



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

FIFTH SECTION

CASE OF SYLENOK AND TEKHNOSERVIS-PLUS v. UKRAINE

(Application no. 20988/02)

JUDGMENT

STRASBOURG

9 December 2010

FINAL

09/03/2011

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

In the case of Sylenok and Tekhnoservis-Plus 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 16 November 2010,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 20988/02) 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 Oleksandr Mykolayovych Sylenok and a Ukrainian company Tekhnoservis-Plus (“the applicant company”), on 5 November 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicant alleged, in particular, that he had been ill-treated by the police and that the investigation into the matter had been ineffective. The applicant company alleged, in particular, that a judgment in its favour had remained unenforced for a significant period of time and that it had no effective remedy in this regard.

4. On 7 July 2009 the Court declared the application partly inadmissible and decided to communicate the above complaints to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant (“the applicant”) was born in 1963 and lives in Chernigiv. The second applicant (“the applicant company”) is a limited liability company owned by the applicant and registered and based in Chernigiv.

A. Facts concerning the applicant

6. On 8 January 2001 the applicant was arrested in the street by plain-clothes police officers – Mr S., Mr K., Mr A. and Mr G. The applicant resisted his arrest, being unaware at the time that they were police officers. According to the applicant, during the arrest and later on at the police station he was beaten by the police officers.

7. On 11 January 2001 the applicant was hospitalised with a broken rib, pneumothorax, head concussion and numerous bruises on his body. A forensic medical examination conducted between 11 January and 1 February 2001 revealed numerous bruises on different parts of the applicant's body and brain concussion. At the same time it did not confirm that the applicant had a broken rib.

8. On 18 January 2001 the applicant complained to the Chernigiv City Prosecutor's Office (the CCPO) about the beatings.

9. On 26 January 2001 the CCPO refused to institute criminal proceedings in respect of the applicant's allegations. It noted that according to the explanations of the police officers the applicant had violently resisted his arrest and therefore they had applied force and had used handcuffs. Furthermore, the police investigator Mr Z. had explained that he and other police officers had not committed any unlawful actions involving the applicant at the police station. Therefore, it concluded that the use of force against the applicant had been lawful.

10. On 12 March 2001 the Chernigiv Regional Prosecutor's Office (the CRPO) quashed the decision of 26 January 2001 owing to incompleteness of the investigation and instructed the CCPO to conduct additional investigative actions, including questioning of the applicant and detailed questioning of each police officer involved in the incident about the circumstances of the applicant's arrest and the individual actions of each police officer involved.

11. An additional forensic examination of 16 March 2001 concluded that the applicant had numerous bruises resulting from the application of force 45 to 50 times, a broken rib, chest trauma, pneumothorax and brain concussion.

12. On 5 April 2001 the CCPO refused to institute criminal proceedings on the ground that, as it transpired from the testimony of the police officers involved in the incident, they had applied force lawfully during the arrest and had not used any unlawful means against the applicant in detention.

13. On 17 April 2001 the Chernigiv Desnyansky District Court (the Desnyansky Court) quashed the decision of 5 April 2001 on the ground that the applicant and eyewitnesses to the incident had not been questioned and that the decision of the CCPO had not established the circumstances in which the applicant had received so many injuries. The court ordered criminal proceedings to be instituted in the case.

14. On 17 May 2001 the CCPO started the criminal investigation. Between 28 May and 5 July 2001 seven witnesses were questioned.

15. Between 20 May and 6 December 2001 the applicant was summoned five times by the investigator but failed to appear.

16. On 27 June 2001 the applicant was found guilty of inflicting medium bodily harm on one of the arresting officers – Mr G. This decision was upheld on appeal but quashed in cassation proceedings on 7 September 2004.

17. On 24 July 2001 the criminal proceedings into the infliction of bodily harm on the applicant were suspended for failure to identify the offenders.

18. On 11 December 2001 the CRPO quashed the decision on suspension of the criminal proceedings and they were resumed.

19. On 20 December 2001 the applicant was summoned by the investigator but failed to appear.

20. On 26 December 2001 three witnesses were questioned.

21. On 23 January 2002 the applicant was recognised as a victim in the case.

22. On 28 January 2002 the applicant was questioned as a victim.

23. Between 29 January and 18 March 2002 nine witnesses were questioned.

24. On 4 February 2002 the applicant failed to appear for questioning. On this date and further on 8 and 14 February 2002 the investigator ordered that the applicant be brought before him (*примусовий привід*).

25. On 14, 15 and 19 March 2002 the cross-examination between the applicant and Mr T., and police officers G., V., Gr., K. and L., took place.

