



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

FIFTH SECTION

CASE OF KOZINETS v. UKRAINE

(Application no. 75520/01)

JUDGMENT

This version was rectified on 27 February 2008 under Rule 81 of the Rules of Court.

STRASBOURG

6 December 2007

FINAL

06/03/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kozinets v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 13 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 75520/01) 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 Valeriy Yuryevich Kozinets (“the applicant”), on 16 May 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs Z. Bortnovska, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 13 May 2004 the Court decided to communicate the complaints under Articles 3 and 13 of the Convention concerning alleged ill-treatment of the applicant by a tax police officer, an inadequate investigation by the domestic authorities into the applicant's allegations and the absence of effective remedies in respect of these complaints to the Government. Under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1959 and lives in Kharkiv, Ukraine.

A. Criminal proceedings

5. At the material time the applicant was the director and allegedly the owner of the Passage private company, which provided currency exchange services. On 16 August 1996 the tax police inspected one of the departments of the company, seized some documents and cash assets, and imposed financial sanctions.

6. On 28 April 1998 the applicant was invited to the Kharkiv State Tax Police Inspectorate (*Податкова міліція Державної податкової інспекції м. Харкова*) to retrieve the documents that had been removed by the tax police. According to the applicant, at 9 a.m., when he entered the office of S., the Head of the Tax Police Inspectorate, and asked when the documents in question would be returned, the latter started to beat him and broke the tape recorder which the applicant had in his pocket. According to the applicant, several people were present at the time in S.'s office. The latter allegedly told his subordinates not to let the applicant out until 11 a.m. At 11 a.m. the applicant left the Tax Police premises.

7. On the same day the applicant complained about these events to the Anti-corruption Department of the Kharkiv Regional State Tax Inspectorate (*Відділ по боротьбі з корупцією Державної податкової інспекції в Харківській області*). The applicant was sent for a medical examination and his complaint was transferred to the Prosecutor's Office.

8. On 29 April 1998 the medical examination revealed that the applicant had suffered minor injuries, and in particular that he had bruises on his abdomen. No head injury was identified.

9. From 30 April to 23 May 1998 the applicant was a patient in the neurosurgery department of Hospital No. 4. He was diagnosed with concussion and numerous bruises were found on his head.

10. On 11 June 1998 a further forensic medical examination concluded that the applicant was suffering from moderately severe physical injuries (including a head injury) which had caused a temporary disability.

11. On 18 August 1998 the financial sanctions against the Passage company were rescinded.

12. According to a forensic medical expert opinion of 1 September 1998, the applicant's medical treatment from 30 April to 8 June 1998 was for a head injury, which could have been inflicted on 28 April 1998 or later. It further stated that, since according to the medical examination of 29 April 1998 the applicant had not had a head injury, it was impossible to establish a link between the incident of 28 April 1998 and the applicant's medical treatment for a head injury.

13. On 2 September 1998 the Kharkiv City Prosecutor's Office (*прокуратура м. Харкова*) refused to institute criminal proceedings against Mr S. for want of *corpus delicti*. In particular, S. and Sh. and P. (employees of the Tax Police who had been present in the office during the events in

question) and Zh. (a security officer) testified that the applicant had not been subjected to any kind of physical pressure. S. and Sh. submitted that the applicant had tried to record his conversation with S. and when the latter had asked the applicant to give him the tape recorder, the applicant had dropped it on the floor and stepped on it. G. (an associate of the applicant, who had accompanied him to the Tax Police office) testified that he had seen the applicant through the window being beaten by S. It was established that it had not been physically possible for G. to have seen the events in question; in any event his testimony was rejected since he was “an interested person”.

14. On 24 November 1998 the cash assets seized in 1996 were returned to the applicant.

15. On 1 December 1998 the Kharkiv City Prosecutor's Office rejected the applicant's request to institute criminal proceedings against the tax police officers who had carried out the inspection on 16 August 1996.

16. On 29 December 1998 the Kharkiv Regional Prosecutor's Office (*прокуратура Харківської області*) quashed the decision of 2 September 1998 and opened criminal proceedings to investigate the circumstances of the incident of 28 April 1998. It was stated that the applicant had indeed received moderately serious physical injuries but that the origin of these injuries was unknown. Therefore, more extensive investigation into the facts of the case was needed.

