawfully carried out by others, which disruption was more significant than that caused by the normal exercise of the right of peaceful assembly in a public place, might be considered a “reprehensible act” ... [and] might therefore justify the imposition of penalties, even of a criminal nature” (*ibid.*, § 173). However, there is no information that appropriate measures were taken to restore peace or weed out the violent strand of protesters. On the contrary, regard being had to the Court’s findings in other Maidan-related cases and the relevant international reports reproduced in *Shmorgunov and Others*, cited above, it transpires that the enactment on 16 January 2014 of so-called “anti-protest laws” which provided for harsh penalties in relation to the exercise of freedom of assembly and free speech essentially frustrated the original obstructive, but peaceful goal of the Maidan protests (see *Shmorgunov and Others*, cited above, §§ 33-35, 197 and 250). Also, the authorities’ repeated attempts to disperse the protesters by force arguably contributed to the consequent escalation of violence.

113. In any event, the Court reiterates that the mere fact that acts of violence occur in the course of a gathering cannot, of itself, be sufficient for finding that the organisers of the gathering had violent intentions (see *Karpyuk and Others v. Ukraine*, nos. 30582/04 and 32152/04, § 202, 6 October 2015). Moreover, an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of a demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (see *Kudrevičius and Others*, cited above, § 94, with further references).

114. In the present case, there is no evidence to suggest that during their participation in the protests Mr I. Lutsenko or Mr Y. Verbytsky y intended to commit or engaged in acts of violence. Thus, the Court considers that they enjoyed the protection of Article 11 of the Convention in that connection (see *Primov and Others v. Russia*, no. 17391/06, §§ 155-156, 12 June 2014 and *Karpyuk and Others*, cited above, § 211).

115. Furthermore, the Court considers that there was an interference with the right of Mr I. Lutsenko and Mr Y. Verbytsky y to freedom of peaceful assembly on account of the abuses to which they were subjected in that connection. Even though the related domestic proceedings have not yet been concluded, the Court finds that there are cogent and substantial elements demonstrating that those abuses were aimed at punishing or

intimidating them on account of their involvement in the Maidan protests and/or preventing their further participation therein (see, notably, the relevant domestic and international findings cited or quoted at paragraphs 81-93 above).

116. Those findings suffice for the Court to conclude that there was an arbitrary interference with Mr I. Lutsenko's and Mr Y. Verbytskyi's right to freedom of peaceful assembly. There is nothing in the case file capable of demonstrating that the interference at issue, which consisted of the treatment examined under Articles 2 and 3 above (see paragraphs 90-93 above), was "prescribed by law" or pursued a "legitimate aim". Nor is there any ground to suggest that it was "necessary in a democratic society".

117. In the light of the foregoing considerations, the Court finds that there has been a breach of Article 11 of the Convention.

## V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

118. The applicants complained of a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for their complaints under Articles 2, 3, 5 § 1 and 11 of the Convention.

119. Mr I. Lutsenko also complained that the measures the authorities had employed to hinder his and other protesters' right to peacefully demonstrate had also been contrary to Article 8 and Article 34 of the Convention and Article 1 of Protocol No. 1.

120. Having regard to the facts of the case, the submissions of the parties, and its findings under those provisions of the Convention (see paragraphs 90-93, 103 and 117 above), the Court considers that it has examined the main legal questions raised in the present case, and that there is no need to give a separate ruling on the admissibility and merits of the applicants' complaints under Article 13 of the Convention (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 156).

## VI. CONCLUDING REMARKS

121. The Court observes, in conclusion, that in this case it has found violations of Articles 2, 3, 5 § 1 and 11 of the Convention on account, in particular, of the ill-treatment and persecution of the first applicant and the torture and death of the second applicant's brother as a result of their implication in the Maidan protests. The Court has also found that much of the abuse was committed by non-State agents who acted with the acquiescence if not the approval of the authorities and that to date no independent and effective official investigation has been conducted into these matters. The judgments relating to the Maidan events (see also

