



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

FIRST SECTION

CASE OF NURMAGOMEDOV v. RUSSIA

(Application no. 30138/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

07/09/2007

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

In the case of Nurmagomedov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 30138/02) 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 Tagir Suleymanovich Nurmagomedov (“the applicant”), on 28 May 2002.

2. The applicant was represented before the Court by Ms O. Shepeleva, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the proceedings for bringing his sentence into conformity with the new law were not fair or public and that officials at the correctional colony where he was held had hindered the submission of his application to the Court.

4. By a decision of 16 September 2004 the Court declared the application partly admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born 1961 and is now serving a custodial sentence in the town of Yemva in the Komi Republic.

A. Bringing the applicant's sentence into conformity with the new Criminal Code

7. On 11 April 1991 the Kochubeyevskiy People's Court of the Stavropol Region convicted the applicant of aggravated robbery (Article 146 § 2 of the RSFSR Criminal Code) and the involvement of minors in criminal activities (Article 210 of the RSFSR Criminal Code). It sentenced him to eight years' imprisonment in a correctional colony. On 29 May 1991 the Stavropol Regional Court upheld the judgment on appeal.

8. The applicant was sent to a correctional colony to serve his sentence. On 14 March 1994 the colony director granted him home leave and he travelled to his native village in the Dagestan Republic. He was due back at the colony on 1 April 1994.

9. According to the applicant, he found his wife and children in a precarious situation and decided not to return to the colony but to start working to support his family. The applicant and his family moved to the town of Gubkinskiy in the Tyumen Region.

10. On 29 April 1999 the colony officials launched a criminal investigation in connection with the applicant's failure to return from home leave. On 29 August 2000 the applicant was summoned to a police station in Gubkinskiy and taken into custody.

11. On 16 November 2000 the Pechora Town Court of the Komi Republic convicted the applicant of evading punishment (Article 188.1 of the RSFSR Criminal Code) and sentenced him to six months' imprisonment to run consecutively to the time left to serve under the judgment of 11 April 1991 (four years and seven months in total).

12. The applicant filed an application for supervisory review of the judgment of 11 April 1991. On 18 April 2002 the Prosecutor General's office refused his application but forwarded a copy of it to the Stavropol prosecutor "to bring the applicant's sentence into conformity with the new Criminal Code [of 1 January 1997]". The Stavropol prosecutor forwarded the request to the Komi prosecutor.

13. On an unspecified date a deputy prosecutor of the Komi Republic lodged an application "for [an order] bringing the applicant's sentence into conformity with the Criminal Code of the Russian Federation".

14. On 28 June 2002 the Knyazhpogostskiy District Court of the Komi Republic granted the prosecutor's motion. It established that Article 162 § 2 of the Criminal Code of the Russian Federation provided for a more lenient punishment for aggravated robbery than Article 146 § 2 of the RSFSR Criminal Code. As the provisions providing for lighter sentences could be applied retrospectively to convicted prisoners, the court considered it necessary to recharacterise the offence committed by the applicant in accordance with the new Criminal Code. It also deleted from the original judgment a reference to the applicant's inebriated state at the time of the

offence as the new Code no longer classified inebriated as an aggravating circumstance. However, that did not result in a reduction of the applicant's sentence because the original sentence remained within the limits of Article 146 § 2 of the new Code.

15. On 3 July 2002 the colony correspondence office informed the applicant that the application by the Komi prosecutor “would be heard in the Knyazhpogostskiy District Court”.

16. On 4 July 2002 the applicant asked the Knyazhpogostskiy District Court to obtain the case file from the Kochubeyevskiy People's Court to enable him to study the file, attend the hearing, make representations and apply for legal aid. According to the stamp on the applicant's letter, the District Court received it on 18 July.

17. On 26 July 2002 the applicant received a copy of the ruling of 28 June 2002 from the prosecutor's office.

18. On 2 August 2002 the judge of the Knyazhpogostskiy District Court who had made the ruling of 28 June, advised the applicant that that court had no power to obtain case files from other courts or to review final convictions and that the applicant could seek legal aid from the local bar council.

