



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

FIFTH SECTION

CASE OF LOPATIN AND MEDVEDSKIY v. UKRAINE

(Applications nos. 2278/03 and 6222/03)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

04/10/2010

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

In the case of Lopatin and Medvedskiy 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,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Mykhaylo Buromenskiy, *ad hoc judge*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 27 April 2010,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 2278/03 and 6222/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Sergey Yuryevich Lopatin and Mr Aleksandr Georgiyevich Medvedskiy (“the applicants”), on 21 December 2002 and 3 February 2003 respectively.

2. Mr Lopatin, who had been granted legal aid, was represented by Mr N. K. Kozyrev. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 17 February 2009 the Court declared the applications partly inadmissible and decided to communicate to the Government the complaint concerning unreported detention, ill-treatment by the police and lack of effective investigation into these allegations, as well as the complaint about the length of the criminal proceedings in their case. It also decided to join them and to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1975 and 1976 respectively.

5. On 10 July 1999 the applicants were apprehended by the police and taken to Torez Town Police Station. According to the applicants, at the

station the police officers ill-treated them in order to extract confessions to the attempted robbery and murder of a Mr L.

6. On 12 July 1999 the applicants were identified by witnesses S. and Gn. and the victim Mr L.

7. The applicants' detention at the police station was not recorded until 13 July 1999, when they were formally arrested. According to the Government, on this day Mr Lopatin resisted while being placed in his cell and had refused to give up items prohibited in detention facilities – a belt and shoe laces. Mr Lopatin objected to this latter assertion, stating that he had been detained for three days already at that time and could not possibly have had any prohibited items on him.

8. On 15 July 1999 both applicants were examined by a forensic medical expert, who drew up reports on the same date. The expert found that Mr Medvedskiy had bruises and scratches on his face, wrists, left elbow, legs, buttocks, hips and back. The expert concluded that the bruises could have been caused by blows with hard objects and could be classified as light bodily injuries. In particular, the bruises on the buttocks and hips could have been caused between 10 and 12 July 1999 by blows with a truncheon. He further concluded that the scratches on the applicant's wrists could have been caused between 10 and 12 July 1999 by the use of handcuffs. With respect to Mr Lopatin, the expert found that he had bruises and scratches on his forehead, neck, wrists, shoulders, back, legs and hips. The expert concluded that the bruises could have been caused by blows with hard objects and could be classified as light bodily injuries. He further concluded that the scratches on the wrists could have been caused between 10 and 12 July 1999 by the use of handcuffs.

9. On 6 August 1999 the Torez Prosecutor's Office refused to institute criminal proceedings into the applicants' allegations of ill-treatment by the police. The decision mentioned that although the applicants had been identified by witnesses on 12 July 1999 they had only been arrested on 13 July 1999. The investigator further noted that, according to the police, Mr Lopatin had resisted when being placed in his cell and that lawful force had been used against him. As to Mr Medvedskiy, the investigator noted that, according to the police, he had had a fight with G., a cellmate. The investigator concluded that there was no evidence that the police had inflicted any bodily harm on the applicants.

10. By a letter of 24 November 1999, the Head of the Torez Police Department informed the Torez Prosecutor that the applicants had been taken to the police station on 10 July 1999. As they had made contradictory statements and referred to witnesses who could prove their alibi, their statements had to be verified by the police officers and this took until 13 July 1999.

11. On 7 December 1999 the prosecutor severed the materials concerning the applicants' detention between 10 and 13 July 1999 from the

criminal case file in order to conduct an additional inquiry into the alleged unlawful detention.

12. The investigation into the criminal case against the applicants was completed on 9 February 2000. On the same day the case was sent to the Donetsk Regional Court for examination.

13. On 17 March 2000 the criminal case was remitted to the Donetsk Regional Prosecutor's Office for additional investigation.

14. On 4 May 2000 the criminal case against the applicants was referred to court.

15. Four court hearings in the case took place between May and September 2000.

16. According to the Government, the proceedings were adjourned between 14 September 2000 and 10 December 2001 because Mr Lopatin's lawyer was ill. According to Mr Lopatin, his lawyer requested an adjournment of the proceedings due to illness for one month only - in February 2001.