17. On 9 and 19 April 1999 two additional forensic medical examinations were carried out. The experts held that there was not enough information to conclude that the head injury sustained by the applicant had been received between 28 and 30 April 1998. The bruises on the applicant's abdomen could have resulted from a blow inflicted three to five days before 29 April 1998.

18. On 21 April 1999 the Kharkiv City Prosecutor's Office terminated the criminal proceedings for lack of evidence that the applicant had been beaten by S.

19. On 14 January 2000 the Kharkiv Regional Prosecutor's Office quashed the decision of 21 April 1999, in particular because the hospital doctors who had examined the applicant had not been questioned, and remitted the case for additional investigation to the Kyiv District Prosecutor's Office (*прокуратура Київського району м. Харкова*).

20. By a decision of 18 February 2000 the investigating officer of the Kyiv District Prosecutor's Office refused to recognise the applicant as a victim in the proceedings, on the ground of lack of proof that he had sustained moderately severe physical injuries. Following this decision the applicant refused to testify or participate in the investigation.

21. On 29 June 2000 an investigator of the Kyiv District Prosecutor's Office terminated the criminal proceedings on the ground that the minor physical injuries sustained by the applicant could have been inflicted earlier

than 28 April 1998 and that there was no evidence that they had been inflicted by S. In particular, there was no medical evidence to confirm when the applicant had received the head injury. The Tax Police employees testified that S. had not beaten the applicant and the only witness who testified otherwise (G.) had not physically been able to see the events in question; this had been confirmed in a reconstruction of the events.

22. On 11 January 2001 the Kyivskyy District Court of Kharkiv quashed the decision of 29 June 2000 and ordered that the criminal proceedings be reopened. The court emphasised that the investigation had failed to find out how the applicant had received the injuries in question.

23. On 5 April 2001 the applicant was declared a victim of an alleged crime.

24. On 23 April 2001 the applicant introduced a civil claim for compensation for pecuniary damage against S. to be considered in the course of the criminal proceedings.

25. On 14 August 2001 the Kharkiv Regional Prosecutor's Office refused to institute criminal proceedings for abuse of power against S., for want of *corpus delicti*.

26. On 20 September 2001 a forensic medical examination concluded that on 29 April 1998 the applicant had had bruises on his abdomen which could have been inflicted on 28 April 1998.

27. On 3 October 2001 the Kyiv District Prosecutor's Office discontinued the criminal proceedings for the infliction of moderately severe physical injuries, in the absence of evidence of a crime.

28. On 10 October 2001 the Kharkiv Regional Prosecutor's Office quashed the decision of 3 October 2001 and remitted the case back for further investigation.

29. On 12 November 2001 the Chervonozavodskyy District Court of Kharkiv quashed the decision of 14 August 2001.

30. On 27 June 2002 a fresh medical examination again concluded that on 29 April 1998 the applicant had had bruises on his abdomen which could have been inflicted on 28 April 1998.

31. On 27 August 2002 the Kharkiv City Prosecutor's Office terminated the criminal proceedings on the ground that it was not possible to establish with sufficient certainty that the injuries suffered by the applicant had been inflicted by S. Moreover, the injuries sustained (bruises on the applicant's abdomen) were classified as minor and in this case, according to Article 27 of the Code of Criminal Procedure, the applicant should have brought a private prosecution directly before the court.

32. On 21 October 2002 the Kharkiv City Prosecutor's Office refused to institute criminal proceedings against S. on suspicion of burglary, for want of *corpus delicti*. It was stated that the applicant's tape recorder had been broken as a result of a dispute which had occurred on 28 April 1998

between the applicant and S. However, the applicant had provoked S.'s reaction by trying to record their conversation.

33. By letters of 2 October, 6 and 20 November and 18 December 2002 and 2 January 2003, the Kharkiv Regional Prosecutor's Office informed the applicant that the criminal proceedings had been terminated lawfully.

