



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

FIFTH SECTION

CASE OF KOVALCHUK v. UKRAINE

(Application no. 21958/05)

JUDGMENT

STRASBOURG

4 November 2010

FINAL

04/02/2011

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

In the case of Kovalchuk v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 12 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 21958/05) 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 Vladimir Vasilyevich Kovalchuk (“the applicant”), on 27 May 2005.

2. The applicant, who had been granted legal aid, was represented by Mr O.V. Komnatsky, a lawyer practising in Zhytomyr, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that he was ill-treated by the police in order to extract a confession of a murder from him and that there was no effective investigation into his complaint relating to the ill-treatment he suffered.

4. The applicant having died on 27 October 2007, his mother, Mrs Ganna Sergiyivna Kovalchuk, informed the Court of her wish to pursue the application.

5. On 4 December 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974 and lived in Zhytomyr.

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

7. At about 11 p.m. on 6 September 2002 two police officers, responding to a call from the applicant's girlfriend's sister, brought the applicant to the Zhytomyr Detoxification Centre for treatment of severe alcohol intoxication. A medical employee who examined him recorded that the applicant had several abrasions on his buttocks.

8. At 7.58 a.m. on 7 September 2002 the applicant was released.

9. Later that day he was arrested and detained by the police on a charge of disobeying a police officer. Two records of his arrest were drawn up by two different police officers, both indicating the time of the arrest as 6 p.m. At an unspecified time on the same date a doctor certified that the applicant had no bodily injuries.

10. On the same date an ambulance was called to the police station in connection with the deterioration of the applicant's health and apparent loss of consciousness. The ambulance records note that the call was registered at 4.05 p.m. Upon arriving at the police station, the ambulance team found the applicant conscious but in a very agitated state and trembling. In addition, he had haematomas on his buttocks. He was diagnosed as suffering from alcohol withdrawal, given medication and left in the police station.

11. On 9 September 2002 the Korolyovsky District Court of Zhytomyr convicted the applicant of disobeying a police officer and ordered his detention for ten days. At an unspecified time during his detention the applicant was questioned as a witness concerning the murder of a Mr K., whose body had been found on 7 September 2002 in the vicinity of the applicant's house. On 9 September 2002 he confessed to the murder.

12. On 10 September 2002 the applicant, who had still not been officially charged, participated as a witness in a reconstruction of the crime scene. In the course of the reconstruction he showed in detail how he had killed Mr K.

13. On the same date an ambulance was called again and the applicant was transferred to the detoxification centre, where he was diagnosed as suffering from “psychotic and behavioural disorders, [a] state of delirious withdrawal from alcohol, [and] hallucinations”. In addition, he was found to have sustained haemorrhages on his shoulders, legs and buttocks. On 13 September 2002 the applicant was returned to the police station.

14. By 20 September 2002 the applicant had obtained a lawyer in connection with possible murder charges against him, had retracted his confession – alleging that it had been given under duress – and had denied any involvement in the killing of Mr K.

15. At 6 p.m. on 20 September 2002 the applicant was released following the expiration of the term of his detention.

16. At 8.10 p.m. on the same day the applicant was arrested again on a charge of having committed a breach of the peace (in particular, for urinating in public and swearing) and, pursuant to a court order issued on 23 September 2002, was again remanded in custody for eight days starting from the date of his arrest.

17. On 28 September 2002 he was released.

18. On 1 October 2002 the applicant underwent a medical assessment in the course of which he was found to be suffering from two surface wounds (on the left shoulder and the left buttock) which qualified as minor bodily injuries.

19. On 2 October 2002, following complaints by his girlfriend about his aggressive behaviour, the applicant was arrested for the third time on a charge of disobeying a police officer and remanded in custody for ten days by a court order issued on 3 October 2002. On 12 October 2002 the applicant was released.

20. On 15 October 2002 the applicant was admitted to hospital on account of his complaints of general weakness, vertigo, pain in the legs and chest, unpleasant sensations inside his anus, constipation and coughing. Based on his complaints, he was diagnosed as suffering from a combination of haemorrhoids, ulcers, several other digestive disorders, pyelonephritis, asthenia and the after-effects of bodily contusions. The applicant remained in hospital until 23 October 2002.

21. In December 2002 the criminal proceedings against the applicant were discontinued for want of evidence of his involvement in the murder of Mr K.