17. Between December 2001 and June 2002 five court hearings took place and one forensic examination was conducted.

18. On 7 June 2002 the Donetsk Court of Appeal, acting as a first instance court, sentenced Mr Lopatin to nine years' imprisonment for robbery and Mr Medvedskiy to fifteen years' imprisonment for robbery and murder. In a separate ruling the court requested the Torez Prosecutor Office to examine the lawfulness of the applicants' detention at the Torez Police Station between 10 and 13 July 1999 and their allegations of ill-treatment.

19. On 14 November 2002 the Supreme Court of Ukraine upheld the decision of the Donetsk Court of Appeal.

20. On 23 September 2003 the prosecutor questioned the police officers concerned.

21. On 25 September 2003 the Torez Court quashed the decision refusing to institute criminal proceedings concerning the allegations of ill-treatment dated 6 August 1999 in respect of both applicants and sent the case file for further investigation. The court noted that there were documents confirming the applicants' detention and bodily harm and that the investigator's conclusion contradicted the established facts.

22. On 3 October 2003 the Torez Prosecutor's Office, after having questioned the forensic expert on whether the applicants' injuries could have been inflicted on 13 or 14 July 1999 and received an affirmative reply, refused to institute criminal proceedings. In the decision it was noted that the applicants had been taken to the police station on 10 July and that the investigators had taken until 13 July to check their testimonies and interview them, but that no data had been found on the unlawful detention of the applicants at Torez Police Station.

23. On 15 March 2004 the Torez Court refused an appeal by Mr Lopatin against the prosecutor's decision of 3 October 2003.

24. On 27 July 2004 the Donetsk Court of Appeal quashed the decision of 15 March 2004 and remitted the case for fresh consideration.

25. On 20 September 2004 the Torez Court quashed the decision of 3 October 2003 in respect of Mr Lopatin on account of insufficient additional investigation and remitted the case for further investigation. In particular, the court instructed the investigator to question additional witnesses who had been in contact with Mr Lopatin at the time of the alleged offence.

26. On 15 October 2004 after questioning the police officers, the prosecutor refused to institute criminal proceedings into Mr Lopatin's allegations of ill-treatment. He concluded that the bodily harm caused to the applicant by the police officers had been lawful as he had been refusing to hand over prohibited items on his arrest.

27. On 15 December 2004 the Torez Court quashed the decision of 3 October 2003 in respect of Mr Medvedskiy on account of insufficient additional investigation and remitted the case for further investigation. The court instructed the investigator in particular to question additional witnesses who had been in contact with Mr Medvedskiy at the time of the alleged offence.

28. On 2 February 2005 the prosecutor questioned the police officers.

29. On 4 February 2005 the Torez Prosecutor's Office refused to institute criminal proceedings into the applicants' allegations. In its decision the investigator relied on previously obtained material and on the testimonies of police officers who could not recollect the details of the applicants' case.

30. On 17 February 2005 the decision of 4 February 2005 was quashed by the Donetsk Regional Prosecutor's Office on account of the incompleteness of the investigation. The prosecutor noted in particular that the investigator had not questioned the doctors who had examined the applicants, the police officers of the detention facility, or the cell-mate G., who had allegedly inflicted bodily harm on Mr Medvedskiy.

31. On 18 March 2005 the prosecutor questioned the doctor who had examined the applicants.

32. On 20 March 2005 the Torez Prosecutor's Office refused to institute criminal proceedings into the applicants' allegations. On 31 March 2005 this decision was quashed by the Donetsk Regional Prosecutor's Office on account of the incompleteness of the investigation.

33. On 14 April 2005 the Torez Prosecutor's Office requested the Torez Police Department to conduct an internal inquiry into the applicants' allegations of ill-treatment and unlawful detention between 10 and 13 July 1999.

34. On 15 April 2005 the acting head of the Torez Police Department replied that it was not possible to conduct the requested inquiry since all the

records relating to the period when the alleged violations had happened had been destroyed after the expiry of the three-year time-limit.

