

**Press release issued by the Registrar**

**Chamber judgment**  
Not Final<sup>1</sup>

**[Shchukin and Others v. Cyprus](#)** (application no. 14030/03)

**CYPRIOT AUTHORITIES FAILED TO INVESTIGATE ALLEGED ILL-TREATMENT OF  
UKRAINIAN SHIP CREW MEMBER DURING DEPORTATION**

***Violation of Article 3 (lack of effective investigation into alleged ill-treatment)  
of the European Convention on Human Rights***

**Principal facts**

The applicants are ten Ukrainian nationals and one Estonian national who were employed by a Ukrainian travel company as catering and hotel staff on the Ukrainian cruise ship *Primexpress Island*. The case concerns the circumstances of their deportation from Cyprus after the ship owners went bankrupt.

The ship was anchored at Limassol Port in Cyprus with more than 100 crew members and more than 100 passengers aboard in September 2001. It was subsequently impounded and forbidden from sailing by a court order, pending proceedings brought by crew members for unpaid wages before the Cypriot Admiralty Court.

While the passengers were repatriated, a number of crew members stayed on board and received revocable landing permits allowing them to disembark. As the owners could not pay either the ship's running costs or the crew, the ship was put up for auction on December 2002. The Admiralty Court rejected the offer made at the auction as too low and ordered that the State-funded food supply to those aboard the ship be stopped (except to four people considered the "minimum security crew") and for arrangements to be made for the repatriation of the remaining crew members. A majority of them left for Ukraine the day after the court's decision, while a small group, including the applicants, remained on board. The ship's captain informed the Cypriot authorities in January 2003 that the group created problems by disobeying orders and drinking alcohol almost every evening. He expressed concerns about the risk of fire or other damage and requested that the group be sent back to Ukraine.

In early February 2003, the authorities issued detention and deportation orders against the applicants on the grounds that they were prohibited immigrants under national law. They

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on the day the request is rejected.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

were not informed of the orders until 18 February 2003, more than ten days later. That day, they went to the immigration police station at the port, having been told that their photographs were to be taken for a renewal of their landing permits.

The applicants maintained that, at the police station, they were immediately arrested, without being served with a document explaining the reasons, and refused contact with the Ukrainian Consul or their lawyer. According to the Cypriot Government, the Ukrainian captain of the ship and a Russian-speaking member of the immigration police had informed the applicants of the reasons for their arrest and deportation. However, since they had reacted violently to the news, the deportation and detention orders were only shown to them from a distance to avoid their destruction. The three women among the group, one of whom had a baby, were separated from the men; according to the Cypriot Government this was for their own protection. They were then driven separately to the airport and deported to Ukraine. The applicants claimed that they were unable to collect their personal belongings from the ship, including warm clothing for the baby. It is uncontested by the parties that the applicants' mobile phones were confiscated and only returned to them at the airport.

Four of the applicants corroborated the claim of the ship's masseur, Oleg Shchukin, that he had been punched in the forehead, held by the neck, forced to the ground and kicked so that he temporarily lost consciousness, after he had asked the police to provide documents or an explanation for their actions. The Cypriot Government denied any ill-treatment of Mr Shchukin, but stated that the police used force to arrest him and handcuffed him because he had attacked the police officers, one of whom was left unfit for work for five days. Three days after his return to Ukraine, Mr Shchukin was examined by a forensic medical expert, whose report stated that he had some minor bodily injuries, in particular a head injury, bruises on his neck and abrasions in the area of the wrist joints, which had been inflicted three to four days earlier.

The applicants lodged a petition with the Ukrainian Parliamentary Ombudsman, complaining of the degrading treatment they had allegedly received from the Cypriot authorities. Their petition was referred to the Cypriot Ombudsman, who in November 2004 issued a report in which she criticised in particular a lack of legal grounds for the deportation orders, as the applicants had not illegally entered the country, and a violation of the applicants' right of access to information, to be heard and to seek court or out-of-court protection. She referred the case to the Cypriot Attorney-General, who took no legal action.

### **Complaints, procedure and composition of the Court**

Mr Shchukin complained under Article 3 of the Convention that he had been injured by immigration police officers. All ten applicants further complained about the alleged unlawfulness of their arrest and detention, relying on Article 5 (right to liberty and security). They further raised a number of complaints concerning their detention and deportation.

The application was lodged with the European Court of Human Rights on 26 March 2003. The Ukrainian Government intervened as a third party.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greece), **President**,  
Anatoly **Kovler** (Russia),  
Elisabeth **Steiner** (Austria),  
Dean **Spielmann** (Luxembourg),  
Sverre Erik **Jebens** (Norway)  
Giorgio **Malinverni** (Switzerland),

George **Nicolaou** (Cyprus) *judges*,

and also Søren Nielsen, **Section Registrar**.

## **Decision of the Court**

### *Article 3 (ill treatment)*

The Court observed that the Cypriot Government had not disputed that police officers had caused Mr Shchukin's injuries, as documented in the medical report, by using force. However, the medical report did not support the allegation that he had been kicked. At the same time, noting that one of the officers' injuries rendered him unfit for work, the Court had no reason to doubt that Mr Shchukin forcefully resisted the arrest. The Court further noted that the injuries he suffered had not had any lasting consequences. The Court unanimously concluded that the use of force against Mr Shchukin had not been so excessive as to reach the threshold of treatment contrary to Article 3. There had therefore been no violation of Article 3.

### *Article 3 (investigation)*

The Court considered that Mr Shchukin's complaint, together with the admission by the police that force had been used, had given rise to a reasonable suspicion that he might have been subjected to ill-treatment by the police. The Cypriot authorities had therefore been under an obligation to conduct an effective investigation. However, there had been no follow-up by the Attorney-General's office concerning Mr Shchukin's complaint. The Government's justification for the lack of action was the failure to submit Mr Shchukin's medical report to the Ombudsman, but there had been no formal decision stating that fact.

The Court further noted that all reports concerning the incident came from the district immigration police, that is, the very authority responsible for the detention and deportation in question. Moreover, the relevant reports were incomplete, as they did not provide any information as to the exact nature of the force used to arrest Mr Shchukin. There was no documentary evidence of any concrete steps taken by the police to investigate the allegations. The authorities had failed to carry out an investigation that was independent, impartial and subject to public scrutiny and the competent authorities had not acted with exemplary diligence and promptness. There had therefore been a violation of Article 3 concerning the lack of an effective investigation.

### *Other alleged violations*

The Court noted that, as the applicants had a lawyer in Cyprus, they could have brought their complaints under Article 5 before the Cypriot courts after their return to Ukraine. However, they had not done so. That part of the application had therefore to be rejected as inadmissible for non-exhaustion of domestic remedies. The Court further rejected the remainder of the applicants' complaints as inadmissible.

### *Just satisfaction*

The Court held that Cyprus had to pay Mr Shchukin 12,000 euros for non-pecuniary damage.

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***The European Court of Human Rights*** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.