



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

FIFTH SECTION

CASE OF BENYAMINSON v. UKRAINE

(Application no. 31585/02)

JUDGMENT

STRASBOURG

26 July 2007

FINAL

26/10/2007

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 Benyaminson v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 31585/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Aleksandr Isaakovich Benyaminson (“the applicant”), on 26 July 2002.

2. The applicant died on 14 November 2004. On 5 February 2005 his partner and sole heir, Ms Nadezhda Stepanovna Cherkassova, expressed the wish to continue the proceedings before the Court on the applicant's behalf. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 7 December 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1943 and lived in Simferopol.

A. Criminal proceedings against the applicant

5. On 9 December 1998 criminal proceedings were instituted against the applicant for fraud and forcible assertion of a private right (*самовластво*). He was suspected of having circumvented the divorce proceedings by way of forging his ex-wife's signature on the petition for divorce and substituting

her in the court proceedings with another woman. This had allegedly been done with a view to obtaining the sole ownership of the matrimonial estate.

6. On 15 December 1998 the applicant was arrested (*затриманий*) and placed in police custody.

7. On 16 December 1998 the Alushta Town Prosecutor (*Прокурор міста Алушты*) ordered the applicant's detention on remand (*взяття під варту*).

8. On 21 December 1998 the applicant's ex-wife was admitted to the proceedings as a victim (*потерпіла*).

9. On 13 January 1999, ruling on a request for release, that had been filed by the applicant's lawyer, the Alushta Town Court (*Алуштинський міський суд*) decided to release the applicant on an undertaking not to abscond (*підписка про невиїзд*).

10. On 21 January 1999 an investigator of the Alushta Town Police Department (*слідчий СВ Алуштинського МВ УМВС в АР Крим*, hereafter “the investigator”), assigned to deal with the case, adjourned the proceedings until 11 February 1999 due to the illness of the applicant.

11. For some time in April 1999 the applicant was put on the list of wanted persons due to his failure to respond to the investigator's summonses. Between 14 June and 8 July 1999 the proceedings were suspended due to the applicant's failure to appear for questioning.

12. On 9 July 1999 the pre-trial investigation was completed and the applicant was given access to the case file. In the course of the investigation the police investigator interviewed ten witnesses and obtained an expert's opinion on the question whether the applicant had forged the victim's signature on the petition for divorce.

13. The applicant commenced studying the case file on 19 July 1999. For a certain period in August 1999 he was on a wanted list due to his failure to appear for scheduled access to the case file.

14. On 20 October 1999 the judge of the Yalta Town Court (*Ялтинський міський суд*) committed the applicant for trial on charges of fraud and forcible assertion of a private right.

15. The hearing scheduled for 22 October 1999 was adjourned due to the illness of the applicant's lawyer.

16. The Yalta Town Court cancelled the hearings fixed for 17 November and 10 December 1999 on account of the victim's and witnesses' failure to appear.

17. On 24 February 2000 the Prosecutor's Office of the Autonomous Republic of Crimea (*Прокуратура Автономної Республіки Крим*, hereafter “the POARC”) informed the applicant that, in response to his complaint, the police investigator who had dealt with his case at the pre-trial stage had been reprimanded for delaying the investigation.

18. The hearing scheduled for 29 March 2000 was adjourned on the applicant's request.

19. The Yalta Town Court could not hold a hearing fixed for 19 April 2000 because the judge was on mission elsewhere.

20. On 11 May 2000 the Yalta Town Court decided that further pre-trial investigations were necessary and remitted the case to the Alushta Town Prosecutor.

21. Between 20 and 29 June 2000 the proceedings were suspended due to the applicant's failure to appear and the victim's temporary stay in Germany.

22. On an unknown date in June 2000 the police investigator issued a certificate, stating that the applicant had refused to participate in further proceedings and to provide his new address in Simferopol.

23. On 3 July 2000 the investigator ordered the police to establish the whereabouts of the victim and the witnesses.

24. From 22 July 2000 until an unknown date in August 2000 the case file was examined by the Alushta Town Prosecutor's Office (*Прокуратура міста Алушта*).