22. In November 2003 the applicant underwent a fresh medical assessment in respect of his injuries sustained in September 2002. Following an assessment of the medical documents and the applicant's state of health at the material time, the panel of experts conducting the assessment concluded that it was not improbable that on or around 8 September 2002 he had sustained minor bodily injuries (bruises and abrasions on his buttocks, shoulders and legs). However, noting the lack of detail in the relevant records, the experts were unable to assess the means by which the injuries had been inflicted. They further found no objective evidence of any mechanical intrusion into the applicant's anus, no causal connection between the above injuries and other health disorders (including the applicant's haemorrhoids, digestive and kidney problems, which had been found to have probably developed prior to his detention) and noted that

the diagnosis of 15 October 2002 concerning the after-effects of bodily contusions had been subjective and unsupported by any evidence.

23. In January 2004 the applicant was examined by specialists from the State Institute for Rehabilitation of the Disabled, who refused to grant him invalid status. However, the panel of specialists diagnosed him as suffering from a number of chronic physical conditions (including haemorrhoids, ulcers, hepatitis and myocardiopathy) as well as from the “after-effects of a head injury sustained in 2002 in the form of arachnoiditis” (inflammation of a membrane surrounding and protecting the nerves of the central nervous system).

24. The applicant was subsequently awarded invalidity status on account of the above illnesses.

25. On 27 October 2007 the applicant died of acute heart and pulmonary failure aggravated by bronchopneumonia.

B. Investigation of the applicant's ill-treatment complaint

26. On 24 September and 9 October 2002 Mrs Kovalchuk complained to the Zhytomyr Regional Prosecutor's Office that between 7 and 9 September 2002 her son had been ill-treated by police officers in order to extract a confession of Mr K.'s murder from him. In particular, they had beaten him, hung him from a pipe while handcuffed and inserted a truncheon into his anus.

27. On 15 October 2002 the acting chief of the Zhytomyr Department of Interior rejected her complaints as unsubstantiated. He noted, in particular, that the applicant had given a vague and inconsistent account of the purported ill-treatment and was unable to identify the police officers involved or the location in which he had supposedly been ill-treated.

28. On 25 November 2002 the chief of the Zhytomyr Department of the Interior, having conducted a further investigation following Mrs Kovalchuk's subsequent complaints, discovered that the applicant's and the police officers' respective accounts of events could not be reconciled. In particular, according to the applicant, four unidentified police officers had severely beaten him and stuck objects into his anus, demanding that he confess to the killing. The investigator in Mr K.'s case admitted having questioned the applicant about the killing, but denied that any pressure had been applied to him. The Department transferred the investigation materials to the prosecutor's office for further enquiries.

29. On several occasions (25 December 2002, 31 March 2003 and 2 September 2003) the Korolyovsky District Prosecutor's Office refused to institute criminal proceedings in respect of the applicant's complaints of ill-treatment, having found no evidence of any wrongdoing by the police.

30. These decisions were subsequently annulled by the supervising prosecutorial authorities (on 14 March, 14 May and 3 September 2003),

finding that: the enquiries had been insufficient; various important witnesses had not been questioned; inconsistencies between various testimonies had not been reconciled; medical evidence had not been duly collected and examined; and no plausible explanation for the applicant's injuries had been proposed.

31. On 11 September 2003 the Korolyovsky District Prosecutor's Office again refused to institute criminal proceedings. The applicant was not informed about this decision.

32. On 14 October 2004, following enquiries made by Mrs Kovalchuk, she obtained a full copy of the decision of 11 September 2003 and subsequently appealed against it on the applicant's behalf to the Bogunsky District Court of Zhytomyr.

33. On 9 November 2005 the Bogunsky District Court allowed the applicant's claims and set aside the decision of 11 September 2003. It found, in particular, that the investigation had failed to analyse the conclusions of the medical assessment completed in November 2003 and to question several important witnesses (specifically, the applicant's fellow inmates).

34. On 27 December 2005 the Korolyovsky District Prosecutor's Office took a fresh decision not to institute criminal proceedings.

35. On 16 November 2006 the Bogunsky District Court set aside the above decision, having found that its previous instructions had not been properly followed.

36. On 23 June 2008, having questioned several additional witnesses, the Korolyovsky District Prosecutor's Office decided that the applicant's injuries had been caused by a fall related to an epileptic seizure resulting from the excessive consumption of alcohol.

37. On 12 August 2008 the Bogunsky District Court set aside this decision, having found that several important witnesses (specifically, the applicant's fellow inmates) had still not been questioned.

38. On 18 September and 30 November 2008 the prosecutor's office took fresh decisions not to institute criminal proceedings into the applicant's alleged ill-treatment which were set aside by the supervising prosecutors on 30 September and 8 December 2008 respectively, each decision making reference to there having been insufficient investigation of the matter.