26. On 20 May 2002 the criminal proceedings were suspended for failure to identify the offenders.

27. On 12 May 2003 the CRPO quashed the decision of 20 May 2002 on the suspension of criminal proceedings. The proceedings were resumed.

28. On 16 May 2003 the investigator requested the applicant to provide him with the medical documents concerning the incident in order to conduct an additional forensic medical examination. According to the Government, the applicant did not provide the documents requested.

29. On 25 May 2003 the criminal proceedings were suspended for failure to identify the offenders.

30. On 1 July 2005 the CRPO quashed the decision of 25 May 2003 on the suspension of criminal proceedings. The proceedings were resumed.

31. On 12 July 2005 the investigator ordered that the applicant be brought before him. At this time the applicant was detained in the Chernigiv SIZO in connection with other proceedings.

32. On 14 July 2005 the criminal proceedings were suspended for failure to identify the offenders.

33. On 5 August 2005 the CRPO quashed the decision of 14 July 2005 on the suspension of criminal proceedings. The proceedings were resumed.

34. On 16 and 24 August 2005 the applicant was summoned by the investigator but failed to appear.

35. On 14 September 2005 one witness was questioned.

36. On 15 September 2005 the criminal proceedings were suspended for failure to identify the offenders.

37. On 7 December 2006 the CRPO quashed the decision of 15 September 2005 on the suspension of criminal proceedings. The proceedings were resumed.

38. Between 25 December 2006 and 24 May 2007 ten witnesses were questioned.

39. On 12 June 2007 the CRPO terminated the criminal proceedings for lack of *corpus delicti* in the actions of the police officers. The CRPO noted that most of the witnesses, owing to the significant lapse of time, could not remember details of the incident and that the original testimonies of the police officers were correct and these officers had acted in accordance with the law.

40. On 11 December 2007 the General Prosecutor's Office (the GPO) quashed the decision of 12 June 2007 and remitted the case for an additional investigation.

41. On 11 February and 4 and 14 March 2008 the applicant was summoned by the investigator but failed to appear.

42. On 14 March 2008 the criminal proceedings were suspended for failure to identify the offenders.

43. On 19 January, 12 February and 26 August 2009 the applicant was summoned by the investigator but failed to appear.

44. Since September 2009, when the applicant was placed on the list of wanted persons in the context of another criminal case in which he was a defendant, the applicant has failed to appear on summons of the investigator.

45. On 5 March 2010 the CRPO received the medical documents from the applicant and on 9 March 2010 the forensic medical examination was ordered.

B. Facts concerning the applicant company

46. On 9 June 2004 the Chernigiv Commercial Court awarded the applicant company (from the State budget) 14,240.69 Ukrainian hryvnias (UAH) in damages, UAH 142.41 in fees and UAH 118.00 in costs and expenses¹. On 1 September 2004 the judgment became final and on 17 September 2004 the court issued a writ of enforcement.

¹ Total of UAH 14,501.10 which was equivalent to EUR 2,246.43 on the date of judgment

47. On 17 December 2004 the applicant company lodged the writ with the Desnyanskiy District State Bailiffs' Service.

48. On 20 December 2004 the bailiffs' service refused to enforce the judgment of 9 June 2004 owing to non-compliance of the enforcement writ with the formalities.

49. On 16 February 2005 the applicant company lodged the same enforcement writ with the Chernigiv Regional State Bailiffs' Service, which rejected it the next day for lack of jurisdiction.

50. On 1 September 2006 the applicant company lodged the writ with the Central State Bailiffs' Service, which rejected it the same day, as the enforcement writ did not indicate the debtor or its location.

51. On 7 November 2006 the applicant company requested the Chernigiv Commercial Court to specify in the enforcement writ the accounts of the State Treasury from which the awarded amounts should be paid.

52. On 23 November 2006 the court rejected the applicant company's request on the ground that the representative of the Treasury had not appeared and the other parties did not know the accounts, nor were they indicated in the case-file materials.

53. On 1 June 2007 the applicant company repeatedly requested the court to bring the enforcement writ into compliance with the formalities. This request was rejected on 26 June 2007.

54. On 5 February 2008 the applicant company lodged the same request with the same court once again.

55. According to the Government, the judge of the Chernigiv Commercial Court invited the representative of the applicant's company to the court to provide explanations, but the representative failed to appear.

II. RELEVANT DOMESTIC LAW

56. Relevant domestic law concerning the applicant's case can be found in the judgment in the case of *Kozinets v. Ukraine* (no. 75520/01, §§ 39-42, 6 December 2007). Relevant domestic law concerning the applicant company's complaints is summarised in *Voytenko v. Ukraine* (no. 18966/02, §§ 20-22, 29 June 2004).