25. In the meantime, on 27 July 2000 the investigator ordered the police to establish the whereabouts of the applicant.

26. On 30 August 2000 the investigator questioned the victim. On 31 August 2000 he decided to suspend the proceedings on the ground that the victim had taken up permanent residence in Belorussia.

27. On an unknown date in early October 2000 the Alushta Town Prosecutor's Office brought disciplinary proceedings against the investigator for unjustified delay of the proceedings.

28. On 10 October 2000 a new investigator was assigned to the applicant's case. On the same date he discontinued the proceedings in respect of the fraud charge, but continued in respect of the charge of a forcible assertion of private right charge.

29. On 28 November 2000 the Prosecutor's Office of the Autonomous Republic of Crimea (*Прокуратура Автономної Республіки Крим*) set aside the investigator's decision of 10 October 2000.

30. On 12 December 2000 the case was handed over to a new investigator. On 21 December 2000 yet another investigator was assigned to deal with the case.

31. The investigation resumed on 4 January 2001.

32. In a decision of 10 January 2001 the investigator discontinued the criminal proceedings as they became time barred.

33. On 23 January 2001 the Alushta Town Prosecutor's Office set aside this decision. The proceedings resumed on 21 February 2001.

34. Between 15 March and 3 May 2001 the investigator suspended the proceedings due to the fact that the case was liable for termination on the ground of the parties' friendly reconciliation. On the latter date the investigator decided to discontinue proceedings on the above ground.

35. On an unknown date before 9 June 2001 the Alushta Town Prosecutor's Office set aside the investigator's decision of 3 May 2001.

36. On 10 June 2001 the investigator ordered the police to establish the whereabouts of the victim.

37. On 20 June 2001 the investigator was informed that the victim had taken up permanent residence in Belorussia.

38. From 16 June to 18 July 2001 the proceedings were suspended due to the parties' friendly reconciliation. On the latter date the investigator questioned a witness.

39. From 16 June to 20 July 2000 the investigator re-interviewed four out of the ten witnesses, on whose evidence the bill of indictment of 21 August 1999 had been based. On 13 July 2001 he issued a request to the Belorussian police to establish the victim's whereabouts and to serve a summons obliging her to appear and give evidence.

40. Between 20 July and 17 September 2001 the proceedings were again suspended on the basis of the reconciliation of the parties.

41. On 17, 18 and 23 September 2001 the investigator questioned further three out of the ten original witnesses.

42. On 8 October 2001 the police investigator referred the case to the court with a request for termination of the criminal proceedings as the charge had become time barred.

43. On 12 October 2001 the Alushta Town Prosecutor's Office retrieved the case file from the court and ordered further investigations.

44. On 22 and 27 October and on 10 December 2001 the investigator questioned the victim.

45. On 21 December 2001 the investigator discontinued the proceedings on the ground of lack of evidence of the applicant's involvement in the imputed offences.

46. On 11 January 2002 the Prosecutor General's Office (*Генеральна прокуратура України*) set aside the investigator's decision of 21 December 2001 and transmitted the case to the Prosecutor's Office of the Autonomous Republic of Crimea for further investigations.

47. In a decision of 2 February 2002 the investigator discontinued the criminal proceedings against the applicant for lack of evidence and lack of *corpus delicti*.

48. On 7 February 2002 the Prosecutor's Office of the Autonomous Republic of Crimea quashed that decision on the ground that the investigator had not followed the instructions of the Prosecutor General's Office.

49. On 3 April 2002 a new investigator was assigned to deal with the case. On 5 and 9 April 2002 respectively he re-interviewed a witness and the victim.

50. On 20 April 2002 the case was transferred to another investigator.

51. On 22 April 2002 the fresh pre-trial investigation was completed and the applicant was given access to the case file. On 3 June 2002 the case file together with the indictment was sent to the Yalta Town Court for examination on the merits.