35. On 15 April 2005 the Torez Prosecutor's Office refused to institute criminal proceedings. It was decided that the bodily harm sustained by Mr Lopatin was the result of lawful use of force by the police and that the bodily harm sustained by Mr Medvedskiy was the result of a fight with his cellmate. It was further established that the applicants had been unlawfully detained at Torez Police Station between 10 and 13 July 2005, but the officials of the above police station could not be found criminally liable for an abuse of power because their prosecution was time-barred. The applicants did not appeal against that decision.

36. By a letter of 29 December 2005, the Prosecutor of the Donetsk Region informed Mr Medvedskiy's mother that they would no longer reply to her complaints about the refusal to institute criminal proceedings into the allegations of unlawful detention and ill-treatment.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

37. The relevant provisions of the Constitution of Ukraine provide:

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. ...”

Article 29

“Every person has the right to freedom and personal inviolability.

No one shall be arrested or held in custody other than pursuant to a reasoned court decision and only on grounds of and in accordance with a procedure established by law.

In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately if he or she has not been provided, within seventy-two hours of the time of detention, with a reasoned court decision in respect of the holding in custody.

Everyone who has been arrested or detained shall be informed without delay of the reasons for his or her arrest or detention, apprised of his or her rights, and from the

time of detention shall be given the opportunity to personally defend himself or herself, or to have the legal assistance of defence counsel.

Everyone who has been detained has the right to challenge his or her detention in court at any time.

The relatives of an arrested or detained person shall be informed immediately of his or her arrest or detention.”

B. Code of Criminal Procedure, 1960

38. Article 4 of the Code provides that the court, prosecutor or investigator shall, within the scope of their competence, institute criminal proceedings in any case where signs of a crime have been discovered, take all necessary measures provided by law to establish the commission of the crime and the identity of the offenders and to punish them.

39. Article 22 of the Code prohibits extracting confessions from an accused or any other participant in the proceedings through violence, threats or other illegal means.

40. Article 28 of the Code provides that the person who has sustained material damage as the result of a crime shall be entitled to lodge a civil claim against the accused person or the persons who bear material liability for the actions of the accused.

C. Civil Code, 2003

41. The relevant provision of the Code provides:

Article 1167

Grounds of Responsibility for Non-Pecuniary Damage

“...2. Non-pecuniary damage shall be indemnified irrespective of the guilt of the government, governmental body of the Autonomous Republic of Crimea, local self-government, physical or legal person that inflicted it:

...

2) if damage to a physical person has resulted from his or her illegal imprisonment...”

D. The Act “on the procedure for the compensation of damage caused to a citizen by the unlawful actions of bodies of inquiry, pre-trial investigative authorities, prosecutors or courts” of 1 December 1994 (with amendments)

42. The relevant provisions of the Act provide:

Section 1

“Under the provisions of this Law a citizen is entitled to compensation for damage caused by:

(1) unlawful conviction, unlawful indictment, unlawful arrest and detention, unlawful conduct of a search, seizure of property during the investigation and trial, unlawful removal from work (office) or other procedural actions that interfere with a citizens' rights;

(2) the unlawful imposition of administrative arrest or correctional labour, unlawful confiscation of property, the unlawful imposition of a fine;

(3) the unlawful conduct of search and seizure activities provided for by the Laws of Ukraine on “Search and Seizure Activities”, “the Organisational Legal Basis for Combating Organised Crime”, and other legal acts.

In the cases indicated in part 1 of this section, the damage sustained shall be compensated in full irrespective of the guilt of the officials of the bodies of inquiry, the pre-trial investigative authorities, prosecutors or courts.”

Section 2

“The right to compensation for damage in the amount, and in accordance with the procedure, established by this Law shall arise in cases of:

(1) acquittal by a court;

(2) the termination of a criminal case on grounds of the absence of proof of the commission of a crime, the absence of *corpus delicti*, or a lack of evidence of the accused's participation in the commission of the crime;

(3) the refusal to initiate criminal proceedings or the termination of criminal proceedings on the grounds stipulated in paragraph 2 of part 1 of this section;

(4) the termination of proceedings for an administrative offence.

