



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

FIFTH SECTION

CASE OF DUSHKA v. UKRAINE

(Application no. 29175/04)

JUDGMENT

STRASBOURG

3 February 2011

FINAL

03/05/2011

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

In the case of Dushka v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska,
Julia Laffranque, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 29175/04) 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 Yuriy Nikolayevich Dushka (“the applicant”), on 26 July 2004.

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

3. The applicant alleged, in particular, that he had been tortured in police custody to obtain confession of a crime and that the investigation into his complaint had been ineffective.

4. The applicant having died on 4 March 2005, his mother, Mrs Tatyana Ivanovna Dushka, informed the Court of her wish to pursue the application.

5. On 9 December 2009 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 1985 and lived in Bilgorod-Dnistrovsky.

A. Proceedings against the applicant

7. In the early morning on 18 November 2002, responding to P.'s complaint about having been robbed, the police arrived in a bar and arrested the applicant, a minor at the material time, and V., his acquaintance, and took them to the police station for questioning. The applicant explained that he knew nothing about the robbery and left the police station. It is unclear whether he was officially released.

8. At about noon on 18 November 2002 the applicant was arrested when walking down a street. According to the applicant, he was seized by force by two policemen dressed in civilian clothes, without any explanations. According to the police officers, they invited him for questioning concerning P.'s robbery and he swore at them and attempted to escape, making it necessary to arrest him by force.

9. On the same date the applicant was charged with refusal to comply with the lawful demands of the police officers, presented before the Bilgorod-Dnistrovsky Court without his parents being informed or a lawyer being appointed, and sentenced to seven days' administrative detention.

10. On 19 November 2002 the police formally initiated criminal proceedings concerning P.'s robbery.

11. On 21 November 2002 the Bilgorod-Dnistrovsky Court reviewed the applicant's sentence after an objection from the Bilgorod-Dnistrovsky Prosecutor, reduced it to three days' detention and ordered the applicant's release. Subsequently (on 4 January 2003) the President of the Odessa Regional Court of Appeal quashed the decisions of 18 and 21 November 2002 by way of supervisory review, having found that the applicant should not have been subjected to administrative detention as he was a minor. He did find, however, that the applicant's malicious insubordination rendered him liable to a fine of 136 hryvnias (UAH).

12. Before his release on 21 November 2002, the applicant was questioned concerning P.'s robbery, in the presence of his mother and a lawyer appointed by the police, and confessed to having participated in the robbery.

13. Following his release, the applicant hired a new lawyer and retracted his confessions. He alleged that he had neither participated in, nor witnessed P.'s alleged robbery and that his previous confessions had been made under duress. He further explained that on 21 November 2002 he had confirmed his confession in presence of his mother and the advocate because the police had threatened that otherwise he would not be released from detention.

14. In December 2003 the applicant was committed for trial on charges of robbery. On 3 May 2005 the Bilgorod-Dnistrovsky Court remitted his case for additional investigation. The parties did not provide any further information concerning the outcome of the criminal proceedings.

B. The applicant's alleged ill-treatment and the investigation into his ill-treatment complaint

15. According to the applicant, while he was serving his administrative detention sentence he was severely ill-treated by police officers, who tried to make him confess to participating in P.'s robbery. In particular, he was handcuffed to a radiator and beaten on the head and body with a plastic water bottle. On several occasions the applicant lost consciousness. As a result of the ill-treatment, on 18 and 19 November 2002 the applicant, who had not been given access to either a lawyer or his parents, wrote self-incriminating statements, dictated by the police. By way of evidence that he was so questioned, the applicant presented copies of his confession statements dated 18 and 19 November 2002. These documents contained his and the law-enforcement officers' signatures only (no signatures of an advocate or a minor's legal representative) and a seal of the Bilgorod-Dnistrovsky Prosecutor's Office.

16. According to the Government, no investigative actions in the applicant's respect took place during his administrative detention.

17. According to the applicant, on 22 November 2002 he complained to the Bilgorod-Dnistrovsky and Odessa Regional Prosecutors' Offices that he had been ill-treated by the police, but he was denied referral to a forensic expert to assess his injuries.

18. On 23 November 2002 the Internal Security Service of the Ministry of the Interior agreed to provide the applicant with the necessary referral. On the same day the applicant underwent a forensic examination and was found to have minor bodily injuries. In particular, the expert found that the applicant suffered from abrasions and bruises on different parts of his body, a haematoma, situational neurosis, cephalalgia and a possible kidney contusion, which could have been sustained on 18 November 2002.

