



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

FIFTH SECTION

CASE OF SERGEY TIMOFEYEV v. RUSSIA

(Application no. 12111/04)

JUDGMENT

STRASBOURG

2 September 2010

FINAL

02/12/2010

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

In the case of Sergey Timofeyev v. Russia,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Anatoly Kovler,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 12111/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Sergey Vladislavovich Timofeyev (“the applicant”), on 10 March 2004.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 28 April 2008 the President of the Fifth 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 § 1).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in the town of Shakhty, in the Rostov Region.

6. On 10 July 1995 the Shakhty Prosecutor's Office instituted criminal proceedings against the applicant and Mr P. for rape and attempted rape of

two victims. On 10 October 1995 the proceedings were terminated for lack of evidence.

7. On 13 December 1995 the decision of 10 October 1995 was quashed and the case was remitted for a further investigation.

8. On 1 July 1996 the applicant was remanded in custody on suspicion of rape and attempted rape. On an unspecified date he was released. A preventive measure in the form of an undertaking not to abscond was applied both to the applicant and Mr P.

9. On 1 July 1997 the Shakhty Town Court acquitted the applicant and Mr P. of rape and attempted rape.

10. On 15 January 1998 the Rostov Regional Court quashed the first-instance judgment on appeal and remitted the case for a fresh examination.

11. On 6 August 1998 the Presidium of the Rostov Regional Court quashed the judgment of 15 January 1998 and remitted the case for a new examination in the second instance.

12. On 26 August 1998 a hearing before the Rostov Regional Court was postponed because the applicant's counsel, Mr K., was occupied.

13. On 9 September, 14 October and 4 November 1998 the Rostov Regional Court postponed appeal hearings because the applicant was ill.

14. On 9 December 1998 the Rostov Regional Court postponed a hearing because they had received a telegram from an anonymous sender requesting that the applicant's case be taken off the list of appeals to be heard.

15. On 29 December 1998, as well as on 3 February and 3 March 1999 the Rostov Regional Court postponed appeal hearings because of the applicant's illness.

16. On 14 April 1999 the Rostov Regional Court decided to examine the appeal in the applicant's absence, quashed the judgment of 1 July 1997 and remitted the case for a fresh examination in the first instance. The applicant's counsel was not present at the hearing.

17. On 11 May 1999 the Shakhty Town Court scheduled a hearing for 8 June 1999.

18. On 8 June 1999 the Shakhty Town Court ordered Mr P. to be summoned to a hearing. It appears that Mr P. failed to comply with the summons.

19. On 2 July 1999 the criminal proceedings against the applicant and Mr P. were suspended. The preventive measure in Mr P.'s respect was changed to custodial detention and he was put on a wanted list. The Shakhty Town Court decided not to proceed with the examination of the case. The applicant and his lawyer did not appeal against the decision.

20. On 4 January 2002 the criminal proceedings were resumed in respect of the applicant.

21. On 10 January 2002 the Shakhty Town Court postponed a trial hearing owing to the applicant's failure to appear.

22. On 23 January 2002 a trial hearing was postponed to 18 February 2002.

23. On 18 February 2002 a hearing was postponed owing to witnesses' and the applicant's counsel's failure to appear. Mr K. was absent because of a business trip.

24. On 26 February 2002 a hearing was postponed because of the applicant's illness.

25. On 14 March 2002 a hearing was postponed on a prosecutor's request in charge of the search for Mr P.

26. On 18 March 2002 a hearing was postponed because one of the victims failed to attend.

27. On 21 March 2002 a hearing was postponed until 22 March 2002 on the applicant's request, to allow him to study the case file.

28. On 21 March 2002 the Shakhty Town Court dismissed Mr K.'s request to suspend the proceedings against the applicant pending the search for Mr P. The applicant's counsel appealed against the ruling on the same day.