B. Other proceedings

34. In March 2001 the applicant instituted defamation proceedings in the Chervonozavodskyy District Court of Kharkiv against the Kharkiv Regional Prosecutor's Office. He stated that he had submitted numerous complaints of violations to different State authorities. These had been forwarded to the Kharkiv Regional Prosecutor's Office, which in its response letters to the Ukrainian Parliament Commissioner for Human Rights, to the Member of Parliament, L., and to the Prosecutor General, had provided false information about the actions of the tax police in respect of the applicant's enterprise and about the investigation in the applicant's criminal case.

35. On 2 October 2001 the court upheld the applicant's complaint.

36. On 21 February 2002 the Kharkiv Regional Court of Appeal quashed the judgment of 2 October 2001 and rejected the applicant's complaint as unsubstantiated.

37. On 1 October 2002 a panel of three judges of the Supreme Court of Ukraine rejected the applicant's request for leave to appeal under the cassation procedure.

38. On an unidentified date the applicant instituted proceedings in the Pechersky District Court against the Prosecutor General of Ukraine, claiming that he had unlawfully refused to examine the applicant's complaints. On 27 January 2004 the court returned the applicant's complaint as he had failed to comply with the procedural requirements.

II. RELEVANT DOMESTIC LAW

1. Constitution of Ukraine, 1996

39. The relevant provision of the Constitution of Ukraine reads as follows:

Article 28

“Everyone has the right to respect for his or her dignity.

No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity. ...”

2. Code of Criminal Procedure, 1961

40. Article 4 of the Code provides that the court, prosecutor or investigator must, to the extent that it is within their power to do so, institute criminal proceedings in every case where signs of a crime have been discovered, take all necessary measures provided by law to establish whether a crime has been committed and the identity of the perpetrators and punish them.

41. In accordance with Article 27 of the Code criminal proceedings on infliction of minor physical injuries are instituted by the courts following complaints by the victims (private prosecution proceedings). No pre-trial investigation is held in such cases.

42. Article 215 of the Code provides that an investigator's decision to discontinue the proceedings can be appealed against to the prosecutor or to the court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

43. The applicant complained that he had been tortured by a tax police officer, contrary to Article 3 of the Convention. He further complained under Article 6 of the Convention that the investigation undertaken by the domestic authorities into these events had been insufficient. The applicant also complained under Article 13 of the Convention of a lack of effective remedies in respect of the above violations.

44. The Court is of the opinion that it is appropriate to examine the applicant's complaint of an inadequate investigation into his allegations of ill-treatment under the procedural limb of Article 3 of the Convention.

45. The relevant Articles 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

46. The Government submitted that the applicant had not exhausted effective domestic remedies in respect of the alleged violations of Article 3 of the Convention as he had failed to appeal to the court against the decision of 27 August 2002 by which the criminal proceedings had been terminated.

47. The applicant insisted that there were no effective domestic remedies to exhaust in his case.

48. The Court notes that the Government's objection is closely linked to the applicant's complaints under Articles 3 and 13 of the Convention. In these circumstances, it joins the objection to the merits of the applicant's complaints.

B. Merits

1. The submissions of the parties

49. The Government maintained that the applicant's allegations of being beaten by the tax police officer had not been supported by any appropriate evidence and that, although the applicant had indeed sustained physical injuries it was impossible to conclude "beyond reasonable doubt" that they had been inflicted by S. They referred to the conclusions of the forensic medical examinations that the applicant had had only minor physical injuries which could have been inflicted three to five days before the events in question. None of the examinations established that the injuries had been inflicted on 28 April 1998. The Government also submitted that, as for the testimonies of G., who had allegedly seen the applicant being beaten by S., it had been established that G. could not have seen the events in the room properly since its windows had been covered with opaque plastic curtains. Furthermore, the Government maintained that the investigation in the applicant's case had been performed by an independent authority which had carried out a full investigation and had taken all necessary action. Therefore, the procedural limb of Article 3 of the Convention had not been violated and the applicant had had at his disposal an effective domestic remedy in accordance with Article 13 of the Convention.

50. The applicant contested the Government's submissions. He maintained that the investigation officers had failed to comply with the court decisions of 11 January and 12 November 2001 and had not held an effective investigation in his case. He further submitted that the reconstruction of events had been held in the absence of G. Moreover, the testimony of G. had been rejected on the ground that he was "an interested person" while the testimonies of the tax police officers had been included in the case file even though they were S.'s subordinates. Finally, the

information about the applicant's head injury had been ignored and no investigation had been conducted into it.

