



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

FIRST SECTION

CASE OF SILIN v. RUSSIA

(Application no. 3947/03)

JUDGMENT

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Silin v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 3947/03) 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 Vladimir Igorevich Silin (“the applicant”), on 27 January 2003.

2. The applicant was represented by Mr V. Zherebenkov, 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 duration of his pre-trial detention and the criminal proceedings against him had been excessive.

4. By a decision of 7 September 2006, the Court declared the application partly admissible.

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970 and lives in Moscow.

7. On 28 August 2000 the applicant was detained on suspicion of having committed a crime punishable under Article 126 of the Criminal Code (attempted kidnapping by a group). A report on his detention stated that

eyewitnesses, including victims, had identified him as the perpetrator and that other grounds existed for suspecting him of having committed the crime.

8. On 30 August 2000 an investigator ordered him to be detained pending trial pursuant to Article 90 of the Code of Criminal Procedure. The investigator took into account the dangerousness and seriousness of the offence, the risk of the applicant's absconding and obstructing the investigation, and the need to examine his implication in other similar crimes. Next day, the order was upheld by the acting prosecutor of the north-east administrative district of Moscow.

9. On 7 September 2000 the applicant was charged on several counts, including the use of violence dangerous to life against a State official in the performance of his duties, attempted aggravated kidnapping by an organised group and conspiracy to murder. The investigation established that the applicant had entered into agreement with P., the head of an organised criminal group acting in Moscow and the Moscow Region, and had commissioned him in January and then in February 1999 to beat F. and T., who had occupied senior positions in the Customs office. F. had been beaten up by three persons, the identity of one of whom had not been established by the investigation, with baseball bats in the porch of his apartment block; he had suffered open craniocerebral trauma as a result. T. had been beaten up and had received knife wounds. The investigation also established that later in 1999 the applicant had commissioned the same organised group to kidnap Sh., for the purpose of blackmail. Each time the applicant had paid P. remuneration. He had allegedly acted on the instructions of a person whose identity had not been established by the investigation. As well as these three criminal cases joined into one case, the latter was joined with one more case of infliction of bodily harm involving the same organised group.

10. On 23 October and 1 November 2000 the investigator ordered that the term of the applicant's pre-trial detention be extended. He stated, *inter alia*, that it was necessary to carry out a range of investigation measures in order to establish the identity of other persons involved in the kidnapping of Sh. and to ascertain the applicant's participation in that crime, to finalise the preparation of the charges and to enable the applicant to examine the materials of the case file. The requests contained the circumstances of the crimes, as established by the investigation, and the description of evidence collected by the investigation. On 26 October 2000 the prosecutor of the north-east administrative circuit of Moscow approved the order of 23 October 2000 and extended the term of the applicant's pre-trial detention until 24 November 2000. The investigator's order of 1 November 2000 was supported by the prosecutor of the north-east administrative circuit of Moscow and the prosecutor of Moscow and was approved, on 8 November

2000, by a deputy prosecutor general, who extended the term of the applicant's pre-trial detention until 24 February 2001.

11. The applicant's advocate challenged the detention as unlawful and unjustified. By a decision of 28 November 2000 a judge of the Tverskoy District Court of Moscow dismissed the complaint. The judge found that the nature, seriousness and circumstances of the offences of which the applicant stood accused and their danger to the public warranted the detention orders. The applicant did not appeal.

12. On 30 January 2001 the investigator ordered a further extension of the applicant's detention. The order reflected the state of investigation in the case against the applicant and seven other persons including what had been done since the last extension of the applicant's detention. Thus, one more accomplice in the crime against F. had been identified and arrested; evidence of participation by several other individuals in the crime against T. had been examined; the defendants had examined expert reports; and more documentary evidence had been collected. The investigator submitted that it was necessary to finalise the charges against the applicant and for him to examine the voluminous case file, which would require additional time. On the basis of those considerations and having regard to the seriousness of the offences of which the applicant stood accused, the investigator ordered the applicant's detention to be extended until 24 May 2001. The prosecutor of the north-east administrative circuit of Moscow and the Moscow prosecutor supported the order and on 14 February 2001 a deputy prosecutor general approved it.