19. On 20 October 2003 the prosecutor of the Komi Republic lodged an application for supervisory review of the ruling of 28 June 2002 on the ground that it had been made in the applicant's absence.

20. On 19 November 2003 the Presidium of the Supreme Court of the Komi Republic granted the prosecutor's application. It quashed the ruling of 28 June 2002 and remitted the matter to the same court.

21. The applicant described the subsequent events as follows:

“On 11 December 2003 I was called to the colony headquarters where I was told, in room no. 2, that the ruling of the Knyazhpogostskiy court of 28 June 2002 would now be reviewed... I was told right away that the new ruling would be identical to the ruling of 28 June 2002, the only difference being that it would be made in my presence. I asked to appoint prisoner S. as my representative but was told, 'Prisoner S. is now restricted in his movements and cannot attend the court hearing'. I asked for the refusal to be certified in writing, but this was refused. I asked those present at the 'court hearing' to give their names, but was told, 'you will find out from the ruling'.

I considered my further participation in this farce inappropriate and asked that my refusal to participate further in the hearing ... be entered in the record and left the room. On 24 December 2003 I received the ruling of 11 December 2003 containing the phrase, '... having heard the submissions by convict T.S. Nurmagomedov...'”

22. On 11 December 2003 the Knyazhpogostskiy District Court issued a new ruling similar to the ruling of 28 June 2002.

23. The applicant lodged an appeal. On 31 December 2003 the judge informed him that his appeal could not be processed because of certain formal defects. The applicant did not re-submit his appeal.

B. Alleged hindrance to the applicant's correspondence with the Court

24. According to the applicant, on 23 May 2002 he submitted an application to the European Court to the correspondence office of colony 222-35/2 (*снейчасть ИК 222-35/2*). Twenty-five days later the application was returned to him and he was told that he had no right to petition international institutions until he had exhausted all domestic remedies.

25. He sent a copy of his application to the Court through an informal channel and complained about the actions of the colony administration to a prosecutor's office.

26. On 12 July 2002 the Ust-Vymskiy prosecutor in charge of compliance with laws in correctional colonies (*прокурор по надзору за соблюдением законов в ИУ*) confirmed the lawfulness of the actions of the colony administration, finding as follows:

“An application to [i]nternational institutions is only possible after the issue has been resolved (or has not proved possible to resolve) within the country because otherwise the complaint or application would immediately be returned for resolution in the country... This procedure also applies to convicted prisoners...”

Therefore the actions of the administration of correctional colony no. 2 declining to send your application to the Registry of the European Court of Human Rights were lawful...”

27. The applicant further submitted that the first package sent by the Court on 13 August 2002 had not been given to him until 31 December 2002. The envelope had been removed to make verification of the date of receipt impossible.

28. On 10 October 2003 the acting deputy colony director approved the findings of an internal inquiry that had been carried out by the deputy colony director in charge of prisoners' human rights into the circumstances surrounding the applicant's request to dispatch his application to the European Court. According to the inquiry's findings, in May 2002 the applicant had asked a senior inspector of the special registration group about the procedure for lodging applications with the European Court. The inspector had advised him to apply first to the competent domestic authorities. The applicant had made no further demands to the colony administration concerning his application and had sent it to the Court through informal channels, in breach of the internal regulations. The human-rights deputy director proposed to consider it established that the alleged hindrance had not taken place.

29. On the same date the acting deputy director issued order no. 592-A on behalf of the Mikun directorate of correctional facilities (*Микуньское управление лесных исправительных учреждений*) for the attention of the human-rights deputy director and the directors of other correctional colonies in the region. The introductory part of the order related the exchange that

had taken place between the applicant and the colony inspector. The human-rights deputy director was ordered to provide each colony with a set of educational materials on the procedures for applying to, *inter alia*, the Russian Ombudsman and the European Court and to prepare test questions on human rights for colony officials. The colony directors were instructed to study the educational materials and to ensure compliance with the order of the Ministry of Justice of 23 December 2001 prohibiting all hindrances to the communication between convicted prisoners and the Court.