The right to compensation for damage caused by the search and seizure activities indicated in section 1 of this Law, conducted prior to the institution of criminal proceedings, arises in the cases set out in paragraph 1(1) of part 1 of section 1, or in cases in which no decision was taken on instituting criminal proceedings within six months of the conduct of such activities, as a result of which such activities ... were cancelled.”

Section 3

“In the cases referred to in section 1 of this Law the applicant shall be compensated for ...

(5) non-pecuniary damage.”

Section 4

“... Compensation for non-pecuniary damage shall be awarded in cases in which unlawful actions by bodies of inquiry, pre-trial investigative authorities, prosecutors or courts have caused non-pecuniary losses to a citizen or led to the disruption or the need for additional effort in the organisation of his or her life.

Non-pecuniary damage shall be defined as the suffering caused to a citizen due to physical or psychological influence resulting in a deterioration or deprivation of his or her ability to act in accordance with his or her usual habits and wishes, a deterioration in his or her relations with the people around him or her, or other adverse effects of a non-pecuniary nature.”

43. In December 2005 Section 2 of the Act was supplemented by a new item which reads as follows:

“(1-1) the finding in a judgment by a court or other decision by a court (except a ruling or decision of a court on remittal of the case for further investigation or for retrial) of the fact of unlawful indictment, unlawful arrest and detention, the unlawful conduct of a search, seizure of property during the investigation and trial, unlawful removal from work (office), other procedural actions that interfere with citizens' rights, or the unlawful conduct of search and seizure activities;”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

44. The applicants complained that they had been ill-treated by the police and that the investigation into these allegations had been ineffective. They referred to Article 3 of the Convention, which reads as follows:

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

A. Admissibility

45. The Government considered that the applicants had not exhausted all remedies available to them under domestic law as they had failed to appeal against the decision of 15 April 2005 to a higher prosecutor or court.

46. Mr Lopatin submitted that over six years more than thirty complaints had been sent to different State authorities, including prosecutors and courts, but to no avail.

47. Mr Medvedskiy made no further comments.

48. The Court finds that the Government's contentions concerning non-exhaustion are so closely linked to the merits of the applicants' complaints under Articles 3 and 13 of the Convention that they should be joined to them and considered together with them.

49. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Alleged ill-treatment by the police

50. Mr Lopatin maintained that the domestic authorities had failed to give plausible explanations for the cause of the bodily injuries inflicted on him. He considered that the version of the events accepted by the investigation had serious flaws. Notably, the applicant could not have been placed in detention or have had prohibited items in his possession on 13 July 1999 as by that time he had already spent three days in detention and any prohibited items would have been seized from him on the day of his actual arrest, that is, on 10 July 1999. Furthermore, after a certain period of time had elapsed the investigation could no longer find any documents concerning the circumstances of the applicant's detention between 10 and 13 July 1999 as they had been destroyed after three years.

51. Mr Medvedskiy made no further comments.

52. The Government maintained that the applicants had not been subjected to ill-treatment by the police. They referred to the conclusions of the investigation: that Mr Lopatin had sustained bodily injuries as a result of a lawful application of force by the police, and Mr Medvedskiy as a result of a fight with his cellmate G.

53. The Court reiterates that “where an individual is taken into police custody 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*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

54. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow

from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

55. Turning to the circumstances of the present case, the Court notes that it is not in dispute between the parties that the bodily injuries recorded by the forensic expert on 15 July 1999 (see paragraph 8 above), were inflicted on the applicants while they were in detention. It should be further noted that the domestic authorities did advance an explanation as to the cause of the applicants' injuries. However, in the Court's opinion such an explanation cannot be considered satisfactory and convincing for the following reasons.

