



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

1959 · **50** · 2009

FIFTH SECTION

CASE OF DROZD v. UKRAINE

(Application no. 12174/03)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Drozd v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 12174/03) 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 Nikolay Pavlovich Drozd (“the applicant”), on 18 March 2003.

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

3. The applicant alleged, in particular, that he had been beaten up by police officers and that the domestic authorities had failed to conduct an effective investigation of his complaints.

4. On 13 April 2005 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

5. The applicant was born in 1963 and lives in the village of Velykyy Listven, Gorodnya District, in the Chernihiv Region.

6. According to the applicant, at about 11 a.m. on 11 September 1997, when he was in company of Mr O.K. and two ladies, three police officers, S.V., V.V. and I.P., entered the house. They pushed him and Mr O.K. out to

the police car and drove both to the collective farm office. There they were joined by Mr Y.M., another villager, who, along with officers S.V. and V.V. severely beat the applicant and Mr O.K..

7. Between 12 September 1997 and 2 October 1997 the applicant underwent inpatient treatment on account of numerous leg injuries, including surgical dissection and drainage of a haematoma. As regards Mr O.K., between 12 and 29 September 1997 he was also treated in the hospital on account of traumatic vascular asthenia (*астено-вегетативний синдром*).

8. On 10 October 1997 the Gorodnya Prosecutors' Office rejected Mr O.K.'s request for criminal proceedings to be initiated against the officers S.V. and V.V., having found no appearance of criminal conduct on their part. On 17 November 1997 the Chernihiv Prosecutors' Office annulled this decision and remitted the case for additional investigation. On 3 December 1997 the Gorodnya Prosecutors' Office refused to initiate criminal proceedings.

9. Following a further complaint by the applicant and Mr O.K., lodged on 9 March 1998, the Chernihiv Department of the Ministry of Interior conducted an internal investigation. On 19 March 1998 it announced that the circumstances described by the complainants "were found to be partly true". However, there was no appearance that the police officers had infringed applicable law. In particular, it was confirmed that on 11 September 1997 officers S.V., V.V. and I.P. had invited the applicant and Mr O.K. to the farm office for questioning concerning their suspected involvement in a burglary at a village store. When near the office, they encountered Mr Y.M., who got into a fight with Mr O.K. After the fight was over, the police officers left the villagers and went off to continue their investigation. According to another villager, Mr Y.L., Mr O.K. and the applicant had fought each other the night before at a drinking party in his house.

10. According to the applicant, at about 9:30 p.m. on 4 November 1999 the same police officers, S.V. and V.V., together with officer A.B., found the applicant in the company of Mr O.P. and Mr Y.K. in a house belonging to Mr O.P. Officers S.V. and V.V. beat the applicant severely, causing him cerebral concussion. The applicant did not, however, see a doctor, since he was afraid of reprisals by police, and attempted to recover at home on his own. However, as he continued to suffer (in particular, from headaches and dizziness) he sought medical advice on 27 January 2000. According to the medical records, on this date the applicant was prescribed medication for the after-effects of a head injury. Subsequently (between 2 and 18 August 2000) the applicant underwent inpatient treatment for pyramidal insufficiency and vegetative-vascular syndrome, recorded as after-effects of a head injury. The applicant has allegedly suffered from frequent headaches, vertigo, general weakness and bouts of depression ever since the injury.

11. In the meantime, on an unspecified date criminal proceedings were instituted against the applicant, who was suspected of having stolen hay from the collective farm's barn on or around 20 November 1999. On 10 December 1999 the applicant was placed in the Gorodnya temporary detention centre, apparently kept in custody some two weeks and then released. On 24 February 2000 the applicant was remanded in custody pending trial. On 22 May 2000 the Gorodnya District Court convicted the applicant and another villager, Mr O.G. of stealing 460 kilos of hay. The applicant was subjected to a fine and three years' imprisonment suspended on a two-year probation term. This judgment was not appealed against and became final on 30 May 2000.

12. On 30 July 2002, after his probation term ended, the applicant complained to the national ombudsman (*Уповноважений Верховної Ради з прав людини*) that there had been incidents of police ill-treatment on 11 September 1997 and 4 November 1999. On 15 August 2002 the ombudsman forwarded his complaints to the Gorodnya Prosecutors' Office.

13. On 4 September 2002 the Gorodnya Prosecutors' Office decided not to institute criminal proceedings against the officers accused by the applicant of ill-treating him, having found no appearance of criminal conduct on their part. The decision was based on the testimonies of police officers only.

14. On 13 September 2002 the Chernihiv Prosecutors' Office found that this decision was based on a perfunctory enquiry and ordered an additional investigation.