39. On 26 January 2009 a fresh decision not to institute criminal proceedings was taken, relying, in particular, on the impossibility of collecting further evidence because of the death or relocation of numerous witnesses, the inability of the remaining witnesses to recall details and the destruction of relevant documentary records.

40. On 30 March 2009 the Bogunsky District Court set aside this decision following an appeal by Mrs Kovalchuk. The court noted, in particular, that the case file contained two reports concerning the applicant's arrest on 7 September 2002 which had been made by two different police officers and instructed the investigator to clarify the situation.

41. On 1 October 2009 the Bogunsky District Court annulled a further decision of the prosecutor's office not to institute criminal proceedings, dated 28 May 2009, having found that the situation relating to the arrest reports had not been clarified and that no determination of why the applicant had been questioned about Mr K.'s murder during his detention and the circumstances in which he had suffered bodily injuries had taken place.

42. On 26 November 2009 a fresh decision was taken not to institute criminal proceedings. The investigating authorities noted, *inter alia*, that the applicant's accounts of the relevant events had been inconsistent and that on several occasions he had changed his story. In particular, he had initially alleged that he had been beaten by a rubber truncheon but subsequently insisted that the officers had punched and kicked him. In addition, on 17 March 2003 he had asserted that he had no claims against the police at all and did not share his mother's view about the necessity of an investigation.

43. On 12 March 2010 the Bogunsky District Court upheld the above decision.

44. Mrs Kovalchuk appealed, noting, in particular, that in addition to its failure to establish those responsible for her son's injuries, the investigation had failed to reconcile a number of factual inconsistencies. For instance, according to the relevant records, an ambulance was first called to the police station to assist the applicant at 4.05 p.m. on 7 September 2002, whereas according to both the reports concerning the applicant's arrest and the court decision of 9 September 2002, the applicant had not been arrested until 6 p.m. Furthermore, according to statements by Mrs T.I., the applicant's acquaintance, she had already seen the applicant in the police station at noon on 7 September 2002 and had also witnessed an ambulance arriving to help him twice on that day.

45. On 31 March 2010 the Zhytomyr Regional Court of Appeal quashed the Bogunsky District Court's ruling, set aside the decision of 26 November 2009 and remitted the complaint of ill-treatment for further investigation. The court noted that previous instructions of judicial authorities had not been followed and ordered that the investigation determine, in particular: (i) where, in what circumstances, and by whom bodily injuries had been inflicted on the applicant "having regard to the fact that on 7 September 2002 he had been examined by a doctor who had not recorded any injuries"; (ii) why there were two different reports on the applicant's arrest; (iii) why the applicant had been questioned as a witness about Mr K.'s murder while detained in custody for an unrelated administrative offence; and (iv) why he had confessed to a killing of which he had been innocent. The Court of Appeal also ordered that the statements of Mrs T.I. concerning the circumstances in which she had seen the applicant on 7 September 2002 be re-examined.

46. According to the case file, the investigation of the applicant's complaint of ill-treatment is currently pending.

II. RELEVANT DOMESTIC LAW

47. The relevant domestic law can be found in the judgment in the case of *Kozinets v. Ukraine* (no. 75520/01, §§ 39-42, 6 December 2007).

THE LAW

I. PRELIMINARY OBSERVATION

48. The applicant died on 27 October 2007, while the case was pending before the Court (see paragraph 4 above). It has not been disputed that his mother is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see *Toteva v. Bulgaria*, no. 42027/98, § 45, 19 May 2004, and *Yakovenko v. Ukraine*, no. 15825/06, § 65, 25 October 2007).

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

49. The applicant complained that he had been ill-treated by police officers whilst in custody in September 2002, contrary to Article 3 of the Convention. He further complained under Article 13 of the Convention that there was no effective investigation into his complaint of ill-treatment and that he therefore lacked an effective remedy in respect of the aforementioned violation.

50. The relevant Articles of the Convention read as follows:

Article 3

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

Article 13

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

51. The Court is of the opinion that it is appropriate to examine the applicant's complaint of inadequate investigation into his allegations of ill-treatment under the procedural limb of Article 3 of the Convention (see *Kozinets v. Ukraine*, cited above, § 44).

A. Admissibility

52. The Government submitted that the applicant's complaint of ill-treatment was premature, as the relevant domestic investigation was still under way.

53. The applicant insisted that the investigation was ineffective and that he was, therefore, excused from the requirement to await its results.

54. The Court considers that the Government's objection raises an issue which falls to be examined under Article 3 of the Convention together with the complaint of the ineffectiveness of the investigation, and accordingly joins it to the merits of the applicant's complaint.