13. On a further request by the investigator, approved by the regional and city prosecutor, a deputy prosecutor general of the Russian Federation extended, on 10 May 2001, the applicant's pre-trial detention further, until 24 August 2001, on the grounds that the applicant was liable to abscond, resume his criminal activity and obstruct the investigation and in view of the gravity of the offences of which the applicant stood accused and the need for him to examine the case file.

14. On 10 July 2001, after the investigation in the case had been completed and the indictment approved, the case against the applicant and his co-defendants was transferred to the Moscow City Court for trial.

15. By a decision of a judge of the Moscow City Court of 31 July 2001 the hearing was set down for 14 August 2001 and an order was made for the applicant's continued detention. The applicant did not appeal against the decision.

16. Between 14 August and 22 October 2001 the hearing was adjourned for reasons attributable to the applicant's co-defendants.

17. The trial commenced on 22 October 2001.

18. On 26 November 2001 the lawyer of one of the applicant's co-defendants, Mr Grachev, lodged an application seeking an order for his client to be made the subject of an outpatient psychiatric examination. The

application was supported by all the other defendants and their lawyers. By a decision of 27 November 2001 the court granted the application and adjourned the hearing, first until 3 December and then until 7 December 2001.

19. On the latter date, following a further application by Mr Grachev's lawyer, supported by all the other defendants, the court ordered that Mr Grachev be made the subject of an inpatient psychiatric examination with a view to determining whether he could be held responsible for the offences of which he stood accused. It also adjourned the hearing until the experts' report was available and ordered that the applicant should remain in custody.

20. The experts' report on Mr Grachev's condition was issued on 4 February 2002 and two days later Mr Grachev was brought back to his detention facility, of which the court was informed.

21. The trial recommenced on 3 April 2002 and was then adjourned until 13 May 2002, owing to the illness of one of the defendants and the need to summon witnesses. The hearing was held on 13, 14, 15, 17 and 20 May 2002.

22. On 23 May 2002 the public prosecutor lodged an application, based on expert opinion, seeking an order for Mr Grachev to receive compulsory inpatient psychiatric treatment and requesting the postponement of the proceedings in consequence. On 24 May 2002 the court granted the prosecutor's request and ordered that Mr Grachev undergo compulsory inpatient psychiatric treatment until his condition improved. The court further ruled that the examination of the case against the other defendants, separately from Mr Grachev's case, would undermine the thoroughness and objectivity of the trial. The court therefore adjourned examination of the case until Mr Grachev's health condition had improved. The court stated that it took into account Mr Grachev's diagnosis, which did not require lengthy inpatient treatment for him.

23. Submitting no objections to that decision, the applicant however requested to be released, subject to an undertaking not to leave his place of residence, referring to the uncertainty as to the duration of Mr Grachev's treatment, his own lack of previous convictions, his permanent place of residence in Moscow, the fact that he had a wife and small child dependent upon him for support and the fact that his state of health required regular examinations by specialists of a kind not available at the detention facility. In a decision of 24 May 2002 the Moscow City Court refused the request for release made by the applicant and his two co-defendants on the ground of the seriousness of the offences of which they stood accused.

24. The applicant's lawyers lodged an appeal against this decision, requesting that the applicant be released from custody and instead, as a preventive measure, be required to give an undertaking not to leave his place of residence. They pointed once again to the uncertainty as to the

duration of Mr Grachev's treatment, during which time the case would lie dormant, and to the length of the applicant's pre-trial detention, which had begun in August 2000.

25. Mr Grachev's lawyer also lodged an appeal against the decision of 24 May 2002. Relying on Articles 5 and 6 of the Convention, he complained that the unlimited extension of the pre-trial detention of his client and the other defendants in the case, including the applicant, constituted an unlawful and excessive restriction of their rights, which completely disregarded their right to liberty. In practice, the decision of 24 May 2002 anticipated, by means of pre-trial detention, their future conviction and punishment, in breach of the principle of presumption of innocence. The lawyer also argued that the order extending the defendants' pre-trial detention for an indefinite period – until the as yet unknown date of Mr Grachev's recovery – exceeded permissible restrictions on human rights and freedoms.