2. *The Court's assessment*

a. **Concerning the alleged ill-treatment**

51. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). It has also found that the distinction between “torture” and “inhuman or degrading treatment” was intended to “attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering” (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 167).

52. To fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the gender, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100-01, ECHR 2001-VIII). The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI).

53. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)).

54. The Court reiterates its jurisprudence confirming the standard of proof “beyond reasonable doubt” in its assessment of evidence (see *Avşar v. Turkey*, cited above, § 282). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact.

55. Turning to the facts of the case, the Court considers that there is sufficient evidence in the case (see paragraphs 8 and 10 above) that the

applicant sustained injuries, which were sufficiently serious to amount to ill-treatment falling within the scope of Article 3. It remains to be considered whether the State authorities should be held responsible under Article 3 for having inflicted these injuries.

56. The Court notes that while during the investigation of the applicant's case, it was established by a number of examinations that the applicant had a head injury and bruises on his abdomen, the precise date of infliction of these injuries was never established. The testimony of the applicant, S. and the witnesses produced two conflicting accounts of the events, and the actions taken by the investigation authorities did not remove the contradictions between them. The case file materials do not establish that the applicant entered the Tax Police premises in good health but left it having sustained injuries; however, indications that he had been injured before or after his visit are equally absent. Moreover, the medical examination which confirmed substantial injuries did not take place immediately after the visit in the morning but only the next day.

57. The Court, in particular, notes that the present case differs from the situation “[w]here an individual, when taken in police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention” (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11 and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V) since the present applicant has been never detained by the State authorities.

58. Given all of the information in its possession, the Court cannot conclude “beyond reasonable doubt” that the applicant's injuries were caused by the actions of a tax police officer. Therefore, there is no violation of the substantive limb of Article 3 of the Convention.

b. Concerning the alleged inadequacy of the investigation

59. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the 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. 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 *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of*

Judgments and Decisions 1998-VIII, p. 3290, § 102, and *Labita v. Italy* [GC], cited above, § 131).

60. The investigation into arguable allegations of ill-treatment must also be thorough. This 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*, 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, ECHR 1999-IV, §§ 104 et seq.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000).

61. The Court notes at the outset that the criminal proceedings in the applicant's case lasted for more than four years and were discontinued several times but, following the applicant's appeals, reopened and remitted for further investigation. Although the Court is not in a position to analyse the quality of the case-law of the domestic judicial authorities, it reiterates that, since remittal is usually ordered because of errors committed by lower courts or other authorities whose decisions are appealed against, the repetition of such orders within one set of proceedings discloses a serious deficiency (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

62. The Court observes that the national authorities have quashed the decisions terminating the criminal proceedings because of insufficient investigation into the facts of the case. However, although they have indicated the necessary actions to be taken, these recommendations have not been followed by the investigation authorities. In particular, the hospital doctors who treated the applicant following his head injury were never questioned and no attempts were made to investigate how the applicant could have sustained the injury.

63. The Court further notes that the investigation was marked by other flaws. In particular, from the materials submitted by the parties it is unclear whether G. indeed participated in the reconstruction of events and thus had the opportunity to show the investigation authorities how he had seen the events in question. It is also unclear whether confrontations were held between the applicant and the Tax Police employees allegedly present in S.'s office on 28 April 1998.

64. The Court notes, lastly, that the proceedings were finally terminated by the decision of the prosecutor of 27 August 2002. It is true that the Code of Criminal Procedure provides for the possibility of appeal against a decision terminating criminal proceedings to the higher prosecutor or to the court. However, in the present case, given that the proceedings in the applicant's case were closed and reopened three times by the higher prosecutors and twice by the courts, the Court is not convinced that the

applicant's appeal to the court against the decision of 27 August 2002, as indicated by the Government, would have rendered the investigation effective.

65. Therefore, the Court concludes that in the present case there is a violation of the procedural limb of Article 3 of the Convention. It follows that the Government's preliminary objection (see paragraph 46 above) must be dismissed.

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

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

67. The applicant complained under Article 6 § 1 of the Convention of the outcome and of an allegedly unfair hearing in the defamation proceedings.