15. On 7 October 2002 the Gorodnya Prosecutors' Office refused to institute criminal proceedings. It noted in particular that the applicant, his wife, Mr O.P. and Mr Y.K., who had allegedly witnessed the incident of 4 November 1999, had ignored repeated invitations to appear for questioning. As regards the applicant's neurological symptoms, they could be associated with his oligophrenia and vegetative-vascular dystonia, which had already been diagnosed in 1983. Furthermore, according to the applicant's psychiatrist, oligophrenia sufferers are prone to inadequate interpretation and distortion of facts.

16. On 14 January 2003 the Chernihiv Prosecutors' Office upheld this decision. The applicant appealed to the court. He argued, in particular, that neither he nor his former wife had ever received an invitation to appear for questioning. His oligophrenia was irrelevant to the facts, as his physical injuries had been confirmed by medical certificates.

17. On 2 June 2003 the Gorodnya District Court annulled the decision of 7 October 2002, having found that the investigation of the applicant's complaint had been perfunctory. In particular, the prosecution should have questioned the applicant and his family and should have ordered an assessment of the applicant's health by a commission of experts.

18. On 10 November 2003 the Gorodnya Prosecutors' Office refused to institute criminal proceedings. According to this decision, several villagers had testified that they had never seen the police beat the applicant. Moreover, Mrs L.K., the collective farm accountant, remembered seeing him fight with his brother and Mr A.L. in September 1997.

19. On 15 December 2003 the Chernihiv Prosecutors' Office annulled the decision of 10 November 2003. It mentioned in particular that the court's instruction to arrange a medical expert assessment had not been complied with.

20. On 10 January 2004 the Gorodnya Prosecutors' Office ordered the applicant to be examined by a medical expert.

21. On 18 May 2004 the applicant was examined by a medical expert, who confirmed that he had suffered numerous leg injuries on 11 September 1997. She further found that the applicant's assertion that he had suffered a head injury on 4 November 1999 was not improbable.

22. On 20 May 2004 the Gorodnya Prosecutors' Office refused to institute criminal proceedings. It found that the applicant had suffered minor injuries and could avail himself of the opportunity to bring a private prosecution.

23. On 10 September 2004 the Gorodnya District Court annulled this decision as based on a perfunctory enquiry. The court found, in particular, that the prosecution had been under the obligation to determine the relevant facts in so far as it was possible. In particular, according to the court's earlier instructions, the applicant's assessment should have been carried out by a commission, rather than by a single expert. Furthermore, the authorities had not determined the identity of the collective farm employees who could be questioned about the events and had not verified the testimony of Mrs L.K. concerning the applicant's fights with his brother and Mr A.L.

24. On 26 December 2004 the Gorodnya Prosecutors' Office refused to institute criminal proceedings. Additionally to the earlier reasons, it referred to the testimonies by Messrs A.L. and Y.L., the applicant's neighbours, who asserted having seen the applicant and his brother kicking each other in September 1997.

25. On 28 January 2005 the Gorodnya Prosecutors' Office annulled this decision, referring, in particular, to its own failure to comply with the court's instructions concerning the expert assessment.

26. On the same date a commission of six experts from the Chernihiv Regional Bureau of Court Experts examined the applicant. They found it established that on 11 September 1997 the applicant had sustained numerous leg injuries. As regards his head injury, the available documents were insufficient to make a definite conclusion. It was probable that in November 1999 the applicant had sustained a head injury as a result of a fall. However, there was no appearance that a causal link existed between the alleged injury and the subsequent neurological symptoms.

27. On 3 February 2005 the Gorodnya Prosecutors' Office refused to institute criminal proceedings. In addition to previous findings it referred to the testimonies of the applicant's brother, former wife and nine collective farm office employees, who asserted that they had never witnessed the applicant being beaten by the police. Furthermore, the applicant's brother had confirmed that they had been on bad terms and had fought on various occasions, including in September 1997.

28. The applicant appealed, complaining in particular that the investigation had failed to establish how he had obtained his injuries.

29. On 31 March 2005 the Chernihiv Prosecutors' Office annulled this decision, referring to the prosecution's failure to question Mrs L.K. about the details of the fight between the applicant and his brother and the need for further study of medical records to determine how the applicant's injuries could have been inflicted.

30. On 14 May 2005 the Gorodnya Prosecutors' Office refused to institute criminal proceedings.

31. On 26 May 2005 the Chernihiv Prosecutors' Office annulled this decision, referring to the need to question the applicant's acquaintances in whose company he had purportedly encountered officers S.V. and V.V. on 11 September 1997 and 4 November 1999.