B. Merits

1. Concerning the alleged ill-treatment of the applicant

55. According to the applicant, the case file contained sufficient evidence that his injuries had been inflicted by the police during his detention. In particular, the Government had failed to provide a plausible alternative explanation as to why he had confessed to a killing of which he had been innocent, and why he had become permanently disabled and eventually died within several years of his release.

56. According to the Government, it has not been possible to assess the truthfulness of the applicant's allegations concerning his ill-treatment by police officers in September 2002, as the domestic investigation into these allegations is still pending.

57. Applying the general principles determined in its case-law (see, for example, *Vergelskyy v. Ukraine*, no. 19312/06, § 106, 12 March 2009) to the facts of the present case, the Court notes that the case file contains conflicting and incomplete information, making it impossible to determine the exact nature, gravity and timing of most of the bodily injuries complained about. In particular, it is not possible to determine with sufficient precision whether the applicant had suffered any bodily injuries – in particular, abrasions on his buttocks – before his arrest (see paragraphs 7, 9 and 45 above); whether he had had any objects inserted into his anus during his detention; or whether he had sustained the two wounds recorded in the medical assessment of 1 October 2002 during his detention or after his release. Nor it is possible to establish whether the applicant had in fact

sustained a head injury during his detention and, if so, whether his permanent disability, which had developed several years after his release, could be connected to it.

58. The Court notes in this regard that it was Mrs Kovalchuk who had insisted that the applicant had been physically ill-treated. In contrast, the applicant himself took no independent action, had produced vague statements in which he could not point to any particular place in which the ill-treatment took place or identify any particular police officer who had subjected him to such treatment, and had modified his statements over time (see paragraphs 27-28 and 42 above).

59. The only injuries whose infliction while in detention appears sufficiently established by evidence (see paragraphs 13 and 22 above) are the leg and shoulder haematomas. Even assuming that these injuries resulted not from beatings, as suggested by Mrs Kovalchuk, but from the applicant's sudden fall and epileptic seizures in connection with alcohol withdrawal symptoms (see paragraph 36 above), the Court considers that, having failed to provide a detailed account of the circumstances in which these injuries had appeared and evidence that the State agents under whose control the applicant had been at the time could not have reasonably foreseen and prevented them, the State remains responsible for the injuries at issue (see *Lotarev v. Ukraine*, no. 29447/04, §§ 83-84, 8 April 2010).

60. In addition, the Court refers to the findings of the domestic courts (see paragraphs 41 and 45 above) and finds it remarkable that on 9 September 2002, the third day of his detention, the applicant confessed to a murder of which he was innocent (see paragraphs 11 and 21 above). Furthermore, on 10 September 2002 the applicant actively participated in a reconstruction of the crime scene and gave a detailed explanation of his purported participation in the murder. Noting that later on the same day the applicant was hospitalized in a delirious state, a strong suspicion arises that even if they did not instigate the applicant's psychotic fit, the police at least took advantage of his vulnerable emotional state and pressured the applicant into giving a false confession. This suspicion is confirmed by the apparent lack of procedural guarantees surrounding the applicant's interrogation, as he was questioned as a witness rather than as a suspect and in the absence of a lawyer. This, in conjunction with other irregularities surrounding the applicant's detention in custody, in particular, the two conflicting records of his arrest on 7 September 2002 and ambiguous evidence concerning the actual time of his detention in custody (see paragraphs 9, 10, 44 and 45 above), gives rise to a strong suspicion that regardless of whether the police resorted to physical violence, they used the applicant's arrest as a pretext to break his resistance in order to obtain self-incriminating statements.

61. The Court finds that such a practice is contrary to Article 3 of the Convention (see, *mutatis mutandis*, *Jalloh v. Germany* [GC], no. 54810/00, § 82, ECHR 2006-IX, and *Gäfgen v. Germany* [GC], no. 22978/05, § 131,

ECHR 2010-...) and, especially given the applicant's vulnerable state of health at the time of his detention in custody, qualifies as inhuman and degrading treatment.

62. In the light of the above, the Court concludes that there has been a breach of Article 3 of the Convention in respect of the applicant's ill-treatment.

2. Concerning the effectiveness of the investigation of the applicant's ill-treatment complaint

63. The applicant submitted that the investigation of his ill-treatment complaint was ineffective.

64. The Government objected to this submission. According to them, the authorities have been doing everything in their power to investigate the applicant's complaint of ill-treatment.

65. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by State authorities in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3290, § 102).

66. As regards the circumstances of the present case, the Court notes at the outset that although the applicant first lodged his complaint of ill-treatment (through his mother) on 24 September 2002, within two weeks of the alleged ill-treatment, the investigation, which has lasted eight years, has not established the circumstances surrounding his complaint and has not found those (if any) responsible for his injuries.