19. Between 26 November and 20 December 2002 the applicant received in-patient treatment for his injuries and stress in the Bilgorod-Dnistrovsky District Hospital. Subsequently (in 2003-2004) the applicant also underwent medical treatment for depression and chronic pyelonephritis, conditions which, according to him, were caused by head and kidney injuries sustained at the hands of the police and related stress.

20. On various dates between 22 November 2002 and 1 April 2003 the applicant's mother complained about his ill-treatment to various authorities, including the ombudsman and the President of Ukraine, in various informal ways. However, it appears that no formal action followed.

21. On 1 April 2003 the applicant lodged an official request with the Bilgorod-Dnistrovsky Inter-District Prosecutor's Office to institute criminal proceedings in respect of his ill-treatment.

22. On 11 April 2003 the prosecutor's office refused to initiate the criminal proceedings, having found that there was no evidence of

ill-treatment. It noted, in particular, that on the morning of 18 November 2002 the applicant had left the police station without authorisation and that at noon on the same day he had refused to follow the police officers who invited him to report for questioning, had sworn at them, pushed them and attempted to escape. His arrest and the bringing of insubordination charges had therefore been justified. Moreover, during his detention the applicant had never requested medical assistance and upon his release he had signed a document stating that he had no claims against the police. No investigative measures in the applicant's respect had been taken during the period of his detention.

23. On 15 April 2003 the Deputy Head of the Bilgorod-Dnistrovsky Department of the Ministry of the Interior conducted an internal investigation and concluded that there was no ill-treatment case to answer. In particular, the only force applied to the applicant had been during his arrest and in response to his attempt to escape. He further noted that during the applicant's detention no investigative action had been taken in his respect. On 18 September 2003 and 1 April 2004 two other internal investigations were carried out and similar conclusions were reached.

24. On 10 January 2004 the Bilgorod-Dnistrovsky Prosecutor's Office took a fresh decision refusing to initiate criminal proceedings concerning the applicant's ill-treatment complaint. It noted that the applicant had fallen to the ground on several occasions while trying to escape. It made no conclusions, however, as to whether or not these falls were the cause of the applicant's injuries. On the same date that decision was quashed by the Odessa Regional Prosecutor's Office and the case was remitted for additional investigation.

25. In the meantime, having been notified of the decision of 11 April 2003 in October 2003, the applicant appealed against it before the Bilgorod-Dnistrovsky Court. He noted, in particular, that the prosecutor's office had not questioned him, his relatives or any witnesses to his arrest concerning the events in question. It also failed to respond to his allegation that there was no legal basis for the demand to appear for questioning and his ensuing arrest at noon on 18 November 2002. If the police officers had wanted to question him about P.'s robbery, according to the applicable law they should have issued a summons and informed his parents. This procedure had not been complied with; the police had unlawfully demanded that he follow them, so he should not have been convicted of insubordination. Further, the prosecutor's office had not reacted to the fact that the applicant's administrative detention had been unlawful as he had been a minor at the material time. In addition, the authorities had wrongly stated that no investigative action involving the applicant had been taken during his detention. In particular, on 18 and 19 November 2002 he had made self-incriminating statements.

26. On 15 January 2004 the Bilgorod-Dnistrovsky City Court annulled the decision of 11 April 2003. It stated, in particular, that the investigation had been perfunctory and that the prosecution had failed to establish the cause of the applicant's injuries. It further noted that the allegation that the applicant had not been questioned concerning P.'s robbery during his detention contradicted the factual evidence contained in the case-file materials.

27. On 9 February and 2 March 2004 the Bilgorod-Dnistrovsky Prosecutor's Office again refused to institute criminal proceedings into the applicant's ill-treatment allegations, relying on essentially the same arguments as above.

28. On 20 February and 6 March 2004 respectively those decisions were set aside by the Odessa Regional Prosecutor's Office and the General Prosecutor's Office, and the case was remitted for further investigation. The General Prosecutor's Office noted, in particular, that the investigation had not determined what legal basis there had been for the police officers' initial demand of 18 November 2002 that the applicant report for questioning, or whether the applicant's reaction vis-à-vis the police necessitated his arrest and the use of force against him. Further, the authorities had not questioned the applicant or the medical expert who had examined his injuries and had not verified the police officers' version that the applicant had fallen several times while trying to escape.