26. Between 2 and 25 July 2002 the appeals were not examined as one of the defence lawyers was on annual leave. On 30 July 2002 the Supreme Court of the Russian Federation dismissed both appeals and upheld the decision. It stated that the lower court had taken into account the experts' opinion of the short-term character of Mr Grachev's disease and ordered his compulsory treatment in accordance with the law, which provided that such treatment could be ordered if a person's mental state posed a danger to that person and others and required permanent and intensive observation. The Supreme Court held that the reasons given in support of the request for the applicant's release could not be considered cogent as the applicant stood accused of serious crimes.

27. On 19 August 2002, after the case file had been returned to the trial court, the hearing was set down for 2 September, and then adjourned to 10 September 2002 owing to the failure of the defence lawyers to appear.

28. On 10 September 2002 the trial court, having heard evidence from the defence, who had requested the release of the applicant and his two co-defendants and substitution of the detention measure with another preventive measure not involving deprivation of liberty, granted the prosecutor's request and extended the pre-trial detention of the applicant and his co-defendants until 1 October 2002. The court gave as reasons for its decision the fact that the applicant and his co-defendants had been charged with a particularly serious offence (conspiracy to murder by an organised group with aggravated circumstances) and that there were no grounds for annulling or altering the preventive measure chosen. By a decision of 30 September 2002, at the prosecutor's request, a further extension in respect of the same persons was ordered until 1 January 2003, on the same ground. The court further referred to a decision of a medical committee of 20 September 2002 to terminate Mr Grachev's compulsory treatment. The applicant did not appeal against these decisions.

29. On 30 December 2002 the trial resumed. On the same day the court, at the prosecutor's request, ordered Mr Grachev to be made the subject of an inpatient psychiatric expert examination with a view to determining whether he could be held responsible for the offences of which he stood accused, and extended the pre-trial detention of the applicant and three other defendants until 1 April 2003 on the ground of the seriousness of the offences of which they stood accused.

30. Mr Grachev's psychiatric expert examination was carried out on 27 February 2003.

31. On 10 April 2003 the Moscow City Court ordered that the hearing in the case be held on 14 April 2003. On that date it ordered that the pre-trial detention of the applicant and three other defendants be extended from 1 April 2003 until 1 July 2003 inclusive, on the ground that they were accused of particularly serious offences and were liable to abscond and obstruct the proceedings, and in view of the circumstances of the case and their respective personalities. The court stated in its decision that it had had no opportunity to discuss the question of the preventive measure in respect of the applicant and the other defendants, whose pre-trial detention had previously been extended until 1 April 2003. The court noted that the case file had been kept throughout this period at the expert institution which had carried out Mr Grachev's psychiatric examination.

32. Between 14 April and 6 May and on 9 June 2003 the hearing was adjourned for reasons imputable to the applicant's co-defendants. The hearing in the case ended on 18 June 2003 and the court started its deliberations.

33. On 27 June 2003 the Moscow City Court delivered a judgment in the case against the applicant and seven other defendants. The applicant was convicted of attempted kidnapping as part of an organised group, inciting malfeasance in public office and aiding and abetting an assault on a State official. The prosecutor dropped some other charges against him, including conspiracy to murder by an organised group with aggravated circumstances. The applicant was acquitted on the remaining charges. He was sentenced to four years' imprisonment. The period of his pre-trial detention commencing on 28 August 2000 was counted towards the term of his sentence.

34. No appeal was lodged against the judgment, which came into effect on 15 July 2003.

35. On 15 October 2003 the Tverskoy District Court of Moscow ordered the applicant's early conditional release.

II. RELEVANT DOMESTIC LAW

36. Before 1 July 2002 preventive measures in criminal proceedings were governed by the Code of Criminal Procedure of the RSFSR of 1960.

For its relevant provisions see the case of *Kalashnikov v. Russia* (no. 47095/99, § 89, ECHR 2002-VI).