29. Between 22 March and 1 April 2002 the Shakhty Town Court held hearings on the applicant's case every day.

30. On 28 March 2002 the Shakhty Town Court dismissed the applicant's request that the proceedings be terminated on the basis of the Act of Amnesty in Commemoration of the 55th Anniversary of the Victory in the Great Patriotic War of 1941-45 adopted by the Russian State Duma on 26 May 2000 ("the Amnesty Act").

31. On 1 April 2002 a hearing was postponed because the applicant was ill.

32. On 9 April 2002 the criminal proceedings in respect of the applicant were suspended because of his illness.

33. On 23 April 2002 the Rostov Regional Court upheld the rulings of 21 and 28 March 2002.

34. On 13 June 2002 the proceedings against the applicant were resumed and a hearing was scheduled on 27 June 2002.

35. On 27 June 2002 the Shakhty Town Court held a hearing, dismissed the applicant's challenge in respect of the composition of the court and a request for a medical examination and postponed the hearing until 23 August 2002.

36. On 25 July 2002 the Presidium of the Rostov Regional Court quashed by way of supervisory review the refusal to dismiss the applicant's requests of 27 June 2002.

37. On 16 August 2002 the Chief Doctor of the Shakhty Oncological Dispensary informed the trial court that the applicant had been diagnosed with malignant lymphoma and had undergone gastrectomy (removal of the

stomach) and hemicolectomy (removal of a part of the colon). He underlined that the applicant had a first-degree disability and “dumping syndrome” (rapid fall in blood sugar after eating) which did not allow him to participate in the hearing; and that any stressful situation could aggravate his condition.

38. On 19 August 2002 the criminal proceedings in respect of the applicant were suspended because of his illness.

39. On 1 October 2002 the Rostov Regional Court quashed the ruling of 19 August 2002 and remitted the case for a fresh examination to the Shakhty Town Court with a new composition.

40. On 29 October 2002 a hearing was scheduled for 15 November 2002.

41. On 15 November 2002 the proceedings in respect of the applicant were suspended because of his illness and then resumed on 27 November 2002.

42. On 10 and 25 December 2002 hearings were postponed because of the applicant's absence.

43. On 17 January 2003 the proceedings in respect of the applicant were suspended because of his illness and then resumed on 31 January 2003.

44. On 10 February 2003 a hearing was postponed because the applicant's counsel, Ms L., was occupied.

45. On 26 February 2003 the Shakhty Town Court heard the applicant, his counsel, the victim and several witnesses and examined written evidence.

46. On 28 February 2003 the Shakhty Town Court convicted the applicant of rape and attempted rape and sentenced him to three years' imprisonment. The applicant was exempted from serving the sentence under the Amnesty Act.

47. On 28 February 2003 one of the victims appealed against the judgment.

48. On 5 and 11 March 2003 the applicant lodged appeals against his conviction, challenging, *inter alia*, the court's factual findings. According to the applicant, he requested the Rostov Regional Court to examine his appeal in his presence. According to the Government's submissions, the applicant did not request to be present at a hearing.

49. On 11 March 2003 the prosecutor appealed against the judgment of 28 February 2003.

50. On 1 April 2003 the applicant lodged an additional appeal in which he made detailed complaints alleging deficiencies in the first-instance proceedings. According to the Government, he also requested that an appeal hearing be held in his presence.

51. On 20 April 2003 the victim lodged an additional appeal, which was forwarded to the applicant for comments.

52. On 27 May 2003 the Shakhty Town Court received the applicant's comments on the victim's and prosecutor's appeals and then forwarded the case to the Rostov Regional Court. An appeal hearing was scheduled for 15 July 2003.

53. On 15 July 2003 the Rostov Regional Court postponed an appeal hearing to 5 August 2003 because the applicant was ill.

54. On 5 August 2003 the applicant did not appear before the Rostov Regional Court because he was ill. The hearing was postponed until 26 August 2003.