32. On 9 June 2005 the Gorodnya Prosecutors' Office refused to institute criminal proceedings. In addition to the reasons given earlier it stated that the applicant had falsely noted that on 11 September 1997 officers S.V. and V.V. had been accompanied by officer I.P., while no such officer had served in the Gorodnya Police at that time. It also referred to a statement by Mrs A.P., one of the two ladies who had been with the applicant on 11 September 1997 and who had denied seeing the officers beating him in the house.

33. On 5 October 2005 the Gorodnya Court found that the police had failed to comply with its earlier instructions.

34. On 17 October 2005 the Gorodnya Prosecutors' Office refused to institute criminal proceedings, on essentially the same grounds as before.

35. On 10 January 2006 the Gorodnya District Court annulled this decision, having found that it had not been preceded by any investigatory activities.

36. On 1 February 2006 the Gorodnya Prosecutors' Office refused to institute criminal proceedings. By way of reasoning, it recited the findings of the internal investigation of 19 March 1998.

37. On 6 March 2006 the Chernihiv Prosecutors' Office annulled this decision.

38. On 12 April 2006 the Gorodnya Prosecutors' Office refused to initiate criminal proceedings. In addition to earlier reasons, it referred, in particular, to the impossibility of questioning Mr O.K. (the other alleged victim of the events of 11 September 1997), who had died by hanging in

April 2004. It further referred to the testimonies by the applicant's brother concerning their fight in 1997; to that of Mr Y.M., who remembered being present during the questioning in the farm office and seeing nobody beating the applicant. It further referred to the applicant's condition diagnosed in 1983, making him prone to neurological symptoms as well as to distortion of facts.

39. On 7 June 2006 the Novozavodskyy District Court of Chernihiv annulled this decision. It found that the prosecution had not complied with the previous judgments indicating omissions in their inquiry. In particular, no effort had been made in good faith to locate Mr Y.K. and Mr O.P., who had allegedly witnessed the applicant's beating on 4 November 1999. According to the case file records, they resided in Kyiv, while the prosecution had unsuccessfully sought their contact details from the Chernihiv address bureau. Furthermore, no effort had been made to check the medical records of the temporary detention centre, in which the applicant had been placed in December 1999 shortly after the alleged head injury.

40. On 26 July 2006 the Chernihiv Regional Court of Appeal upheld this decision. It also emphasised that the reference to the applicant's condition diagnosed in 1983 was irrelevant to the verification of the facts in his case, in particular in light of the medical documents concerning his injuries.

41. On 1 September 2006 the Gorodnya Prosecutors' Office refused to institute criminal proceedings referring to essentially the same reasons as before as well as to the absence of any information concerning Mr O.P. and Mr Y.K. in the Chernihiv address bureau.

42. On 12 April 2007 the Novodazovskyy District Court of Chernihiv annulled this decision. It found that the courts' previous instructions had not been complied with. It further ordered an additional medical assessment, questioning of the applicant's brother and a check of the records of the Gorodnya temporary detention centre.

43. On 12 June 2007 the Gorodnya Prosecutors' Office refused to institute criminal proceedings, referring to essentially the same reasons as before. It also referred to additional questioning of the head of the previous expert commission, who believed that a new medical assessment would be futile. Furthermore, by April 2004 the Gorodnya temporary detention centre had destroyed all the records for 1999.

44. On 26 February 2008 the Novozavodskyy District Court annulled this decision. On 11 March 2008 the Chernihiv Regional Court of Appeal quashed the decision of the trial court, having found that its analysis of the case file was perfunctory.

45. On 11 April 2008 the Novozavodskyy District Court found the decision not to institute criminal proceedings sufficiently substantiated and upheld it. On 29 April 2008 the Chernihiv Regional Court of Appeal upheld the decision of the trial court.

46. On 25 June 2008 the Supreme Court of Ukraine rejected the applicant's request for leave to appeal in cassation.

II. RELEVANT DOMESTIC LAW

47. 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. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained that he had been beaten by the police officers. He further maintained that the investigation undertaken by the domestic authorities into his complaints had been lengthy and insufficient. The applicant relied on Articles 3 and 6 § 1 of the Convention in respect of his complaints.

49. The Court, which is master of the characterisation to be given in law to the facts of the case (see as a recent authority *Castravet v. Moldova*, no. 23393/05, § 23, 13 March 2007) finds that the complaints at issue fall to be examined under Article 3 of the Convention which is the relevant provision and reads as follows:

Article 3

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

A. Admissibility

50. The Government submitted that this complaint is inadmissible, as the applicant failed to lodge it within six months of the date on which the incidents occurred. As an alternative, they maintained that the applicant had lodged his application before exhausting the remedies provided under domestic law.