30. On 21 November 2003 the deputy Minister of Justice – the authority in charge of the penitentiary system – sent a circular to the heads of regional departments of the Chief Penitentiary Directorate, reminding them that the decision as to whether domestic remedies had been exhausted was made by the European Court itself and that the administration of a penal institution was not competent to determine this issue and were not to prevent prisoners from lodging applications with international human rights' organisations. The deputy minister called for rigorous compliance with the State's obligations under Article 34 of the Convention.

II. RELEVANT DOMESTIC LAW

A. Relevant criminal law

31. Pursuant to Article 146 § 2 of the RSFSR Criminal Code (in force until 1 January 1997), aggravated robbery was punishable by between six and fifteen years' imprisonment and the confiscation of property. Article 210 provided that involving minors in criminal activities, loitering or prostitution was punishable by up to five years' imprisonment.

32. Article 150 § 1 of the Criminal Code of the Russian Federation (in force since 1 January 1997) provides that involving a minor in the commission of a criminal offence through promises, deception, threats or otherwise is punishable by up to five years' imprisonment. Article 162 § 2 provides that aggravated robbery is punishable by between seven and twelve years' imprisonment and the confiscation of property.

B. Procedure for reviewing sentences in connection with the entry into force of the new Criminal Code

33. Article 10 of the Criminal Code (“Retrospective effect of criminal law”) provides that where a new criminal law decriminalises an offence, provides for more lenient punishment or otherwise improves the situation of the offender it shall apply with retrospective effect to offences committed before it came into force, even where the offender is already serving sentence. If the new law provides for a shorter sentence, then the offender's

sentence must be reduced accordingly. Laws providing for a heavier sentence or otherwise aggravating the situation of the offender have no retrospective effect.

34. Section 3 of the Criminal Code (Entry into Force) Act (no. 64-FZ of 13 June 1996) provided as follows:

“Where a convicted prisoner who was sentenced under the previous Criminal Code has not yet served his sentence, the sentence shall be brought into conformity with the Criminal Code of the Russian Federation if the sentence imposed by the court was more severe than the maximum sentence laid down by the relevant provision of the Criminal Code of the Russian Federation.

If the criminal law otherwise improves the situation of offenders or convicted prisoners..., convictions and judicial acts concerning other criminal-law measures must be reviewed by the convicting court or the court with jurisdiction for the locality where the sentence is being served.

Relief from punishment, a reduction in sentence or any other improvement in the situation of the offender ... shall be decided upon in accordance with Articles 361.1, 368 and 369 of the RSFSR Code of Criminal Procedure.”

35. Article 361.1 in Chapter 29 (“Execution of Sentences”) of the RSFSR Code of Criminal Procedure (in force until 1 July 2002) provided that a court, acting on an application by a convict or prosecutor in connection with the enactment of a law with retrospective effect, could exempt the convicted prisoner from serving the sentence, reduce his sentence or otherwise improve his situation. In such proceedings the court was required to base its ruling (*определение*) solely on the circumstances that were established in the final conviction and could not overrule the interpretation of the criminal law by the convicting court.

36. Article 368 determined the territorial jurisdiction of the courts. Article 369 provided that these issues were to be decided at a hearing. “As a rule”, the convict was to be summoned to the hearing.

37. Article 397 § 13 in Chapter 47 (“Proceedings for Examination and Determination of Issues Relating to the Execution of Sentences”) of the Code of Criminal Procedure of the Russian Federation of 18 December 2001 (in force since 1 July 2002) provides that decisions on a reduction of sentence following the enactment of a law with retrospective effect shall be made in accordance with Article 10 of the Criminal Code.

C. Handling of correspondence in penitentiary institutions

38. As worded at the material time, Article 91 of the Penal Code and paragraph 12 of the Internal Regulations of Correctional Institutions (Order no. 224 of the Ministry of Justice of 30 July 2001) provided that all incoming and outgoing correspondence of detainees, other than correspondence with courts, prosecutors, penitentiary officials, the

Ombudsman and counsel, was subject to censorship by the colony officials. Letters were to be put in mailboxes or given to the officials in an unsealed envelope. Paragraph 13 required detainees to submit all complaints through the colony officials.