37. Since 1 July 2002 preventive measures in criminal proceedings have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001). Its relevant provisions are summarised in the case of *Lind v. Russia* (no. 25664/05, §§ 47-52, 6 December 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

38. The applicant complained under Article 5 § 3 of the Convention that his right to trial within a reasonable time or to release pending trial had been infringed. Article 5 § 3, in so far as relevant, reads:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. The parties' submissions

39. The Government submitted that the applicant's pre-trial detention had lasted two years, ten months and seventeen days. Though on two occasions – on 10 September 2002 and 14 April 2003 – it had been extended after the previous court order for his detention had expired, its duration had complied with domestic law and was compatible with Article 5 § 3. The domestic courts had reasoned their detention orders by the nature, seriousness and circumstances of the offences of which the applicant had stood accused and their danger to the public, as well as the risk of the applicant's absconding or obstructing the proceedings.

40. The applicant argued that the Moscow City Court had based its decisions of 10 and 30 September 2002 and 30 December 2002 and 14 April 2003 to extend his pre-trial detention solely on the seriousness of the charges against him. He noted that subsequently, during the trial, the prosecutor had dropped the charges against him of conspiracy to murder by an organised group with aggravated circumstances, to which the Moscow City Court had referred as a ground for his continued detention. The arbitrary extension of his pre-trial detention, in particular pending Mr Grachev's recovery, had constituted an unlawful and excessive restriction of his right to liberty.

B. The Court's assessment

41. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be examined in each case according to its particular features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudla v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

42. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, having due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and any well-documented facts stated by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

43. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 35, § 84). The existence of a strong suspicion of the involvement of a person in serious offences, while constituting a relevant factor, cannot alone justify a long period of pre-trial detention (see, for example, *Tomasi*, cited above, pp. 35-36, § 89, and *Scott v. Spain*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2401, § 78).

44. The Court notes that the applicant's pre-trial detention commenced on 28 August 2000 and ended on 27 June 2003, when the trial court delivered a judgment in his case. It therefore lasted about two years and ten months.

45. The initial ten months of the applicant's detention took place during the investigation in the case. For the subsequent two years the applicant remained in custody pending trial. His main concern before the Court relates to the latter period.

46. The Court observes that all except one of the court decisions ordering the applicant's continued detention during that period were either based solely on the seriousness of the offences of which the applicant stood

accused (see paragraphs 23, 26, 28 and 29 above) or did not cite any reason at all (see paragraphs 15 and 19 above).

47. The Court also notes that when rejecting the application for release in its decision of 24 May 2002 the Moscow City Court did not address the applicant's specific arguments concerning the lack of previous convictions, his home, family ties and health.

48. The Court further observes that the decision of the Moscow City Court of 10 April 2003 cited, in addition to the seriousness of offences, such reasons for the applicant's continued detention as the risk of his absconding and obstructing the proceedings and his personality. However, there is nothing in that decision which would indicate that the court had based its findings on specific factual indications of such risks including those relating to the applicant's personality. Unless there were indications to the contrary, the risk that the applicant, if released, would act to prejudice the administration of justice must have diminished with time, once the investigation had concluded (see *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 17, § 35). Similarly, the danger of flight necessarily decreases as the time spent in detention passes (see *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 39, § 10).

49. The Court has previously found a violation of Article 5 § 3 of the Convention in several Russian cases where the domestic courts prolonged an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulas paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 100-03, 1 March 2007; *Shcheglyuk v. Russia*, no. 7649/02, §§ 40-46, 14 December 2006; *Khudoyorov v. Russia*, no. 6847/02, §§ 180-89, ECHR 2005-... (extracts); *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); *Dolgova v. Russia*, no. 11886/05, §§ 38 et seq., 2 March 2006; *Rokhlina v. Russia*, no. 54071/00, §§ 63 et seq., 7 April 2005; *Panchenko v. Russia*, no. 45100/98, §§ 91 et seq., 8 February 2005; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

50. The fact that a year, two years and more than two and a half years after the applicant had been taken into custody the domestic courts relied solely on the gravity of the offences as a reason for his continued detention, that they disregarded specific relevant arguments by the defence in favour of his release and failed to substantiate their reference to the risk of the applicant's absconding and obstructing the proceedings as the reasons for his continued detention, are sufficient for the Court to conclude that the domestic authorities did not adduce "relevant and sufficient" reasons to justify the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

51. There has therefore been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

52. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. The parties’ submissions

53. The Government contested that argument. They submitted that the length of the proceedings had been justified by the need for the compulsory psychiatric treatment of the applicant’s co-defendant Mr Grachev, as the Moscow City Court had considered that a separate examination of the case against the remaining defendants would have undermined the thoroughness and objectivity of the trial. They further pointed out that the hearings had been adjourned for reasons attributable to the defendants: their illnesses and failure to appear, failure of the defence lawyers to appear and the need to conduct the expert psychiatric examinations. The Government argued that the case, which involved numerous episodes and nine defendants, had been particularly complex.