55. On 26 August 2003 the appeal hearing was again postponed because of the applicant's failure to appear in the court-room due to illness.

56. In August 2003 the President of the Criminal Chamber of Rostov Regional Court requested the Ministry of Health of Rostov Region and Chief Doctor of the Shakhty Oncological Dispensary to provide information on the applicant's state of health with a view to the possibility of his participating in an appeal hearing scheduled for 30 September 2003.

57. On 4 September 2003 the Health Department of Shakhty Administration informed the Rostov Regional Court that the applicant was suffering from a malignant lymphoma and that between 29 July and 18 August 2003 he had been hospitalised. The applicant was weak; a stressful situation would have an adverse impact on his state of health. It was not possible to predict or assume a date when he would be available for an appeal hearing.

58. On 29 September 2003 the applicant sent a telegram to the Rostov Regional Court, requesting that the hearing be adjourned as he was in hospital. He also asked if the court was equipped with facilities to enable wheelchair access.

59. On 30 September 2003 the Rostov Regional Court decided to reject the applicant's request to adjourn the appeal hearing. It referred to the applicant's serious state of health, and the legislative rule that the appeal court must start examination of an appeal no later than one month after it has been lodged.

60. On the same day the Rostov Regional Court examined the case on appeal. The court heard submissions by the judge rapporteur and prosecutor, but the applicant's counsel was not present at the hearing. The judgment of 28 February 2003 was upheld.

61. On 20 February 2004 the Rostov Regional Court rejected the applicant's request for supervisory review proceedings. With respect to the applicant's complaint about examination of the case on appeal in his absence the court found that the applicant had failed to appear "for a far-fetched reason".

II. RELEVANT DOMESTIC LAW

The Code of Criminal Procedure (CCP)

62. An appeal court examines appeals with a view to verifying the lawfulness, validity and fairness of first-instance judgments (Article 373).

63. An appeal court must start the examination of an appeal no later than one month after its receipt (Article 374).

64. An appeal court can directly examine evidence, including additional material submitted by parties (Article 377 §§ 4 and 5).

65. An appeal court may (a) uphold a first-instance judgment; (b) quash it and terminate criminal proceedings; (c) quash it and remit the case for a fresh examination in the first-instance; and (d) amend the judgment (Article 378 § 1).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

66. The applicant complained that the criminal proceedings against him had been excessively long and that the appeal court had held the hearing in his absence. He relied on Article 6 of the Convention, which in its relevant parts reads as follows:

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

A. The parties' submissions

1. The Government

67. The Government contested the applicant's arguments. They claimed at the outset that the applicant had filled in the application form on 2 June 2004, although 10 March 2004 had been mentioned as the date of introduction of the application. They emphasised that the proceedings against the applicant had ended on 30 September 2003, that is more than six months before 2 June 2004, and concluded that the application had been lodged out of time.

68. Furthermore, the Government claimed that the applicant had had the right to attend an appeal hearing but he had not been obliged to do so. The applicant had requested the Rostov Regional Court to reschedule hearings

on three occasions although he had not been in hospital on the dates of those hearings. Accordingly, the applicant had lied that he was in hospital when requesting that hearings be postponed. The Rostov Regional Court had taken all necessary and lawful measures to ensure the applicant's attendance at an appeal hearing. The applicant's retained lawyer had been duly informed of the date and time of the hearing of 30 September 2003: first, he had been present at the hearing of 26 August 2003 when it had been decided to postpone the examination of the appeal until 30 September 2003; secondly, the Rostov Regional Court had notified the lawyer of the date of a new hearing by a letter of 27 August 2003. The lawyer had not attended the hearing of 30 September 2003 for unknown reasons; he had not requested that it be postponed. In his supervisory review request the lawyer had not claimed that he had been deprived of an opportunity to be present at the appeal hearing. Furthermore, the Rostov Regional Court had had reasonable grounds to assume that the applicant would not attend appeal hearings in the future because he could not be obliged to do so. The appeal court had had a duty to ensure a reasonable balance of the rights of the applicant and other parties to the proceedings. The applicant's presence at a hearing would imperil his health. Further postponements of a hearing would render the proceedings lengthier. In sum, the Government argued that the applicant's absence at the appeal hearing of 30 September 2003 had not been in breach of Article 6 of the Convention.