56. The Government, relying on the results of the investigation, maintained that Mr Lopatin had sustained bodily injuries (bruises and scratches on his forehead, neck, wrists, shoulders, back, legs and hips) as a result of a lawful application of force by the police on 13 July 1999 when he had resisted while being placed in his cell and had refused to give up his belt and shoe laces that were items prohibited in detention facilities (see paragraph 7 above). The Court reiterates that recourse to physical force against a person which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3. Such a "strict proportionality" approach has also been taken by the Court in respect of a situation where an individual is already under the full control of the police (see, among others, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269; *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII; and *Milan c. France*, no. 7549/03, 24 January 2008, § 68). In this connection, the Court notes that according to the case file material the version of events advanced by the police had never been thoroughly checked from the viewpoint of proportionality and the absolute necessity of the application of force. Furthermore, as submitted by the applicant, such a version of events did not match the ultimate findings of the domestic authorities as to the date of his arrest. Accepting the fact of the applicant's arrest on 10 July 1999, the domestic authorities failed to explain why the withdrawal of items prohibited in detention facilities, which would normally be made upon a detainee's arrival, had been conducted in respect of Mr Lopatin only three days later.

57. As to the authorities' version of events with respect to Mr Medvedskiy's injuries (bruises and scratches on his face, wrists, left elbow, legs, buttocks, hips and back), the Court notes that this account,

apart from having been denied by the applicant himself, rested solely on the testimonies of the police. The investigation did not question the alleged perpetrator G., who, as according to the police, had had a fight with the applicant. Nor did the investigation explain the nature of the injuries on the applicant's wrists and hips, which, according to the forensic report, could have been caused by handcuffs and a truncheon respectively, which hardly corresponds to the explanation of a fight between cellmates.

58. The Court notes that the materials in the case file enable the conclusion that the applicants were the victims of violence during their detention. While the applicants did not present and indeed were not in a position to present any direct independent evidence capable of confirming their allegation that their injuries were caused by police officers, the Court considers that, viewed cumulatively, the medical evidence, the applicants' testimonies, the fact of their detention at the police station and the lack of any plausible alternative explanation as to the origin of the applicants' injuries, give rise to a reasonable suspicion that the injuries may have been caused by the police.

59. The Court reiterates that a State is responsible for the welfare of persons in detention and that the authorities have a duty to protect such persons. Bearing in mind the authorities' obligation to account for injuries caused to persons under their control, the Court considers that failure to find and prosecute persons guilty of a crime of violence against a detainee, as in the instant case, cannot absolve the State of its responsibility under the Convention (see, *mutatis mutandis*, *Esen v. Turkey*, no. 29484/95, § 28; *Yaz v. Turkey*, no. 29485/95, § 30; *Ayşe Tepe v. Turkey*, no. 29422/95, 22 July 2003).

60. In the light of the above, and in the absence of any plausible explanation of the Government as to the origin of the applicants' injuries, it must be considered that the applicants sustained the injuries as a result of inhuman and degrading treatment for which the Government must bear Convention responsibility.

61. The Court concludes that there has been a breach of Article 3 of the Convention in this regard.

2. Alleged failure to carry out an effective investigation

62. Mr Lopatin considered that despite the instructions of the courts, the prosecutors had never conducted a thorough investigation of his complaints and had not taken all necessary investigative measures.

63. Mr Medvedskiy made no further comments.

64. The Government maintained that the investigation into the applicants' allegations of ill-treatment had been effective. They noted that the investigator had interviewed police officers, a forensic expert and a doctor on several occasions. They concluded that the prosecutor had taken all necessary measures for the investigation of the applicants' allegations.

65. The Court considers, first of all, that the medical evidence and the applicants' complaints and testimony together gave rise to a reasonable suspicion that their injuries could have been caused by the police.

66. Where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards of effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005).

67. The Court notes that, following the applicants' complaints, the State authorities conducted a perfunctory investigation and only questioned the alleged offenders (see paragraph 9 above). They took the denial of the police officers at face-value, accepted the version of events given by the police and refused to institute criminal proceedings, despite the applicants' statements and their undisputed bodily injuries. Further investigation was mainly limited to questioning the same police officers, who could no longer recall the circumstances of the applicants' case (see paragraph 29 above).

68. As to the questioning of medical experts referred to by the Government, it was limited to the question whether the injuries could have been inflicted on the applicants not during the period of their unreported detention between 10 and 12 July 1999, as indicated in the original expert forensic report, but at a later date. Such questioning seems to be directed more towards supporting the version of events given by the police than to investigating the applicants' allegations (see paragraph 22 above).