*Shmorgunov and Others*, cited above, §§ 520 and 527; *Kadura and Smaliy v. Ukraine*, nos. 42753/14 and 43860/14, § 153, 21 January 2021, not final; *Dubovtsev and Others v. Ukraine*, nos. 21429/14 and 9 others, §§ 81 and 83, 21 January 2021, not final; and *Vorontsov and Others v. Ukraine*, nos. 58925/14 and 4 others, §§ 48 and 51, 21 January 2021, not final) point to a deliberate strategy on the part of the authorities, or parts thereof, to hinder and put an end to a protest, the conduct of which was initially peaceful, with rapid recourse to excessive force which resulted in, if not contributed to, an escalation of violence.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

123. Mr I. Lutsenko and Mr S. Verbytskyi claimed 40,000 and 100,000 euros (EUR) respectively for non-pecuniary damage.

124. Mr I. Lutsenko also claimed UAH 32,992.65 – the equivalent of about EUR 3,000 at the material time – in respect of pecuniary damage, covering the cost of the medical treatment he had undergone in January 2014 because of the violation of Articles 3, 5 § 1 and 11 of the Convention in his case. He provided copies of medical documents and receipts in that regard.

125. The Government contested the applicants’ claims, which it argued were excessive and premature, as the related domestic proceedings were still ongoing.

126. The Court considers that the Government did not demonstrate that the applicants were able in practice to obtain reparation for the consequences of the violation of those provisions found in this case in such a way as to restore as far as possible the situation existing before the breach.

127. The Court notes that Mr I. Lutsenko submitted sufficient documentary evidence demonstrating that the sum which he claimed in respect of pecuniary damage was the amount that he had paid for his medical treatment. Consequently, the Court awards him the amount claimed in full – EUR 3,000 in respect of pecuniary damage, plus any tax that may be chargeable.

128. As to the applicants’ claims in respect of non-pecuniary damage, judging on an equitable basis, the Court awards Mr I. Lutsenko EUR 16,000

and Mr S. Verbytskyi EUR 25,000 in that regard, plus any tax that may be chargeable.

### **B. Costs and expenses**

129. The applicants also claimed EUR 1,000 each for legal costs in the domestic proceedings and those before the Court, but provided no documents in that regard. Mr I. Lutsenko requested that the claimed amount be paid directly into his lawyer's bank account.

130. The Government contested those claims, stating that they had not been duly substantiated.

131. The Court reiterates that, according to its established 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. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 192, ECHR 2016).

132. In the present case, regard being had to the insufficiency of the documents in its possession and the above criteria, the Court finds that the applicants' claims for costs and expenses should be dismissed.

### **C. Default interest**

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* Mr S. Verbytskyi's complaints under Articles 2, 3 and 14 of the Convention and both applicants' complaints under Articles 3, 5 and 11 of the Convention admissible.
3. *Holds* that it is not necessary to examine the admissibility and merits of the applicants' remaining complaints.
4. *Holds* that there has been a violation of Article 3 of the Convention in that Mr I. Lutsenko was ill-treated and Mr Y. Verbytskyi was tortured

and the authorities failed to conduct an effective official investigation into that matter;

5. *Holds* that there has been a violation of Article 2 of the Convention on account of Mr Y. Verbytskyi's murder and the authorities' failure to conduct an effective official investigation into that matter;
6. *Holds* that there has been a violation of Article 5 § 1 of the Convention in that Mr I. Lutsenko and Mr Y. Verbytskyi were arbitrarily abducted and deprived of their liberty on 21 January 2014;
7. *Holds* that there has been a violation of Article 11 of the Convention on account of the arbitrary interference with Mr I. Lutsenko's and Mr Y. Verbytskyi's right to freedom of peaceful assembly;
8. *Holds* that there is no need to examine separately whether there has been also a violation of Article 14 of the Convention taken in conjunction with Articles 2 and 3 on account of the authorities' failure to conduct an effective investigation into Mr Y. Verbytskyi's abduction, ill-treatment and death;
9. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable to the applicants, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 3,000 (three thousand euros) to Mr I. Lutsenko in respect of pecuniary damage, in addition to EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 25,000 (twenty-five thousand euros) to Mr S. Verbytskyi 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicants' claims for just satisfaction.

LUTSENKO AND VERBYTSKYI v. UKRAINE JUDGMENT

Done in English, and notified in writing on 21 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.  

Victor Soloveytko  
Registrar

Síofra O'Leary  
President