67. The Court further notes that the investigation was closed on a number of occasions, as the prosecutor was not able to detect evidence of ill-treatment. All of the decisions to close the investigation were subsequently set aside by administrative or court order, as the prosecutor's office had failed to employ all the means available to them to establish the circumstances surrounding the applicant's complaint. In their decisions the supervising prosecutorial authorities and the courts expressly pointed to a number of measures which could have been taken, also noting that their previous instructions had not been fully complied with (see paragraphs 30, 33, 35, 37, 40, 41 and 44 above). In spite of this, the investigation was subsequently closed on a number of occasions without further substantive measures having been taken.

68. Per the decision of 26 January 2009 to close the investigation, various sources of evidence were no longer available on account of the lapse of time. In particular, some witnesses had died, moved away or could no longer recall details of the events, and relevant documents had been destroyed. Most importantly, the applicant himself had died. In these

circumstances, the Court does not have reason to believe that yet another reopening of the investigation would redress the earlier shortcomings and render the investigation effective.

69. The Court finds that the factual circumstances surrounding the investigation of the applicant's complaint of ill-treatment in the present case are similar to the situations in which it has found violations in a number of recent cases (see, *inter alia*, *Mikheyev v. Russia*, no. 77617/01, §§ 112-113 and 120-121, 26 January 2006; *Kobets v. Ukraine*, no. 16437/04, §§ 53-56, 14 February 2008; and *Vergelskyy v. Ukraine*, cited above, § 102).

70. In the light of the circumstances of the present case and its settled case-law, the Court concludes that there has been a violation of Article 3 of the Convention on account of the ineffective investigation of the applicant's complaint of ill-treatment whilst in custody. It follows that the Government's objection (see paragraph 52 above) must be dismissed.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. The applicant also complained under Article 5 §§ 1 and 3 of the unlawfulness of his detention in 2002, and under Article 6 § 3 (c) about not having been assigned a lawyer when questioned in connection with the killing of Mr K.

72. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

73. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. Mrs Kovalchuk claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

76. The Government contended that the present application concerned a non-transferable right. Consequently, the applicant having died, his mother could not claim any compensation.

77. In the light of the principles developed in its jurisprudence, the Court finds that the applicant's mother, who took up the domestic and Convention proceedings in the applicant's stead, can claim compensation on the deceased applicant's behalf (see, *inter alia*, *Lukanov v. Bulgaria*, 20 March 1997, § 53, *Reports* 1997-II; *Toteva*, cited above, § 71; and *Yakovenko*, cited above, § 134).

78. Taking the nature of the violations found into account and ruling on an equitable basis, the Court awards Mrs Kovalchuk EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

79. Mrs Kovalchuk also claimed 6,595.98 hryvnyas (UAH) for costs and expenses. She presented supporting invoices for the following amounts: copying services – UAH 1,164.51; translation services – UAH 270; postage – UAH 1,453.31; medical expenses – UAH 645.28; bank charges – UAH 10.00; court fees – UAH 19.00; and expenses related to the applicant's funeral – UAH 3,011.88.

80. The Government considered that this claim was unsubstantiated.

81. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, noting the documents in its possession and the above criteria, the Court finds no causal link between the present proceedings and the unspecified medical expenses, court fees and expenses related to the applicant's funeral. It therefore rejects this part of the claim. However, the Court awards the applicant EUR 290 to cover the costs claimed under other heads.

C. Default interest

82. The Court considers it appropriate that the default interest 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. *Holds* that the applicant's mother, Mrs Ganna Sergiyivna Kovalchuk, has standing to continue the present proceedings in the applicant's stead;

2. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint under Article 3 of the Convention concerning his alleged ill-treatment by the police officers and dismisses it after having examined the merits of that complaint;
3. *Declares* the complaints concerning ill-treatment in police custody and ineffective investigation of the applicant's respective complaint admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman and degrading treatment suffered by the applicant at the hands of the police;
5. *Holds* that there has been a violation of Article 3 of the Convention on account of the ineffective investigation of the applicant's complaint of ill-treatment by police officers;
6. *Holds*
 - (a) that the respondent State is to pay the applicant's mother, Mrs Ganna Sergiyivna Kovalchuk, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 290 (two hundred and ninety euros) in respect of costs and expenses plus any tax that may be chargeable to her on the above amounts, to be converted into the national currency of Ukraine at the rate applicable on the date of settlement;
 - (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;
7. *Dismisses* the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 4 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President