69. Furthermore, despite the applicants' numerous complaints and appeals and the instructions of the domestic courts, the investigation failed to question the cell-mate G. and the other persons who had been in contact with the applicants during the relevant period, such as the witnesses who had identified the applicants on 12 July 1999 (see paragraph 6 above). The Court also reiterates its findings as to the inconsistencies in the versions given by the investigation (see paragraphs 56-57 above) and the failure of the investigation to address them.

70. In view of these considerations, the Court considers that the applicants took sufficient steps to bring their allegations of ill-treatment to the attention of the domestic authorities, and that the eventual

ineffectiveness of the investigation dispensed them from lodging further appeals at the domestic level (see paragraphs 9, 21, 23, 24, 25, 27, 30 above). The Court therefore dismisses the Government's objections as to the admissibility of this complaint and finds that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicants' allegations of ill-treatment.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

71. The applicants complained that they had been detained unlawfully between 10 and 13 July 1999 and that the domestic authorities had failed to effectively investigate the alleged unlawful deprivation of their liberty, in breach of Article 5 § 1 of the Convention, which reads as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...”

A. Admissibility

72. The Government maintained that the domestic authorities had acknowledged the unlawfulness of the applicant's detention at the police station between 10 and 13 July 1999. Therefore, the applicants could no longer claim to be victims. Furthermore, such acknowledgment provided the applicants with an opportunity to claim compensation for damages, which they failed to take advantage of. In their opinion, it was for the applicants to demonstrate that the remedies available could have not been effective in their case

73. Mr Lopatin maintained that the special Act “on the procedure for the compensation of damage caused to a citizen by the unlawful actions of bodies of inquiry, pre-trial investigative authorities, prosecutors or courts” required a court decision. He doubted the authenticity of the decision of 15 April 2005 and its evidential force in claiming damages for unlawful detention. He submitted that had he lodged a claim for compensation with a

domestic court, the likelihood of the fact of his unlawful detention being established before the domestic courts was negligible.

74. Mr Medvedskiy made no comment.

75. As to the Government's argument that the applicants lost their victim status following the acknowledgement of their unlawful detention, the police admitted the fact of the applicants' detention between 10 and 12 July 1999 as early as November 1999 (see paragraph 10 above), but it took the investigator almost four years to recognise the detention, and another one and a half years to acknowledge its unlawfulness. The Government failed to explain the reasons for such a delay, which eventually barred prosecution of those responsible for the applicants' unlawful detention (see paragraph 35 above) and led to the loss of the prison records relating to the period in question (see paragraph 34 above). Recalling that justice delayed is often justice denied, the Court considers that such a belated acknowledgment of the violation did not deprive the applicants of their victim status. Furthermore, acknowledgment of a violation is not sufficient, since the applicants should have the possibility of obtaining redress at the domestic level.

76. The Government considered that the provisions of the Civil Code of 2003 provided the applicants with such a possibility but they had failed to use it.

77. The Court notes that the Government's objections are of a general nature and do not address several important issues. They do not argue and do not demonstrate that the provisions of the Code could apply retroactively to the events that took place four years prior to the entry into force of the Code. Nor do they explain why the Civil Code and not the special law on compensation referred to by Mr Lopatin should apply in the instant case. Finally, the above-mentioned law was amended in December 2005 to introduce the right to compensation for unlawful detention regardless of whether or not the person concerned has been acquitted. In such circumstances, the Court is not persuaded by the Government's arguments that the remedy advanced by them was effective and had to be exhausted by the applicant.

78. The Court therefore rejects the Government's objections.

79. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

80. Mr Lopatin maintained that his detention between 10 and 13 July 1999 had been unlawful.

81. Mr Medvedskiy made no further comment.

82. The Government reiterated that the unlawfulness of the applicants' initial detention had been acknowledged at the domestic level.

83. The Court reiterates that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, *inter alia*, *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports* 1997-IV).