29. On 22 March 2004 the Odessa Regional Prosecutor's Office also addressed a letter to the Bilgorod-Dnistrovsky Prosecutor, alerting him that the investigation was perfunctory and one-sided. In particular, it was largely based on the explanations given by the police officers, without any other measures being taken to establish the real facts. It further invited the Bilgorod-Dnistrovsky Prosecutor to facilitate "a proper and professional investigation".

30. On 5 April 2004 the Bilgorod-Dnistrovsky Prosecutor's Office took a fresh decision not to institute criminal proceedings, which was set aside by the Odessa Regional Prosecutor's Office on 15 November 2004 and followed by a new refusal on 14 December 2004.

31. On 27 January 2005 the Odessa Regional Forensic Experts Bureau re-assessed the applicant's injuries as being of 'intermediate gravity'. In particular, it concluded that his depressive disorders and pyelonephritis could be connected to a traumatic experience in November 2002. It further concluded that, in view of their number and location, the injuries concerned could not have been sustained as a result of a single fall. It was likely that the injuries at issue had been caused by multiple impacts with blunt objects, such as a fist, a foot or the like.

32. Following this assessment, on 5 September 2005 the Bilgorod-Dnistrovsky District Court set aside the decision of 2 March 2004 refusing to initiate criminal proceedings (which had already been annulled

by the General Prosecutor's Office on 6 March 2004) and ordered further investigation.

33. On 23 March 2006 the Bilgorod-Dnistrovsky Prosecutor's Office refused to comply with the court's instructions, finding that further to the annulment of the decision of 2 March 2004 by the General Prosecutor's Office, it had already carried out additional investigations, and its last decision of 14 December 2004 was valid.

34. On 26 May 2006 the Odessa Regional Prosecutor's Office annulled that decision and ordered further investigation.

35. On 5 June 2006 the Bilgorod-Dnistrovsky Prosecutor's Office took a fresh decision not to institute criminal proceedings, relying essentially on the same arguments as in its previous refusals.

II. RELEVANT DOMESTIC LAW

36. 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

37. The applicant died on 4 March 2005, while the case was pending before the Court (see paragraph 4 above).

38. The Government submitted that the applicant's mother can pursue the proceedings after the applicant's death as his close relative. She, however, cannot be considered the victim of violations of the Convention in his respect.

39. The Court finds that while the applicant's mother has not been directly affected by the violations of the Convention complained about by the applicant, following his death she has standing to pursue the present proceedings on his behalf (see *Toteva v. Bulgaria*, no. 42027/98, § 45, 19 May 2004, and *Yakovenko v. Ukraine*, no. 15825/06, § 65, 25 October 2007). However, reference will still be made to the applicant throughout the ensuing text.

II. ALLEGED ILL-TREATMENT AND INEFFECTIVE INVESTIGATION OF THE ILL-TREATMENT COMPLAINT

40. The applicant complained that he had been ill-treated by police officers whilst in custody in November 2002, to obtain his confession that

he had participated in P.'s robbery. He further complained that there had been no effective investigation into his complaint of ill-treatment. The applicant relied on Articles 3 and 13 of the Convention.

41. 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.”

A. Admissibility

42. The Government submitted that the applicant's complaint of ill-treatment was inadmissible for non-exhaustion of domestic remedies, as the applicant's mother had never appealed against the prosecutor's office's refusal of 5 June 2006 to institute criminal proceedings into his ill-treatment complaint.

43. The applicant insisted that between November 2002 and June 2006 he had lodged numerous complaints with various competent authorities, all to no avail, as the prosecutor's office was plainly unwilling to conduct a real investigation. The investigation had therefore been ineffective and it was futile to appeal against a further refusal to investigate his complaint.

44. 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 about the ineffectiveness of the investigation, and accordingly joins it to the merits of the applicant's complaint.

B. Merits

1. Submissions of the parties

45. The applicant alleged that he had sustained permanent health damage as a result of his ill-treatment by the police. In particular, he suffered from chronic pyelonephritis and the after-effects of a head injury, including depression and suicidal thoughts. He maintained that his injuries had been inflicted on him by the police when they questioned him on 18 and 19 November 2002 in the absence of his parents or a lawyer. The applicant further submitted that under duress he had first made a self-incriminating

statement on 18 November 2002, and that he had confirmed it on 21 November 2002 in the presence of his mother and a lawyer, because the police had threatened not to release him otherwise. After recovering from the stress and hiring a new lawyer upon his release, the applicant had retracted his confession.