52. On 26 June 2002 the Yalta Town Court held a preparatory hearing. Having found the pre-trial investigation insufficient, it decided to remit the case back to the Alushta Town Prosecutor for further investigations.

53. On 5 August 2002 a new investigator took over the case.

54. On 14 August 2002 the proceedings were suspended due to the victim's failure to appear. On 11 September the Alushta Town Prosecutor's Office set aside this decision.

55. On 13 September 2002 the Prosecutor's Office of the Autonomous Republic of Crimea instituted disciplinary proceedings against the investigator for delay of the proceedings.

56. On 15 and 25 September 2002 the investigator summoned the victim to give evidence. As she had failed to appear, on 9 October 2002 the investigator ordered the police to establish her whereabouts.

57. Between 10 October and 12 December 2002 the proceedings in the case were suspended for an unknown reason. On the latter date the case was transferred to another investigator, who re-interviewed a witness. He further questioned the victim and the applicant on 13 and 18 December 2002 respectively.

58. On 24 December 2002 the applicant's criminal case was again brought before the Yalta Town Court.

59. The preparatory hearing scheduled for 21 February 2003 was cancelled due to the applicant's and victim's failure to appear.

60. Hearings were held on 12 and 17 March, 2 and 15 April, 14, 19 and 26 May and 31 July 2003.

61. In a decision of 1 August 2003, at the request of the prosecutor, the court sent the case back to the Alushta Town Prosecutor's Office for further investigations.

62. The investigations resumed on 23 October 2003. Between 5 and 17 November 2003 the case file was examined by the Alushta Town Prosecutor's Office.

63. On 2 December 2003 a new investigator was assigned. From 4 to 8 December 2003 the case file was with the Alushta Town Prosecutor's Office.

64. On 8 December 2003 the investigator terminated the proceedings on the ground of the Amnesty Act of 11 July 2003.

65. On 9 January 2004 the Deputy Prosecutor of the Autonomous Republic of Crimea quashed that decision and discontinued the criminal proceedings against the applicant for lack of *corpus delicti*.

66. On 17 March 2004 the latter decision was revoked by the Prosecutor General's Office.

67. On 8 April 2004 the police investigator discontinued the criminal proceedings against the applicant due to the lack of any *corpus delicti*.

C. The applicant's detention on remand

68. On 15 December 1998 the applicant, following his arrest, was placed in the holding facility at the Alushta Town Police Department. Protesting against his allegedly unlawful detention the applicant went on hunger strike, which continued for a week. The applicant stated that the material conditions of detention in that facility were gravely inadequate.

69. On 23 December 1998 the applicant was transferred to Simferopol pre-trial detention centre No. 15 (*Сімферопольський слідчий ізолятор*, hereafter “the SIZO”).

70. The applicant alleged before the Court that he had been subjected to torture and degrading treatment while in detention in this latter facility. He submitted that the conditions of his detention had been wholly unsatisfactory and had in themselves constituted torture, since during that period he had contracted a serious illness and lost 20 kg in weight.

71. As noted above (see paragraph 9), the applicant was released from the SIZO on 13 January 1999.

D. Medical records

72. On 25 January 1999 a traumatologist from the Alushta Town Hospital examined the applicant and found signs of recent bruising on his jaw.

73. On 1 February 1999 the applicant was taken into the Alushta Town Hospital and diagnosed with acute diffuse chronic bronchitis.

74. On 9 February, and after 12 February 1999, the applicant was examined and treated at the Alushta Venereology Healthcare Centre. He was diagnosed with scabies.

75. According to a certificate dated 27 July 1999 issued by the Cardiology Healthcare Centre in Simferopol, the applicant was suffering from, among other things, ischemic heart disease, stenocardia, obstructive chronic bronchitis and pulmonary sclerosis.

76. On 3 December 1999 the applicant was examined at the Alushta Town Hospital and found to be suffering from ischemic heart disease and chronic bronchitis.