84. In this connection, the Court observes that the absence of an arrest record must in itself be considered a serious failing, as it has been the Court's constant view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Fedotov v. Russia*, no. 5140/02, § 78, 25 October 2005; *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006; and *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III).

85. In the instant case, it is no longer disputed that the applicants remained in custody for three days without any records and the unlawfulness of their detention had been acknowledged by the domestic authorities (see paragraph 35 above). These authorities, however, failed to investigate this violation with sufficient efficiency (see paragraph 75 above). The Court therefore considers that there has been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

86. Mr Lopatin further complained that he had no effective remedy for his complaints of ill-treatment and unlawful deprivation of liberty. He relied on Article 13 of the Convention:

“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

87. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

88. The applicant maintained that he had no effective remedy for his complaints under Articles 3 and 5 of the Convention complaints.

89. The Government considered that the applicant had effective remedies. They reiterated their position on the effectiveness of the investigation in respect both of the alleged ill-treatment and the alleged unreported detention. They also maintained that there were further domestic remedies for the applicant's complaints under Article 5 which he had failed to use.

90. Having regard to its finding under Articles 3 and 5 of the Convention about deficiency of the investigation, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

91. The applicants complained that the criminal proceedings against them had been unreasonably long. They relied on Article 6 § 1 of the Convention, which provides, in so far as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

92. The Government contested that argument. They maintained that the proceedings had been relatively complex. Furthermore, in the proceedings before the first-instance court a significant delay had been caused by the failure of Mr Lopatin's lawyer to appear.

93. Mr Lopatin disagreed. He submitted that the delay caused by his lawyer's illness constituted only one month. He further maintained that in replies to his queries the authorities had informed him that the delays were caused by the large number of cases and the unsatisfactory work of the units responsible for escorting the accused to the courts.

94. Mr Medvedskiy made no further comments.

95. The period to be taken into consideration began on 4 July 1999 and ended on 14 November 2002. It thus lasted three years, four months and twelve days for two levels of jurisdiction.

96. The Court reiterates that, in assessing the reasonableness of the length of the proceedings in question, it is necessary to have regard to the particular circumstances of the case and the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicants and of the relevant authorities, and what was at stake for the applicants (see, for instance, *Kudla v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

97. The Court notes that although the overall length of the proceedings could be considered justified given the complexity of the case, there was a period of inactivity of more than a year between September 2000 and December 2001 (see paragraph 16 above) while the case was pending before the first-instance court. The Court notes that the Government failed to substantiate with the documentary evidence their submissions that the period in question had been attributable to the applicant and his lawyer, and no other plausible explanations could be found in the case-file material. In the Court's opinion, such a long period of inactivity in circumstances where special diligence was required because the applicants had been detained is sufficient to find that there has been a violation of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. Mr Lopatin claimed 30,000 euros (EUR) in respect of non-pecuniary damage. He further maintained that he had suffered some pecuniary damage, but did not provide any details or supporting documents.

100. Mr Medvedskiy submitted no claims.

101. The Government considered Mr Lopatin's claim unsubstantiated and unreasonable. They further contended that the applicant's representative was not authorised to lodge such claim.

102. The Court notes that the applicant did authorise Mr Kozyrev to represent him before the Court and that the Government were duly informed of this by letter on 30 April 2009. Therefore, it considers that Mr Kozyrev had powers to lodge just satisfaction claims on behalf of the applicant. The Court further considers that it does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, making its assessment on an equitable basis, it awards Mr Lopatin EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

103. The applicants did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

104. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's contentions concerning the exhaustion of domestic remedies in respect of the applicants' complaints under Articles 3 and 13 of the Convention; and rejects them after an examination on the merits;
2. *Declares* the remainder of the applications admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention as regards the applicants' ill-treatment;
4. *Holds* that there has been a violation of Article 3 of the Convention as regards the absence of an effective investigation into the applicants' allegations of ill-treatment;
5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicants' unreported detention between 10 and 13 July 1999;
6. *Holds* that there is no need to examine the complaints under Article 13 of the Convention;
7. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of criminal proceedings against the applicants;

8. *Holds*

(a) that the respondent State is to pay Mr Lopatin, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable at 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President