46. The applicant further submitted that immediately upon his release he had notified various authorities, including the local prosecutor's office, of the unlawful conduct of the police officers in his respect. The prosecutor's office, however, had refused to take note of his complaint or even to refer him for a forensic examination of his injuries. It was only a day later (23 November 2002) that he managed to obtain such a referral from the Internal Security department of the local police, which was not competent to investigate his complaint. He further alleged that the prosecutor's office was unwilling to investigate the real circumstances in which he had sustained his injuries. This fact was witnessed by the numerous refusals to institute criminal proceedings, which relied primarily on mere statements by the police officers involved denying any ill-treatment, without the reason for the injuries being established. The applicant also alleged that the prosecutor's office had regularly delayed in informing him of its decisions rejecting his complaints, making it hard for him to appeal against them.

47. The Government objected to these arguments. They stated, in particular, that the applicant had not been questioned concerning the robbery during his stay in custody. He had confessed to the robbery in the presence of his mother and a lawyer. Upon his placement in the detention centre, the applicant had been medically examined and found to have no injuries. The injuries complained of could have been sustained under various circumstances, after his release, including falls to the ground or blows from blunt objects, for example. It was not until 1 April 2003 that the applicant had lodged a formal request to initiate criminal proceedings against the police officers. Notwithstanding the lapse of time, the prosecutor's office had taken all necessary measures to investigate the possible ill-treatment and dismissed the applicant's complaint for want of evidence. As the applicant's heirs had failed to appeal against the decision of 5 June 2006, further investigation had not been possible.

2. The Court's assessment

(a) Concerning the alleged ill-treatment

48. Viewing facts of the present case in light of the general principles determined in its case-law (see, for example, *Tomasi v. France*, 27 August 1992, §§ 108-111, Series A no. 241-A; *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336 and *Vergelskyy v. Ukraine*, no. 19312/06, § 106, 12 March 2009), the Court notes that according to expert findings of 23 November 2002 and 27 January 2005, which the parties did not

challenge, the applicant sustained bruises, abrasions and other injuries on various parts of his body, which could have been inflicted on 18 November 2002 (the day of his placement in custody) by multiple impacts with blunt objects (see paragraphs 18 and 31 above). The applicant's account of the circumstances, in which he suffered these injuries, namely, application of force by the police officers during his interrogations, is sufficiently detailed and consistent with the expert findings. The Government has failed to provide any coherent and substantiated alternative account of the relevant events, in spite of several years of investigations. In these circumstances the Court finds that the State is responsible for the above injuries, which amounted to the applicant's ill-treatment.

49. At the same time, the Court finds noteworthy the circumstances surrounding the applicant's arrest, his placement in custody and his questioning about the robbery. First of all it recalls that the applicant's three-day placement in administrative detention was officially declared unlawful by the domestic judicial authorities (see paragraph 11 above).

50. It further notes that neither the refusals of the prosecuting authorities to initiate criminal proceedings, nor the Government's observations, contain any response to the applicant's allegations that his initial forced delivery to the police at noon on 18 November 2002 was not based on any legal ground. In particular, it appears that when the police stopped him on a public street, the applicant had not been engaged in any criminal activity capable of justifying his arrest, nor had he been ordered to report to the police on the basis of an official summons, either as a suspect or as a witness. Moreover, it was not until 19 November 2002 that criminal proceedings were instituted in respect of P.'s robbery complaint. Although the applicant was a minor at the material time, neither his parents nor a lawyer were informed of his arrest and the applicant lacked any representation before the court that sentenced him to administrative detention.

51. Finally, although the Government and the prosecutor's office alleged that the applicant was not questioned about the robbery during his custodial sentence, the applicant provided copies of his confessions and self-incriminating explanations dated 18 and 19 November 2002 signed by the applicant and the law-enforcement officers (no signature of a lawyer or a minor's legal representative present – see paragraph 15 above). Likewise, on 15 January 2004 the Bilgorod-Dnistrovsky Court noted that the prosecutor's office's conclusion that the applicant had not been questioned during his detention was in contradiction with other case-file materials.

52. The fact that the applicant, a minor at the material time, first confessed to the robbery during his administrative detention in a setting lacking procedural guarantees, such as availability of a lawyer, and retracted his confession upon his release, points to the conclusion that his confession may not have been given freely. This, in conjunction with the ambiguous

circumstances surrounding the applicant's arrest and the unlawfulness of his administrative detention, gives rise to a strong suspicion that regardless of whether the police resorted to physical violence (see paragraph 48 above), they arrested the applicant and placed him in detention as a means of breaking his moral resistance and using his vulnerable emotional state to obtain self-incriminating statements.