77. From 12 October 2000 the applicant was placed on the control list of the Tuberculosis Healthcare Centre in Simferopol. According to certificates issued by that Centre dated 23 October 2000, 18 July 2001 and 5 February 2003, the applicant received outpatient antitubercular treatment. He was found to have an active form of infiltrative pulmonary tuberculosis.

78. According to certificates dated 17 March 2002 and 5 March 2003, issued by the Cardiology Healthcare Centre and Simferopol Town Hospital No. 2 respectively, the applicant was still being treated for his heart diseases, such as ischemic heart disease and stenocardia.

79. On 14 November 2004 the applicant died. According to the death certificate, the cause of death was dilated cardiomyopathy.

E. Complaints about the authorities' actions

80. Between 1999 and 2004 the applicant lodged numerous complaints with the prosecution authorities of various levels, alleging that the criminal proceedings against him and his detention on remand had been unlawful and that he had suffered from inadequate medical care when in detention. All his complaints were dismissed.

81. After the criminal proceedings against him had been finally discontinued (see paragraph 67 above), in April 2004 the applicant sued the State Treasury in the Kyivsky District Court of Simferopol under the Law “on the compensation of damage caused to the citizen by unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts”.

82. On 25 November 2004, following the applicant's death, Ms Cherkassova sought information from the court about the applicant's civil case. In a letter of 22 December 2004 a judge from the Kyivsky District Court of Simferopol informed her that, in a decision of the same day, the proceedings had been discontinued on account of the claimant's death and the fact that the application was a personal one that could not be taken over in the proceedings.

THE LAW

I. PRELIMINARY OBSERVATION

83. The applicant died on 14 November 2004, while the case was pending before the Court (see paragraph 2 above). It has not been disputed that his partner and sole heir is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see, among other authorities, *Horváthová v. Slovakia*, no. 74456/01, §§ 25-27, 17 May 2005).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

84. The applicant complained that he had suffered from ill-treatment and insufficient medical assistance whilst in detention on remand. He 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. Parties' submissions

85. The Government maintained that the applicant had failed to indicate any concrete facts or to produce any cogent evidence of ill-treatment. They also pleaded non-compliance with the six-month rule envisaged in Article 35 § 1 of the Convention on the ground that the applicant's complaint about the allegedly inadequate medical care had been filed more than six months after his release from the penitentiary institutions.

86. The applicant disagreed.

B. The Court's assessment

87. The Court notes at the outset that the applicant did not provide any concrete details of the ill-treatment he alleged to have suffered during his detention in the SIZO and he failed to show that he had instituted any domestic proceedings in respect of this complaint. In particular there is no indication that in his claim under the Law “on the compensation of damage caused to the citizen by unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts” the applicant referred to the medical or other conditions of his detention (see paragraph 81 above).

88. In any event, the Court recalls that normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. However, where no domestic remedy is available, the six-month period runs from the act alleged to constitute a violation of the Convention (see, among other authorities, *Al Akidi v. Bulgaria* (dec.), no. 35825/97, 19 September 2000). In cases where there is a continuing situation, the six-month period runs from the cessation of the situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

89. Applying the aforementioned principles to the applicant's complaints about alleged ill-treatment and the inefficiency of the medical care afforded to him during his detention, the Court, assuming that there was no specific remedy to complain about prison conditions, notes that the applicant was released on 13 January 1999, whereas the application was submitted to the Court on 26 July 2002, that is, more than six months later (see *Khudoyorov v. Russia* (dec.), no. 6847/02, 22 February 2005).

90. The Court further considers that an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period. In particular, the applicant's petitions on this matter to the prosecution authorities, cannot be considered effective remedies to be pursued under Article 35 § 1 of the Convention (see *Melnik v. Ukraine*, no. 72286/01, § 69, 28 March 2006). Moreover, no circumstances exist to show that the applicant was unable to lodge these complaints with the Court after his release from custody on that date.

91. It follows that this part of the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

92. The applicant complained about alleged the unfairness and excessive length of the criminal proceedings against him. He invoked Article 6 § 1 of the Convention, which in so far as relevant reads as follows:

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

A. Admissibility

1. Fair hearing

93. The applicant complained that the domestic courts had denied him fair trial, in that they had refused to hear witnesses and to examine documents he had sought to adduce.