39. By Order no. 393 of 26 June 1997, the Ministry of the Interior approved the Directive on the Functioning of Special Departments in Correctional Colonies. Paragraph 5.2 established that complaints addressed to authorities, organisations or officials who were not competent to deal with the matter concerned should not be forwarded to the addressees. The complainant was to be informed of that decision in writing and advised where to send his complaint. If the complainant disagreed with the decision not to forward his complaint, he could contest it by applying to the supervising prosecutor.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

40. The applicant complained that the proceedings for bringing his sentence into conformity with the new Criminal Code fell short of the requirements of Article 6 §§ 1 and 3 (b) and (c) of the Convention, which provide as follows:

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

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require...”

41. The Court must determine at the outset whether Article 6 applied to the proceedings to which the applicant's complaints related.

42. The Government submitted that the proceedings at issue did not determine any criminal charge against the applicant within the meaning of Article 6 of the Convention. The proceedings were conducted in accordance with the chapter of the Code of Criminal Procedure governing issues

relating to the execution of sentences. No new charge was brought against the applicant and the proceedings did not affect the substance of the charge that had been previously determined by the Kochubeyevskiy People's Court. The Knyazhpogostskiy District Court founded its ruling on the factual circumstances that had been established by the Kochubeyevskiy People's Court and did not question the legal characterisation attributed to those facts. The sole purpose of the proceedings was to bring the applicant's sentence into conformity with the new Criminal Code.

43. The applicant acknowledged that the provisions of the Code of Criminal Procedure governing the proceedings at issue did not allow the court to review the factual basis or the legal characterisation of the offence. However, they allowed the interested party, including the convict, to make submissions to the court. The applicant inferred that the proceedings were not a mere formality but a trial requiring full guarantees under Article 6 of the Convention. He pointed out that the removal of the reference to his inebriated state from the original judgment called for a discussion on the effect of that measure on his sentence and that he should therefore have been allowed to present his arguments on that issue.

44. The Court reiterates that a criminal charge is “determined” when the conviction has become final and the sentence has been definitively fixed (see, among other authorities, *Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, § 25; *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 77; and *T. v. the United Kingdom* [GC], no. 24724/94, § 108, 16 December 1999). According to the established case-law of the Convention organs, Article 6 does not apply to proceedings concerning a failed request to re-open a case. Only the new proceedings, after the re-opening has been granted, can be regarded as concerning the determination of a criminal charge (see *Nikitin v. Russia*, no. 50178/99, § 60, ECHR 2004-VIII, with further references).

45. In the instant case the applicant's conviction by the Kochubeyevskiy People's Court became final and enforceable on 29 May 1991 when the Regional Court upheld the judgment on appeal (see paragraph 7 above). The applicant's sentence was fixed at eight years' imprisonment. In determining the sentence, the People's Court had taken account of various circumstances liable to affect the punishment, such as the fact that the applicant had committed the offence in a drunken state. The criminal charge against the applicant was thus “determined” within the meaning of Article 6 of the Convention.

46. In 2000 the applicant's request for supervisory review of the judgment of 11 April 1991 was rejected. The prosecutor, however, noted that the applicant had been convicted under the “old” RSFSR Criminal Code. Since the new Criminal Code provided for the retrospective application of more lenient criminal-law provisions, there existed a possibility that his sentence might be reduced in the proceedings for

bringing the sentence into conformity with the new Criminal Code. These proceedings were instituted and conducted before the Knyazhpogostskiy District Court.

47. The fact that the proceedings were conducted by a court does not, in itself, call for the conclusion that a “determination of the criminal charge” was involved. The Court has to take into account the nature of the issues the court had to decide in the proceedings and its powers with regard to the final conviction.

48. As regards the issues for judicial determination in the instant proceedings, the relevant provisions expressly prohibited the court from making a fresh evaluation of the facts underlying the original conviction or attributing a different characterisation of the facts in law (see paragraph 35 above). The court was solely called upon to match the constituent elements of a crime as established in the original conviction with the definitions of offences contained in the new Criminal Code and replace the old references with the new. It also had power to remove the reference to circumstances which were no longer considered aggravating under the new law.