53. The Court finds that such 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*, cited above, § 131) and, especially given the applicant's vulnerable age, qualifies as inhuman and degrading treatment.

54. 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 in custody.

(b) Concerning the effectiveness of the investigation

55. 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).

56. As regards the circumstances of the present case, the Court notes that the applicant promptly informed the law-enforcement authorities of his alleged ill-treatment. The investigation, which lasted more than three years, did not establish the circumstances surrounding his complaint and did not identify the person or persons (if any) responsible for his injuries.

57. The Court further notes that the investigation was closed on a number of occasions, as the prosecutor's office was not able to detect evidence of ill-treatment. At various times the decisions to close the investigation were set aside by administrative or court orders, as the prosecutor's office had failed to employ all the means available to it to establish the circumstances surrounding the applicant's complaint.

58. The prosecuting authorities largely repeated the same conclusions in all of their refusals. In spite of the instructions issued by the courts and supervising prosecutorial authorities (see paragraphs 26, 28 and 29 above), the investigation provided no specific answers to the particular allegations raised by the applicant in his complaints. In particular, it did not find any plausible explanation as to the reason for his injuries, or provide a substantiated response to his arguments concerning the unlawfulness of his arrest and detention or his allegations that he had been questioned about P.'s robbery in violation of procedural guarantees enshrined in the Code of Criminal Procedure. The Court specifically recalls that on 15 January 2004

the Bilgorod-Dnistrovsky Court found that the prosecutor's office's allegation that the applicant had not been questioned about the robbery during his term in custody contradicted the evidence in the case file. Notwithstanding that finding, the subsequent refusals to initiate criminal proceedings reiterated the same conclusion, without further reasoning.

59. In these circumstances, the Court does not have reason to believe that yet another appeal by the deceased applicant's heirs would redress the earlier shortcomings and render the investigation effective.

60. 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*, no. 19312/06, § 102, 12 March 2009).

61. 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 concerning non-exhaustion (see paragraph 42 above) must be dismissed.

62. Having regard to its finding under Article 3, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 of the Convention in respect of the effectiveness of the investigation.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. In addition, the applicant complained that his arrest on 18 November 2002 had been unlawful, that the court hearing concerning charges of insubordination towards the police officers had been unfair and the resulting conviction arbitrary, and that he had lacked effective domestic remedies in respect of these complaints. He relied on Articles 5, 6 § 1, 7 and 13 of the Convention with respect to these complaints.

64. 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.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 800,000 euros (EUR) in his name and EUR 150,000 euros in his mother's name in respect of non-pecuniary damage allegedly sustained on account of violations of all the provisions of the Convention invoked in his application.

68. The Government submitted that these claims were exorbitant and unsubstantiated. Moreover, Mrs Dushka had no right to claim any award in her name. They also contended that should the Court make any award in the applicant's name, it should be deposited for the benefit of all his lawful heirs.

69. The Court recalls that it has found violations only of Article 3 of the Convention in respect of the applicant's rights. Ruling on an equitable basis, it awards the applicant EUR 18,000 in respect of non-pecuniary damage, to be paid to the applicant's estate.

B. Costs and expenses

70. The applicant also claimed UAH 436 in local transportation costs, UAH 2,781 for his and his mother's medical costs; UAH 6,900 for his and his mother's spa treatment costs; and UAH 1,528.54 in postal and copying expenses. He provided relevant receipts for medical, copying and postal expenses.

71. The Government submitted that these claims were without merit.

72. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 150 covering costs for postal and copying expenses and dismisses the remainder of the claims.

C. Default interest

73. 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 Tatyana Ivanovna Dushka, 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 in police custody and dismisses it after having examined the merits of that complaint;
3. *Declares* the complaints concerning ill-treatment in police custody and the ineffective investigation into the applicant's alleged ill-treatment 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 at the hands of the police;
6. *Holds* that there is no need to examine the complaint under Article 13 of the Convention concerning the ineffectiveness of the investigation;
7. *Holds*
 - (a) that the respondent State is to pay to the applicant's estate, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 18,000 (eighteen thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable on the above amount and to Mrs Tatyana Ivanovna Dushka EUR 150 (one hundred and fifty euros) in costs and expenses plus any tax that may be chargeable to her on the above amount, 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;

8. *Dismisses* the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 3 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President