94. The Court notes that the criminal proceedings against the applicant were eventually discontinued for lack of *corpus delicti* (see paragraph 67 above). In these circumstances, the Court considers that the applicant may not claim to be a victim of the alleged unfairness of these proceedings (see *I.I. v. Bulgaria* (dec.), no. 44082/98, 25 March 2004).

95. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and therefore must be rejected in accordance with Article 35 § 4.

2. Length of the proceedings

96. The Court notes that the applicant's complaint that criminal proceedings against him had lasted unreasonably long 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.

B. Merits

1. Parties' submissions

97. The Government were of the view that the case was rather complex, referring to the necessity to obtain an expert opinion on the question whether the applicant had forged the signature of the victim (his ex-wife) on the petition for divorce and to question ten witnesses. The Government also pointed out that the authorities had made efforts to expedite the examination of the case.

98. The Government further observed that the applicants had contributed to the prolongation of the proceedings by failing to respond to summonses and refusing to provide samples for handwriting experts and filing numerous complaints to the prosecution authorities about the conduct of the proceedings against him. They also invoked the victim's and witnesses' failure to appear before the investigating authorities and the court.

99. The applicant disagreed.

2. The Court's assessment

a. Period to be taken into account

100. The period to be taken into consideration in the present case began with the institution of criminal proceedings against the applicant on 9 December 1998 (see *Antonenkov and Others v. Ukraine*, no. 14183/02, § 40, 22 November 2005) and lasted until 8 April 2004, when the police investigator discontinued these proceedings. It has thus lasted for five years and four months.

b. The reasonableness of the length of proceedings

101. The Court recalls 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 applicant's conduct and the conduct of the competent authorities. On the latter point, what is at stake for the applicant has also to be taken into consideration (see, among many other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 125, ECHR 2002-VI).

102. The Court finds that the investigations concerning charges of fraud and forcible assertion of a private right were not particularly complex. In particular, the need to obtain one expert opinion and to question ten witnesses cannot justify the overall period of the proceedings.

103. The Court notes that in the beginning of the proceedings the applicant failed to appear for several questionings, but any delay caused by his conduct cannot be regarded as having contributed to the prolongation of the proceedings at issue in a decisive manner.

104. As regards the delays attributable to the authorities, the Court observes that for over four years the proceedings remained at the preliminary investigation stage. Taking into account the fact that the case was not legally and factually complex such a time-span appears excessive. The Court further notes that there were lengthy periods during which no investigation activities seem to have taken place. Such gaps occurred, for example, between August 2000 and February 2001, March and June 2001 and December 2001 and April 2002. The fact that those delays were unjustified is evidenced by disciplinary proceedings brought on three occasions against the investigators dealing with the case (see paragraphs 20, 30 and 59 above).

105. It is to be noted that on many occasions the proceedings were stayed due to problems with the summoning of the victim and the witnesses. The Court, unlike the Government, cannot attribute their conduct to the applicant. On the contrary, reiterating that the duty to administer justice expeditiously is incumbent in the first place on the competent authorities (see *Mitchell and Holloway v. the United Kingdom*, no. 44808/98, § 56, 17 December 2002), it considers that the authorities' failure to take the relevant measures to ensure the victim and the witnesses' presence have substantially contributed to the extended length of the proceedings in the applicant's case (see, *Antonenkov and Others*, cited above, § 26, and *Pekov v. Bulgaria*, no. 50358/99, § 106, 30 March 2006).

106. Finally, the Court notes that there was apparently poor coordination between the various bodies involved in the case, as evidenced by the numerous remittals of the case from the prosecution and judicial to the investigating authorities for additional investigations. This, together with the frequent transfers of the case to new investigators who had to acquaint themselves with the file was a major factor contributing to the delay.

107. Having regard to the criteria established in its case-law for assessment of the reasonableness of the length of proceedings, the Court finds that the length of the criminal proceedings against the applicant failed to satisfy the reasonable time requirement of Article 6 § 1 of the Convention.