49. Unlike the supervisory-review proceedings, the proceedings for bringing the sentence into conformity with the new law did not empower the court to quash or alter the final conviction. If the new law provided for a heavier sentence for the same offence, the court was required to do nothing because the new law could not be applied retrospectively to the detriment of the offender (see paragraph 33 above). If, however, the maximum sentence for the same offence was lighter in the new Code than that imposed under the previous legislation, the court had to reduce it to the maximum set out in the new Code. That was a mathematical operation excluding any discretion on the part of the judge. Contrary to the applicant's submission, Article 10 of the Criminal Code did not list the deletion of a reference to aggravating circumstances as a ground for reviewing sentence.

50. In these circumstances, the Court considers that the proceedings for bringing the applicant's sentence into conformity with the new criminal law did not involve a “determination of a criminal charge” against the applicant. Furthermore, these proceedings did not concern the lawfulness of the applicant's conviction. They were not decisive for the applicant's right to liberty and therefore did not determine his “civil rights and obligations” (see, by contrast, *Aerts v. Belgium*, judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V, § 59).

51. It follows that the proceedings which the applicant complained about fell outside the scope of the application of Article 6 of the Convention. There has therefore been no violation of that provision.

II. ALLEGATION OF HINDRANCE TO THE RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

52. The applicant complained that he had been prevented by the colony officials from sending his application to the Court. The Court decided to examine his complaint from the standpoint of the right of individual petition guaranteed under Article 34 of the Convention which reads:

“The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

53. The applicant submitted that the colony inspector had refused to send his application to the Court, compelling him to resort to “informal channels” for dispatching it. The absence of malicious intent in her actions could not exclude her liability. The legislative framework as it existed at the material time permitted the censorship of correspondence with the European Court and allowed prison officers to decide whether the intended recipient of the complaint was competent to deal with it. The inspector had thus acted in accordance with the legal regulations then in force and the lawfulness of her decision was upheld by the supervising prosecutor. The investigation into the incident had taken place some fifteen months later and had been conducted by the same colony administration. Even though certain general measures had subsequently been taken for securing detainees' right of individual petition, the hindrance the applicant complained of had not been acknowledged.

54. Relying on the findings of the investigation that had been conducted by the colony administration in October 2003, the Government maintained that the applicant had not asked the colony officials to dispatch his application form but had merely sought an explanation of the procedure for lodging applications. They emphasised that the colony inspector had given an erroneous explanation to the applicant but had not acted in bad faith and had merely erred in her understanding of the applicable Russian laws and the case-law of the European Court. The Court's letters had been handed over to the applicant within the statutory time-limits and the applicant had lodged no complaints either with the colony administration or with the supervising prosecutor during his visit in August 2004. Finally, the Government pointed out that on 8 December 2003 the Penal Code had been amended so as to discontinue the censorship of correspondence with the Court. Furthermore, by circulars of 23 October 2001 and 21 November 2003, colony officials had been reminded of their duty to ensure compliance with the right of detainees to lodge applications with the Court.

55. The Court welcomes the legislative amendments and administrative regulations aimed at exempting correspondence with the Court from censorship and securing the uninhibited exercise of the right of individual

petition by applicants and prospective applicants held in penitentiary institutions. It notes, however, that these developments occurred after – and partly, in response to – the interference with the right of individual petition that is the subject of the applicant's complaint. It must therefore examine whether at the material time the applicant's right of individual petition was interfered with in a manner incompatible with the respondent State's obligations under Article 34.

56. The Court reiterates that the right of individual petition under Article 34 of the Convention will operate effectively only if an applicant can interact with the Court freely, without any pressure from the authorities (see *Akdivar and Others v. Turkey*, no. 21893/93, § 105, ECHR 1996-IV). The expression “any form of pressure” must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy or having a “chilling effect” on the exercise of the right of individual petition by applicants and their representatives (see *Fedotova v. Russia*, no. 73225/01, §§ 48-51, 13 April 2006; *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002; and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references).