THE LAW

I. SCOPE OF THE CASE

57. In reply to the Government's observations, the applicants made numerous submissions related to the complaints declared inadmissible in the partial decision of 7 July 2009 and to the new events that had taken place after that date. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see, *mutatis mutandis*, *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED ILL-TREATMENT OF THE APPLICANT

58. The applicant complained that he had been beaten by the police and that despite medical evidence of his bodily injuries the domestic authorities had failed to conduct an independent and effective investigation into his ill-treatment. He referred to Articles 3 and 13 of the Convention. The Court, which is master of the characterisation to be given in law to the facts of the case, decided to examine the problems raised by the applicant under Article 3 of the Convention, which is the relevant provision and which provides as follows:

Article 3

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

A. Admissibility

59. The Government maintained that these complaints by the applicant were premature given that the investigation into his alleged ill-treatment was still under way.

60. In the alternative, they submitted that the applicant had contributed to the length of the investigation and had undermined its effectiveness by failing to appear before the investigator upon summons and to undergo the additional medical examination. They considered that the applicant could not complain about delays that he himself had caused and that therefore his complaints must be rejected for abuse of the right of petition.

61. The applicant disagreed.

62. The Court notes that the Government's objections are closely linked to the merits of the applicant's complaint under Article 3 of the Convention. Therefore, it joins them to the merits.

63. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Concerning the alleged ill-treatment

64. The applicant maintained that he had been ill-treated by the police during his arrest and his detention at the police station on 8 January 2001.

65. The Government noted that the criminal proceedings into the applicant's allegations of ill-treatment were pending and therefore they could not confirm or deny the unlawfulness of the police actions against him.

66. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

67. The Court reiterates that, in respect of a person deprived of liberty, recourse to physical force which has not been made strictly necessary by the individual's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336). Furthermore, the use of force in the context of an arrest, even if it entails injury, may fall outside Article 3, particularly in circumstances resulting from the applicant's own conduct (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 64, 20 June 2002).

68. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see

Ribitsch v. Austria, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

69. Turning to the circumstances of the present case, the Court notes that the parties do not disagree on the fact that the police applied force against the applicant during his arrest on 8 January 2001. It was not suggested at any point that prior to his arrest the applicant had been involved in any conflict or had demonstrated any violent behaviour that could have resulted in injuries. Furthermore, despite the use of force against the applicant by the police, no medical examination was conducted immediately upon his arrival at the police station. It is also observed that no plausible alternative version as to the origin of the applicant's injuries was advanced by the domestic authorities at any stage. Therefore, it could be assumed that the injuries sustained by the applicant were caused by the police. The applicant claimed that he had been beaten both during the arrest and later at the police station. The Government did not comment on these allegations, although the domestic authorities denied any ill-treatment of the applicant after his arrest. Even assuming that all of the applicant's injuries were caused during his arrest, the Court notes that the domestic authorities failed to establish the exact circumstances in which the applicant had received what was described in medical records as “numerous bruises resulting from application of force 45 to 50 times, a broken rib, chest trauma, pneumothorax and brain concussion” (see paragraph 11) while in the hands of the police.

70. In those circumstances, and given the burden on the State to provide a plausible explanation for injuries sustained by a person under control of the police, the Court concludes that the Government have not satisfactorily established that the use of force against the applicant was lawful and absolutely necessary and that the applicant's injuries were wholly caused otherwise than by ill-treatment while in police custody. Accordingly, there has been a violation of Article 3 of the Convention in that the applicant was subjected to inhuman and degrading treatment.

2. Concerning the alleged inadequacy of the investigation

71. The applicant maintained that the State authorities had faked the investigation and falsified the materials. In his opinion, their only aim was to ensure that the police officers guilty of his ill-treatment would not be found criminally responsible.

72. The Government argued that the State authorities had taken all steps for a comprehensive investigation into the case. They repeatedly underlined that the applicant's behaviour – failure to appear before the investigator on seventeen occasions and failure to submit medical documents – had caused significant delays in the investigation and had affected its effectiveness. In their opinion, the investigation in the present case could not be considered contrary to Article 3 of the Convention.

73. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

74. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, judgment cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

75. The Court notes that, in the instant case, despite the infliction of bodily harm on the applicant by the police, no investigation was opened by the State authorities of their own motion. It was only after the applicant's complaint against the police officers that the domestic authorities conducted a preliminary inquiry into the matter. Furthermore, the initial decision on refusal to institute criminal proceedings against the police officers was based on their submissions, while the applicant had not even been questioned. Furthermore, as mentioned above, the Court finds no indication of any serious attempt by the investigative authorities to reply to the question posed by the first-instance court on 17 April 2001 (see paragraph 13 above) as to the origin of so many injuries on the applicant following the application of force by the police.