51. The applicant disagreed with these submissions.

52. The Court reiterates that in accordance with Article 35 § 1 of the Convention, it may only deal with a matter if it has been raised before it within six months of the date of the final domestic decision in the process of exhaustion of effective domestic remedies (see, among other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). The

six-month period runs from the act alleged to constitute a violation of the Convention only where no effective domestic remedy is available (see, among other authorities, *Antonenkov and Others v. Ukraine*, no. 14183/02, § 32, 22 November 2005).

53. The applicant in the present case attempted to instigate a criminal investigation into his alleged ill-treatment and subsequently appealed before the domestic courts against the decisions not to institute it. On 18 March 2003 he lodged the present application with the Court and the final domestic decision concerning his claims was taken on 25 June 2008. The Court has earlier recognised that recourse to the remedies used by the applicant in domestic proceedings for his complaints of ill-treatment may in principle be effective (see *Yakovenko v. Ukraine*, no. 15825/06, §§ 71-73, 25 October 2007). It finds therefore that the Government's objection concerning the observance of the six-month time-limit must be dismissed.

54. As regards the Government's objection concerning non-exhaustion, the Court finds that this objection should be dismissed, as by the present date the decision not to institute criminal proceedings concerning the applicant's alleged ill-treatment has been upheld by the courts of three instances.

55. The Court concludes that the applicant's complaints raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. The Court finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

B. Merits

1. The submissions of the parties

56. The applicant maintained, in particular, that along with Mr O.K., the other alleged victim of the beating on 11 September 1997, he immediately complained about the incident on 12 September 1997. The authorities however failed to conduct a proper investigation and to question all the witnesses as they should have. Subsequent complaints lodged by the applicant since 2002 have also been in vain, as the authorities have consistently failed to take all the necessary procedural steps and to establish relevant facts.

57. The Government disagreed with these submissions. They acknowledged that the applicant had sustained leg injuries in September 1997 and that his allegations concerning a head injury in November 1999 were not improbable. They maintained however that there was no evidence that the injuries complained of had been inflicted by the police officers. The applicant could have injured his legs in a fight with another private person. As regards the head injury, assuming the applicant

had suffered one, it was not at all apparent that this injury had resulted from the use of force rather than from an accidental fall.

58. As regards the duty to investigate the applicant's complaint, the Government maintained that it was not easy to establish all relevant facts, as the applicant's complaint, which related to the events of 1997 and 1999, first reached the prosecutors' office only in August 2002. However, once the authorities had been notified of the incidents, an independent enquiry was carried out and all necessary actions were taken to establish relevant facts.

2. The Court's assessment

a. The alleged ill-treatment

59. In light of the general principles determined in its case-law (see, for example, *Kozinets*, cited above, §§ 51-54), the Court considers that the treatment complained of by the applicant has been such as to fall within the scope of Article 3 of the Convention. It remains to be considered whether the State authorities should be held responsible for it.

60. The Court notes that the fact that on 11 September 1997 the applicant sustained numerous injuries to his legs, which required a surgical intervention, is not in dispute between the parties. The applicant's version that these injuries had been inflicted by officers S.V. and V.V., has not, however, been backed up by any evidence. On the contrary, several individuals, including Mrs A.P., who saw the applicant being taken for questioning, Mr Y.M., who purportedly witnessed the applicant's interrogation, and Mrs L.K., an employee of the farm office where the interrogation took place, suggested alternative explanations. They named several villagers, in fights with whom the applicant could have had his legs injured. Moreover, the applicant's brother acknowledged having fought with him in September 1997. Given all of the information in its possession, the Court cannot conclude "beyond reasonable doubt" that the applicant's leg injuries are attributable to police officers.

61. As regards the head injury, the Court can equally not establish a violation of the Convention on the basis of probabilities.

62. In view of the above, the Court finds no violation of the substantive limb of Article 3 of the Convention.

b. The alleged inadequacy of the investigation

63. In light of the general principles concerning the duty of the States to conduct an effective investigation of arguable claims concerning ill-treatment (see e.g. *Kozinets*, cited above, §§ 59-60), the Court notes at the outset that the investigation of the applicant's allegations, which lasted some six years, has neither found the persons responsible for his leg injuries

in September 1997 nor established how, if at all, he sustained a head injury in November 1999.