54. The applicant argued that the decision of the Moscow City Court of 24 May 2002, adjourning the trial until the as yet unknown date of Mr Grachev’s recovery, had been unjustified as by that time all the evidence in the case had already been examined. Not until a year later had the City Court resumed examination of the case on the merits, with the result that it was examined by a new bench and from the beginning. The defence lawyers’ appeal against the decision of 24 May 2002 emphasising a violation of Article 6 had been ignored by the Supreme Court.

B. The Court’s assessment

55. The Court reiterates that in criminal matters the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”; this may occur on a date prior to the case coming before the trial court (see, for example, *Deweert v. Belgium*, judgment of 27 February 1980, Series A no. 35, p. 22, § 42), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted, or the date when preliminary investigations were opened (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, pp. 26-27, § 19; *Neumeister*,

cited above, p. 41, § 18; and *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, p. 45, § 110).

56. The Court takes the date of the applicant's arrest, 28 August 2000, as the start date of the proceedings. These proceedings ended on 27 June 2003. They thus lasted about two years and ten months for one level of jurisdiction.

57. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

58. The fact that the applicant was held in custody required particular diligence on the part of the authorities (see *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov*, cited above, § 132).

59. The case was admittedly complex, involving at least eight defendants involved in several crimes against four persons.

60. The applicant does not appear to have caused any delays in the proceedings. However, a delay of about five and a half months during the proceedings before the trial court was attributable to his co-defendants (see paragraphs 16, 21, 26, 27 and 32 above), for which the State cannot be blamed.

61. As to the conduct of the authorities, the length of the preliminary investigation of slightly over ten months does not appear to have been manifestly excessive.

62. During the court proceedings, which lasted one year, eleven months and seventeen days, a delay of about four months, from 27 November 2001 to 4 February 2002 and from 30 December 2002 to 27 February 2003, was due to the need to carry out psychiatric expert examinations of the applicant's co-accused Mr Grachev. Another four months' delay, from 24 May 2002 to 20 September 2002, was explained by Mr Grachev's compulsory psychiatric treatment ordered because of that person's mental state, which had posed a danger to himself and others and required permanent and intensive observation (see paragraph 26 above). Those delays do not appear unjustified or clearly unreasonable.

63. The Court is not aware of any developments in the case between 6 February and 3 April 2002, 20 September and 30 December 2002 and 27 February and 10 April 2003. However, those periods of inactivity were relatively short.

64. Taking into account the complexity of the case, the delay attributable to the applicants' co-defendants and relatively short periods of the authorities' inactivity, the Court does not find that in the circumstances of

the case the length of the proceedings was excessive to the extent that it failed to meet the “reasonable time” requirement.

65. There has accordingly been no violation of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 3,450 United States dollars (USD) in respect of pecuniary damage, which were calculated as expenses incurred by his family in supplying him with food and other necessities during his pre-trial detention. He submitted no evidence in support of his claim. He further claimed 10,000 euros (EUR) in respect of non-pecuniary damage sustained through the excessively long detention and criminal proceedings in his case.

68. The Government contested these claims.

69. The applicant failed to show that the expenses had been actually incurred. The Court therefore rejects the claim in respect of pecuniary damage. As regards non-pecuniary damage, the Court considers that in the circumstances of the case, the finding of a violation constitutes in itself a sufficient just satisfaction for any damage which could have been suffered by the applicant.

B. Costs and expenses

70. The applicant claimed USD 2,000 as legal costs for the proceedings before the Court, translation costs and post expenses.

71. The Government contested these claims.

72. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,225 for costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

73. 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 a violation of Article 5 § 3 of the Convention;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
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 1,225 (one thousand two hundred and twenty-five euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;
 - (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 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President