76. As to the Government's objections, the Court considers that they should be rejected since the applicant took sufficient steps at the domestic level to bring his complaints to the attention of the national authorities. Furthermore, even assuming that the applicant's behaviour contributed to some delay in the criminal proceedings, it cannot be said from the facts of the case that the applicant was never available for questioning. Moreover, at

least one of the investigator's summonses was served during his detention (see paragraph 31 above). It appears that the applicant was questioned on a number of occasions, participated in cross-examination with alleged offenders and underwent medical examinations.

77. In the light of the serious deficiencies referred to above, the Court considers that the domestic authorities did not fulfil their obligation to investigate the applicant's complaints of ill-treatment. Accordingly, there has also been a violation of Article 3 of the Convention under this head.

III. NON-ENFORCEMENT OF JUDGMENT IN FAVOUR OF APPLICANT COMPANY

78. The applicant company complained about non-enforcement of the judgment of 9 June 2004 given in its favour and a lack of effective remedies in this connection. It invoked Article 13 (cited above), together with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide in so far as relevant as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

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.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...”

A. Admissibility

79. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The alleged violation of Article 6 § 1 of the Convention

80. The applicant company considered that the judgment remained unenforced owing to failure by the State to allocate funds for its execution. It noted that the local department of the State Treasury did not even have an account for such types of payment. It also noted that the enforcement writ issued to it was no longer valid and it could not obtain a new one from the domestic judicial authorities.

81. The Government contended that there had been no violation of Article 6 § 1. They submitted that the applicant company's entitlement to the awarded amount was not in dispute and that the delay in enforcement had been caused by the applicant company which had kept the enforcement writ in its possession for five years and one month out of the five years and six months of non-enforcement.

82. The Court observes that the judgment given in the applicant company's favour remains unenforced.

83. As regards the Government's argument that the enforcement writ had been retained by the applicant company for most of the time, the Court notes that in the instant case the applicant company has obtained a final and enforceable judgment against the State. The Court reiterates that it is inappropriate to require an individual who has obtained a judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007, and the case-law referred to therein).

84. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to those in the present case (see *Romashov v. Ukraine*, cited above, § 46, and *Voytenko*, cited above, §§ 43 and 55).

85. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

86. Having regard to its case-law on the subject, the Court considers that in the instant case there has accordingly been a breach of Article 6 § 1.

2. Alleged violation of Article 1 of Protocol No. 1 to the Convention

87. The Court reiterates its case-law that impossibility for an applicant to obtain enforcement of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set

out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003; and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004). The Court finds no ground to depart from its case-law in the present case.

88. There has, accordingly, been a violation of Article 1 of Protocol No. 1 to the Convention.

3. Alleged violation of Article 13 of the Convention

89. The Court concludes that the applicant company did not have an effective domestic remedy, as required by Article 13 of the Convention, whereby it could have obtained a ruling upholding its right to have its claims finally settled within a reasonable time, as guaranteed by Article 6 § 1 of the Convention (see, for example, *Voytenko*, cited above, §§ 46-48, 29 June 2004, and *Vasylyev*, cited above, § 41). Accordingly, there has been a breach of this provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

1. The first applicant

91. The first applicant claimed 10,000 euros (EUR) in respect of pecuniary damage and EUR 94,000 in respect of non-pecuniary damage.

92. The Government maintained that these claims were excessive and unsubstantiated.

93. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the first applicant EUR 10,000 in respect of non-pecuniary damage.

2. The applicant company

94. The applicant company claimed EUR 20,000 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

95. The Government maintained that these claims were excessive and unsubstantiated.

96. The Court notes that the payment of the outstanding judgment debt to the applicant company would be the most appropriate way of compensation for pecuniary damage. The Court further awards the applicant company EUR 4,800 in respect of non-pecuniary damage.

B. Costs and expenses

97. The first applicant also claimed EUR 3,000 for the costs and expenses incurred before the domestic courts and the Court. The applicant company claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and the Court.

98. The Government maintained that the claims were not supported by documents.

99. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

100. 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. *Joins to the merits* the Government's objections, and rejects them after an examination on the merits;
2. *Declares* the remainder of the application admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the treatment inflicted on the first applicant;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the first applicant's complaints of ill-treatment by the police;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's company;

6. *Holds* that there has been a violation of Article 13 of the Convention in respect of the applicant's company;
7. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the applicant's company;
8. *Holds*
 - (a) that the respondent State is to pay the first applicant, 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), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;
 - (b) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the outstanding judgment debt due to it in respect of pecuniary damage and EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant company in respect of the latter amount, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President