64. However, in assessing to what extent the domestic authorities should be held responsible for such an outcome of the investigation, the Court first notes that until July 2002 the applicant had done little to promote any enquiry. According to the case file materials, he first complained to the police about the incident of 11 September 1997 only on 9 March 1998. The applicant apparently did not attempt to challenge the results of the ensuing internal investigation report dismissing his claims. His next complaint about the incident of September 1997 as well as his first complaint about the incident of November 1999 was directed to the ombudsman only three years after the latter incident. The Court finds that the delays on the applicant's part made it objectively more difficult for the authorities to determine the circumstances in his case.

65. At the same time, the Court considers that the applicant's conduct alone cannot explain the authorities' failure to establish the facts. The Court observes that there was no finding by domestic authorities that his complaint of 2002 was time-barred. The applicant can therefore not be reproached for failure to observe statutory formalities in search of an appropriate domestic remedy. The authorities, for their part, cannot be considered absolved from a duty to act in investigating his allegations. Furthermore, as regards the incident of 11 September 1997 the prosecutors' office was immediately made aware of it by Mr O.K. The authorities were therefore capable of starting to collect evidence much earlier than when the applicant lodged his complaint.

66. In the meantime, an official enquiry into the applicant's complaint was discontinued on numerous occasions in view of the lack of an appearance of criminal conduct on the police officers' behalf. Subsequently, following appeals by the applicant, it was reopened and the matter was remitted for further investigation. In the Court's opinion, repeated remittals of a case for further investigation may disclose a serious deficiency in the domestic prosecution system (see *Kozinets* cited above, § 61).

67. Furthermore, the domestic authorities themselves referred to the prosecution's omissions as reasons for such remittals and instructed the enquirers to take additional measures. However, these instructions were not always properly followed. In particular, notwithstanding that in June 2002 the judicial authorities found it necessary for the applicant to be assessed by a commission of medical experts, three decisions to wrap up the enquiry were subsequently taken and annulled before the assessment finally took place in January 2005. The second medical assessment, recommended by the judicial authorities on 12 April 2007, has never been ordered.

68. A number of actions was taken with unnecessary delays. In particular, it was only on 26 May 2005 that the Chernihiv Prosecutors'

Office ordered the questioning of the individuals in whose company the applicant encountered officers S.V. and V.V. (see § 31 above). The collective farm employees who might have been in the office while the applicant was being questioned, were questioned in accordance with court instructions only on 3 February 2005 (see §§ 23, 27 above). In view of the delays by domestic authorities certain potential sources of relevant evidence, which existed in 2002 when the applicant first lodged his complaint with the ombudsman, became unavailable before the prosecution had explored them. In particular, Mr O.K., the other purported victim of the beating on 11 September 1997, died by hanging in April 2004 (see § 38 above). The temporary detention centre records, which could have shed light on the applicant's purported head injury in November 1999, had been destroyed by April 2004 (see § 43 above).

69. Next, according to the information in the Court's possession, certain potential sources of important evidence have not at all been properly explored. In particular, there is no record of questioning of Mrs I.K., one of the two ladies who purportedly witnessed the applicant being taken for questioning on 11 September 1997. No effort in good faith appears to have been made to locate Mr Y.K. and Mr O.P. (purported witnesses to the applicant's beating on 4 November 1999). Although on 7 June 2006 the Novozavodskyy District Court specifically pointed out that it was likely that these individuals lived in Kyiv, the prosecution continued to seek their details from the Chernihiv address bureau (see §§ 39, 41 above).

70. Finally, even where relevant evidence was secured, it was not always properly explored and verified. In particular, witnesses suggested that the applicant could have sustained leg injuries in fights with various individuals, including his brother, Mr A.L. and Mr O.K. The applicant's head injury could have been intentional or accidental. The prosecution has not made an effort to determine which of the numerous versions was more probable (for example by organising confrontations between various parties). Neither has it addressed certain inconsistencies between various pieces of information, such as whether an officer named I.P. accompanied officers S.V. and V.V. on 11 September 1997 (see §§ 9 and 32 above) and concerning the role of Mr Y.M. in the events on that date (in particular whether he was present during questioning or simply met the applicant and his companions near the farm office, see §§ 9, 36 and 38 above).

71. In light of the above, the Court finds that the authorities did not take all measures that could be reasonably expected from them to establish the circumstances concerning the applicant's complaint about ill-treatment and to find those responsible for his injuries. The Court concludes therefore that in the present case there has been a violation of the procedural limb of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

72. The applicant also complained under Article 6 § 1 and 13 of the Convention that his conviction in 2000 was unfair and referred to Articles 10 and 17 without further details.

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

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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.”

76. The applicant did not submit a claim for just satisfaction within the time-limit allotted for this purpose. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint about ill-treatment and inadequate investigation of this complaint admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb.

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President