108. It follows that there has been a violation of that provision.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

109. The applicant complained that he had had no effective remedy in respect of his alleged ill-treatment, inadequate conditions of detention and the excessive length the criminal proceedings against him. The applicant referred to Article 13 of the Convention, which provides:

“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

1. Remedies in respect of the applicant's complaints under Article 3 of the Convention

110. The applicant complained that he had been denied remedies in respect of his complaints under Article 3 of the Convention.

111. The Government stated that there was no arguable claim about the alleged ill-treatment and that in respect of allegedly insufficient medical assistance the applicant was free to sue the SIZO in civil courts.

112. The Court recalls that the applicant's substantive complaints under Article 3 were rejected as being lodged out of time (see paragraph 91 above). Even assuming that the applicant had an arguable claim of a violation of his rights under Article 3, his complaint made under Article 13 must also be rejected in accordance with Article 35 §§ 1 and 4 of the Convention for failure to comply with the six-month time-limit.

2. Remedies in respect of the complaint about the length of the proceedings

113. The Court notes that the applicant's complaint about the lack of domestic remedy whereby to raise the issue of the excessive length of the proceedings in his case 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.

B. Merits

114. The Government stated that each of the authorities' actions, which had allegedly protracted the proceedings, could have been challenged by the applicant before the higher prosecution authorities.

115. The applicant disagreed.

116. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under

Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It recalls that a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Kudła*, cited above, §§ 157-159).

117. The Government relied on the applicant's alleged right to challenge the authorities' actions impeding the progress of the proceedings before the higher prosecution authorities. The Court, however, considers that the Government have failed to indicate whether and, if so how, the applicant could obtain relief – either preventive or compensatory – by complaining to the very instances that were allegedly responsible for the delays (see *Kobtsev v. Ukraine*, no. 7324/02, § 49, 4 April 2006). Nor could such remedy offer adequate safeguards for an independent and impartial review of the applicant's complaints (see *Merit v. Ukraine*, no. 66561/01, §§ 62 and 63, 30 March 2004).

118. The Court next notes that the applicant's complaints to the higher prosecution authorities about the delays in the proceedings resulted in disciplinary punishment of investigators dealing with his case. This, however, had no effect on the speediness of the proceedings. Nor could this remedy provide the applicant with any substantive redress for delays (see, *mutatis mutandis*, *Kormacheva v. Russia*, no. 53084/99, § 63, 29 January 2004).

119. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant's complaint in respect of the length of his criminal case.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

120. The applicant complained under Article 2 of the Convention that his life was put at risk by gravely inadequate medical conditions in the SIZO.

121. The Court notes that while it is true that after his release the applicant had to undergo serious hospital treatment for chronic bronchitis, ischemic heart disease, stenocardia, scabies and tuberculosis, it has not been shown that the applicant had contracted these diseases during his detention in the SIZO which had lasted twenty one days.

122. The Court, therefore, rejects this complaint in accordance with Article 35 § 4 of the Convention as being manifestly ill-founded within the meaning of Article 35 § 3.

123. The applicant further complained under Article 5 of the Convention that his arrest and detention had been unlawful. The Court considers, noting that the application was lodged with the Court on 26 July 2002, that this complaint was introduced outside the six-month time-limit under Article 35

§ 1 of the Convention (see *Koval v. Ukraine* (dec.), no. 65550/01, 10 December 2002) and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. In respect of pecuniary damage Ms Cherkassova claimed compensation for the costs of the applicant's funeral in the amount of 865 Euros (EUR). She also claimed EUR 8,300 in respect of non-pecuniary damage.

126. The Government considered that the pecuniary damage claimed was not related to the subject matter of the case and that the non-pecuniary claims were excessive.

127. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, judging on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Default interest

128. 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 under Article 6 and 13 of the Convention concerning the length of the criminal proceedings against the applicant and the lack of domestic remedies in that respect admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;

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 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of 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 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 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President