69. Lastly, the Government asserted that the domestic courts had examined the criminal case against the applicant within a "reasonable time". A considerable part of the proceedings had taken place prior to the date of ratification of the Convention by the Russian Federation, namely 5 May 1998. The criminal case had been rather complicated, as proven by a quashing of the applicant's acquittal. The investigation had experienced difficulties when obtaining and assessing the evidence. In the Government's submissions, the applicant had been responsible for four hundred and twenty-six days of delay in examination of the case, as hearings had been postponed because of his illness. The lawyers' inability to appear before the courts had caused in total a delay of sixteen days. Some delays had occurred because of the victim's and witnesses' absence. A delay of two years and six months had been caused by the search for the applicant's co-accused. The applicant's counsel, Mr K., had not appealed against the decision not to proceed with the case in Mr P.'s absence; on the contrary, he had requested the first-instance court to suspend the proceedings until Mr P. could be found. The proceedings had been time-consuming owing to the need to secure the applicant's rights to a fair trial.

2. The applicant

70. The applicant maintained his complaints. He submitted that the Rostov Regional Court had used confidential medical data concerning his

state of health against his interests. Furthermore, the decision to hold an appeal hearing in his absence had been based on medical information but not on any legal provision. The applicant emphasised that he had been deprived of his right to be present at the appeal hearing in the proceedings against him.

71. The applicant also stated that at some point during the court proceedings he had been in a wheelchair. The building of the Rostov Regional Court was not equipped with ramps for disabled persons' access, which had been one of the reasons for the applicant's inability to attend the appeal court's sessions.

72. The applicant further submitted that the proceedings against him had been pending from 10 July 1995 until 30 September 2003, that is for more than eight years. He contested the Government's assertion that the case was complicated. The charges against Mr P. had been subject to a separate set of criminal proceedings and thus could not have influenced the course of the proceedings against the applicant.

73. In sum, the applicant concluded that his right to a public trial within a reasonable time and his defence rights had not been respected.

B. The Court's assessment

1. Admissibility

74. As to the Government's claim that the application was introduced out of time, the Court reiterates that, under Rule 47 § 5 of the Rules of Court, "the date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the subject matter of the application ...". The Court points out in this respect that the applicant presented his complaints about the alleged violations of his Convention rights in a letter sent to the Court on 10 March 2004, as confirmed by the postmark. In such circumstances it accepts that the applicant introduced his application on 10 March 2004 having complied with the six-month rule. Hence the Government's objection in this respect should be dismissed.

75. In so far as the Government may be understood to claim that the applicant failed to exhaust available domestic remedies, since Mr K. did not claim in his supervisory review request that he had been deprived of an opportunity to be present at the appeal hearing, the Court reiterates that, according to its constant practice, an application for supervisory review is not a remedy to be used for the purposes of Article 35 § 1 of the Convention (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004, and *Nazarov v. Russia*, no. 13591/05, § 94, 26 November 2009). The Government's objection in this respect must therefore be dismissed.

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

2. Merits

(a) The applicant's absence from the appeal hearing

77. The Court reiterates at the outset that Article 6 of the Convention, read as a whole, guarantees the right of an accused to participate effectively in his criminal trial. This includes, *inter alia*, a right not only to be present, but also to hear and follow the proceedings (see, for example, *Stanford v. the United Kingdom*, 23 February 1994, § 26, Series A no. 282-A, and *Barberà, Messegue and Jabardo v. Spain*, 6 December 1988, § 78, Series A no. 146). This right is implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of paragraph 3 of Article 6 – “to defend himself in person”, “to examine or have examined witnesses”, and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court” (see *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89). It is difficult to see how a person “charged with a criminal offence” could exercise these rights without being present (see *Russu v. Moldova*, no. 7413/05, § 26, 13 November 2008).