68. The applicant also alleged an infringement of Article 1 of Protocol No. 1 since his tape recorder had been broken by Mr S. and his shirt torn. He also complained that the State authorities had hindered the functioning of his enterprise. These Articles read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

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 or to secure the payment of taxes or other contributions or penalties.”

69. The Court considers that, in the light of all the materials in its possession and 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 or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 385,215 United States dollars (USD)¹ in respect of pecuniary damage and 3,208.330 Ukrainian hryvnas (UAH)² in respect of non-pecuniary damage.

72. The Government pointed out that the applicant had not submitted any documents confirming the alleged pecuniary damage inflicted.

73. 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, having regard to its case-law in comparable cases and making its assessment on an equitable basis, it awards the applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

74. The applicant also claimed UAH 1,610.84³ for the costs and expenses incurred before the domestic authorities concerning the investigation against S. and the Court, and submitted bills in this respect.

75. The Government did not comment on the applicant's claims for costs and expenses.

76. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as these have been shown to have been actually and necessarily incurred and to be reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 237.88 covering costs under all heads.

C. Default interest

77. 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.

¹ Approximately EUR 278,703.

² Approximately EUR 474,022.

³ Approximately EUR 237.88.

FOR THESE REASONS, THE COURT

1. *Decides* to join to the merits the Government's preliminary objection as to the exhaustion of domestic remedies in respect of Article 3 of the Convention;
2. *Declares* the applicant's complaints under Articles 3 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* by six votes to one that there has been no violation of Article 3 of the Convention under its substantive limb;
4. *Holds* unanimously that there has been a violation of Article 3 of the Convention under its procedural limb and accordingly *dismisses* the Government's preliminary objection based on non-exhaustion of domestic remedies;
5. *Holds* unanimously that there is no need to examine the complaint under Article 13 of the Convention;
6. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 237.88 (two hundred and thirty seven euros and eighty eight cents) in costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement¹, plus any tax that may be chargeable;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

¹ Rectified on 27 February 2008. A currency conversion clause was incorporated into the operative part of the judgment.

Done in English, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Maruste is annexed to this judgment.

P.L.
C.W.

DISSENTING OPINION OF JUDGE MARUSTE

With some hesitation I disagreed with the majority in finding no violation of Article 3 under its substantive limb.

It transpires from the facts – and this was not disputed by the respondent Government – that on 28 April the applicant was invited to the Kharkiv State Tax Police Inspectorate and that he was present there. On the same day the applicant complained that he had been beaten in the tax police office to the Anti-Corruption Department, which sent him for a medical examination and transferred his complaint to the prosecutor's office. The medical examination took place the following day and revealed that the applicant was suffering minor injuries and had bruises on his abdomen. The day after, the neurosurgery department of Hospital no. 4 diagnosed concussion and numerous bruises on the applicant's head. These findings were confirmed by a forensic medical examination two weeks later.

These are the hard facts. It is clear that the applicant has made his case and has proof to support his allegations. The closely-linked chain of consequent events is evident. The Chamber also considers (see paragraph 55) “that there is sufficient evidence in the case...that the applicant sustained injuries, which were sufficiently serious to amount to ill-treatment falling within the scope of Article 3”. But then the Chamber endorses the argument of the Government that the precise date of infliction of these injuries was never established, overlooking its own finding of a procedural violation of Article 3. But what can we expect and how can we rely on deficient investigation results?

It has been the rule, already since the *Ribitsch* case, that where allegations are made under Article 3 of the Convention the Court must apply particularly thorough scrutiny. And if the official investigation has failed – as in the case before us – then the *in dubio pro reo* principle applies. Furthermore, the Chamber, when finding that it cannot conclude “beyond reasonable doubt” that the applicant's injuries were caused by the actions of a tax police officer (paragraph 57), seems to lay the burden of proof on the applicant and apply the “beyond reasonable doubt” test in reverse. My understanding is that the burden lies in such situations on the respondent Government, which have to show “beyond reasonable doubt” that the injuries were not caused by State agents. For me this has not been shown in this case. If it had been argued by the Government and found by the Chamber that no causal link between the visit to the police office and the injuries could convincingly be established, I would then have had some difficulty in making these arguments.