57. It is in dispute between the parties whether the applicant asked the colony official to dispatch his application to the Court. The applicant said that he had but the administration had refused, while the Government claimed that he had merely asked for an explanation of the procedure. The Court notes that there are elements that support the applicant's version of events.

58. Firstly, at the material time the Penal Code and the implementing regulations did not treat correspondence with the Court as privileged, so that it was subject to censorship by penitentiary officials (see paragraph 38 above). Moreover, penitentiary officials were formally directed not to send complaints addressed to bodies or organisations which, in their assessment, were not competent to deal with them (see paragraph 39 above). Such complaints were returned to the complainant and this the applicant claimed happened in his case, once the colony inspector had decided that the Court would not be competent to deal with his application because domestic remedies had not been exhausted.

59. Secondly, the Court observes that the applicant availed himself of the right to contest the refusal to send his application before a supervising prosecutor. The prosecutor confirmed that the colony administration had acted lawfully (see paragraph 26 above). The prosecutor's response expressly referred to the refusal to *send* the application to the Court, upholding it as lawful. The Court lends more credence to the prosecutor's letter, which was written as a result of an examination of the issue by an independent official shortly after the events, than to the findings of the

inquiry which was conducted by the colony administration more than one year later.

60. Thirdly, if the applicant had been able to send his application to the Court in the ordinary way, through the colony correspondence office, as the Government claimed, it would have been irrational for him to take the dangerous course of circumventing the colony regulations by sending the application through “informal channels”. Failing to comply with the official rules on correspondence amounted to a serious breach of penitentiary regulations and could have resulted in detention in the disciplinary wing. The Government offered no explanation as to why the applicant would have taken such a risk if there were no restrictions on his correspondence with the Court.

61. The Court finds that by acting as they did, the domestic authorities attempted to discourage, or even prevent, the applicant from pursuing a Convention remedy. Even if there was no fault on the part of the penitentiary officials, whose actions were apparently guided by the regulations then in force, it should be stressed that Governments are answerable under the Convention for the acts of any State agency since what is in issue in all cases before the Court is the international responsibility of the State (see *Fedotov v. Russia*, no. 5140/02, § 75, 25 October 2005; and *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40).

62. In view of the foregoing, the Court considers that the respondent State failed to comply with its obligations under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 6,000 euros (“EUR”) for the alleged violation of Article 6 of the Convention and a further EUR 8,000 for the hindrance to his correspondence with the Court in breach of Article 34 of the Convention.

65. The Government submitted that the claim was “unjust and manifestly excessive” and that a finding of a violation would constitute a sufficient just satisfaction.

66. The Court notes that it has found no violation of Article 6 in the present case. As regards the interference with the applicant's right of individual petition under Article 34 of the Convention, it awards the applicant EUR 500 in respect of compensation for non-pecuniary damage and rejects the remainder of the applicant's claim.

B. Costs and expenses

67. The applicant claimed EUR 300 for the work of his representative before the Court and EUR 50 for postal and copying expenses.

68. The Government pointed out that while the legal-assistance contract between the applicant and his representative had established his obligation to pay EUR 300 to Mrs Shepeleva, the applicant had not produced evidence of payment and Mrs Shepeleva had not “prove[d] the purposes and the amount of the relevant expenses”.

69. The Court is satisfied that a legal-assistance contract between the applicant and his lawyer created a legally enforceable obligation to pay the amounts indicated therein. However, a certain reduction must be applied since one of the applicant's complaints failed. Having regard to the material in its possession, the Court awards the applicant EUR 250 in respect of costs and expenses, plus any tax that may be chargeable.

C. Default interest

70. 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. *Holds* that there has been no violation of Article 6 of the Convention;
2. *Holds* that there has been a hindrance to the applicant's right of individual petition under Article 34 of the Convention;
3. *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 500 (five hundred) in respect of compensation for non-pecuniary damage and EUR 250 (two hundred and fifty euros) in respect of costs and expenses, to be converted into

Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President