78. The Court notes at the same time that the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing as it does for a trial hearing (see *Kamasinski v. Austria*, 19 December 1989, § 106, Series A no. 168). Even where the court of appeal has jurisdiction to review the case both as to facts and as to law, Article 6 does not always require a right to a public hearing, still less a right to appear in person (see *Fejde v. Sweden*, 29 October 1991, § 31, Series A no. 212-C). In order to decide this question, regard must be had, among other considerations, to the specific features of the proceedings in question and to the manner in which the applicant's interests were actually presented and protected before the appellate court, particularly in the light of the nature of the issues to be decided by it and of their importance to the appellant (see *Hermi v. Italy* [GC], no. 18114/02, § 62, ECHR 2006-XII).

79. As to the specific features of the proceedings in question, the Court reiterates that criminal appeals in the Russian legal system deal with both facts and law (see *Metelitsa v. Russia*, no. 33132/02, § 31, 22 June 2006). When quashing a first-instance judgment, an appeal court is empowered both to remit a case for a new examination to a lower court and to amend the judgment (see paragraph 65 above). Given the wide spectrum of powers accorded to appellate courts under domestic law, the Court considers that a

defending party's presence at an appeal hearing may be crucial for securing respect for the right to a fair trial.

80. Turning to the circumstances of the present case, the Court points out that in the first instance the applicant was convicted of rape and attempted rape. Even though he was not to serve his sentence in detention, the fact of being convicted of a violent crime *per se* might have had a significant adverse impact on his private and social life. The Court thus considers that re-examination of the conviction on appeal was of particular importance for the applicant.

81. As to the manner in which the applicant's interests were protected in the second instance, the Court observes that on 30 September 2003, before examining the applicant's case on appeal, the Rostov Regional Court decided that it could hear the case in the accused's absence. It is clear that by then the appeal court was fully aware of the fact that the applicant's counsel was not present in the court room that day. Therefore, the Rostov Regional Court knowingly decided to hold an appeal hearing in a criminal case in the absence of any person capable of bringing arguments in the applicant's defence. It is noteworthy in this respect that the prosecutor appeared and pleaded before the appeal court.

82. The Court is not convinced by the Government's argument that the need to avoid protraction of the proceedings could in itself justify the decision to hold the appeal hearing in the applicant's, as well as his counsel's absence. In view of the serious nature of the crime of which the applicant had been found guilty at trial and the fact that the defending party was put in a disadvantageous position vis-à-vis the prosecution at the appeal hearing of 30 September 2003, the Court considers that the interests of justice required that the appeal court postpone a hearing so that the applicant be present in the court room.

83. The Court thus concludes that the proceedings before the Rostov Regional Court did not comply with the requirement of fairness.

84. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the applicant's absence from the appeal hearing.

(b) Length of criminal proceedings

85. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term (see, among other authorities, *Imbrioscia v. Switzerland*, 24 November 1993, § 36, Series A no. 275). It ends with the day on which a charge is finally determined or the proceedings are discontinued.

86. The period under consideration in the present case began on 10 July 1995, when criminal proceedings were instituted against the applicant, and ended on 30 September 2003, when the applicant was convicted in the final

instance, with the exemption of the period between 10 October and 13 December 1995, during which no proceedings were pending. Accordingly, the period under consideration amounted to a total of eight years and sixteen days. This period spanned the investigation stage and the judicial proceedings, during which the case was remitted for a fresh examination twice at the first level of jurisdiction and once at the second. The period falling under the Court's jurisdiction *ratione temporis* after the entry into force of the Convention with respect to Russia on 5 May 1998 in this case amounts to five years, four months and twenty-seven days. The Court notes at the same time that it may take into account the state of the proceedings existing on the date of ratification (see *Kalashnikov v. Russia*, no. 47095/99, § 124, ECHR 2002-VI).

87. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the authorities before which the case was brought (see *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II, § 67, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 45, ECHR 2004-XI).

88. The Court is disinclined to share the Government's view that the criminal case involving the applicant was particularly complex. The charges against the applicant concerned a single event and nothing in the materials at the Court's disposal suggests that the case file was voluminous. The mere fact that on 1 July 1997 the applicant was acquitted at the first level of jurisdiction could not complicate the proceedings to an extent which would justify their dilatory nature. The Court thus considers that it was not the complexity of the case which accounted for the length of the proceedings.

89. The Court, however, points out that the criminal proceedings against the applicant were on several occasions suspended because of his illness (see paragraphs 32, 38, 41 and 43 above). The aggregate period of such suspensions exceeded four months. Furthermore, numerous hearings were postponed because of the applicant's medical condition (see paragraphs 13, 15, 24 and 53 - 55 above). The overall length of these delays amounted to some nine months. The Court considers that the personal nature of the accusations against the applicant necessitated his presence in the court-room so that he could defend himself properly and the interests of justice be respected and accepts that the delays caused by the applicant's state of health cannot be said to be attributable to the State.

90. As regards the conduct of the authorities, the Court reiterates that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement of Article 6 § 1 (see *Des Fours Walderode v. the Czech Republic* (dec.), no. 40057/98, 4 March 2003). It points out that in the course of the domestic proceedings there were substantial periods of inactivity for which the Government have not

submitted any satisfactory explanation and which are attributable to the State. It is not clear whether any proceedings were pending between 15 January and 6 August 1998 (see paragraphs 10 and 11 above). Even considering that the Convention entered into force in respect of Russia on 5 May 1998, the Court points out that the Government have put forward no explanation for an apparent lack of activity during a three-month period between the ratification date and the date of the supervisory review.

91. However, the Court points out that the most significant delay was caused by the suspension of the proceedings on 2 July 1999 until 4 January 2002. It takes note of the Government's submission that that suspension was required because it was impossible to examine the case in the absence of the applicant's co-accused. The applicant did not object to the decision on suspension; moreover, on 14 March 2002 the applicant's counsel requested to suspend the proceedings for the second time pending the search for Mr P. (see paragraph 25 above). The Court thus cannot conclude that the period of inactivity between 2 July 1999 and 24 January 2002 was attributable to the State.

92. The Court also observes that, save for the periods when the proceedings were suspended, hearings were scheduled at regular intervals and the parties' requests were promptly examined.

93. Having regard to all the circumstances of the case, the Court considers that there were no excessively lengthy periods of inactivity attributable to the State and thus Court finds that the "reasonable time" requirement has been complied with.

94. There has accordingly been no violation of Article 6 § 1 of the Convention on account of the length of proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

95. Relying on Article 6 §§ 1 and 3 (c) and (d), as well as on Article 2 of Protocol No. 7 to the Convention, the applicant complained that the hearing of 14 April 1999 had been held in his absence, that the domestic courts had erred in their assessment of evidence and application of law, that he had not been given enough time to prepare his last plea and that the first-instance court had not questioned a number of important witnesses.

96. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicant's submissions disclose no appearance of violations 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

97. 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

98. In his application form the applicant claimed 100,000 United States dollars in respect of non-pecuniary damage. In his just satisfaction claims the applicant left it to the Court to determine the exact amount to be awarded under this head.

99. The Government found the amount mentioned in the application form to be excessive.

100. The Court finds it appropriate to award the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

B. Default interest

101. 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. *Declares* the complaints concerning the applicant's absence from the appeal hearing and the length of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's absence from the appeal hearing;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the length of proceedings;
4. *Holds*
 - (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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to

be converted into Russian roubles 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;

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

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

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President