



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

FIRST SECTION

CASE OF SHAROMOV v. RUSSIA

(Application no. 8927/02)

JUDGMENT

STRASBOURG

15 January 2009

FINAL

15/04/2009

This judgment may be subject to editorial revision.

In the case of Sharomov 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,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 8927/02) 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 Vadim Gennadyevich Sharomov (“the applicant”), on 10 September 2001.

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

3. On 8 June 2005 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1972 and lives in the town of Irkutsk.

A. Criminal proceedings against the applicant

6. On 22 December 1999 the Sverdlovskiy District Court of the Irkutsk Region convicted the applicant of theft and sentenced him to five years' imprisonment. On 11 April 2000 the Irkutsk Regional Court upheld the judgment.

7. On 7 June 2001 the applicant asked the President of the Regional Court to apply for supervisory review of the above judgments on a number of legal grounds. After leave had been granted, on 2 July 2001 the Presidium of the Regional Court upheld the conviction but reduced the applicant's sentence to four years and six months because of an error in the calculation of the term. The applicant was not brought to the hearing.

8. The applicant made further attempts to obtain a review of his conviction and sentence. Apparently in reply to one of those applications, by a letter of 18 November 2002 the Irkutsk Regional Prosecutor's Office notified the applicant that they had applied for supervisory review of the judgments of 22 December 1999 and 11 April 2000. It appears that the scope of the application for review was limited to an argument that the trial court had erred in determining the prison regime to be applied to the applicant without having regard to the cancellation of his conviction in 1992 for another offence. The applicant received that letter on 22 November 2002.

9. It appears that on 6 December 2002 the applicant submitted his observations in relation to that request. However, in the meantime, on 2 December 2002 the Presidium of the Regional Court had already examined the supervisory review application and found that the 1992 conviction had been cancelled in 1997 and should not have been taken into consideration when the trial court decided whether there had been a repeated commission of a criminal offence (recidivism). It concluded that the applicant's acts had constituted dangerous rather than "particularly" dangerous recidivism, and changed the type of the correctional facility in which the applicant was to serve his sentence. The Presidium upheld the judgments of 22 December 1999 and 7 June 2001 in the remaining part. The applicant was not brought to that hearing. On 30 December 2002 he was told that the review had taken place, but a copy of the decision was not given to him.

B. Alleged ill-treatment

10. The applicant served his sentence in correctional colony no. UK-272/25 situated in the village of Vikhorevka in the Irkutsk Region.

1. The applicant's account

11. According to the applicant, on 7 September 2001 the colony administration informed the detainees that a special-purpose squad would be brought to the colony "to discipline detainees".

12. On 21 September 2001 five officers of the special-purpose squad arrived at the colony in order to "render practical assistance in carrying out searches and prophylactic measures". On the same day the wardens and the officers of the squad searched the applicant's cell. The applicant objected to the search and the officers intimidated him, beat him up and damaged his personal belongings. The applicant received no medical assistance and the colony doctor refused to record his injuries. The colony administration subsequently refused to dispatch his complaints to the prosecutor.

2. The Government's account

13. According to the Government, the Director of the Regional Department for Execution of Sentences of the Ministry of Justice ordered a series of searches in detention facilities with a view to seizing unauthorised items kept by detainees in their cells which could be used for an escape.

14. Searches were carried out in the applicant's cell on 10 and 21 September 2001. According to a report dated 10 September 2001, the use of force was accounted for by the applicant's insults to officers. A report drawn up on 21 September 2001 indicated that the applicant had uttered insults and threats of reprisals. The Government submitted copies of reports by two officers to their superior, stating that during the search on 21 September 2001 the applicant had uttered insults and threats of reprisals to the officers. Another officer stated that the applicant had objected to the search and had swung his hands; because of his refusal to stop after a warning, his hand had been held behind his back, he "had been held in a posture preventing resistance" and had been placed in a separate room pending the search in his cell. A report drawn up by the colony medical assistant indicated that no injuries had been detected on the applicant's body.

3. Investigation into the events of 10 and 21 September 2001

15. Several detainees complained to the Bratsk Prosecutor's Office, in charge of supervising penitentiary institutions, about the events of 10 and 21 September 2001. They alleged that they and certain other detainees, including the applicant, had been beaten up by the squad members, with the tacit agreement of the colony administration.

16. On 21 January 2002 the Bratsk Penitentiary Supervising Prosecutor's Office refused to initiate criminal proceedings against the squad members. The assistant prosecutor indicated that the squad intervention had been duly authorised by the Regional Department for

Execution of Sentences on 6 and 13 September 2001 (decrees nos. 385 and 398). The squad officers wore camouflage with their ID numbers and balaclava masks. On 10 September 2001 during the search of his cell the applicant had refused to comply with orders (to stay in the corridor against the wall), and had threatened the officers with reprisals, insulting them and pushing them away. Therefore, on an order from the colony chief officer the applicant was immobilised. During another cell search on 21 September 2001 the applicant behaved in the same way and also incited other detainees to riot. In order to put a stop to his actions he was immobilised. Special means and weapons were not used. The assistant prosecutor interrogated the complainants and other detainees, some of whom however had stated that special means or weapons had been used against detainees.

17. On 28 February 2002, on a complaint by the applicant, an official of the Irkutsk Regional Department for Execution of Sentences informed him as follows. On 21 September 2001 five officers of the special-purpose squad had arrived in the colony. The applicant prevented the wardens from carrying out searches and assaulted them verbally and physically. Following the searches, the doctor visited the detainees to find out if they had sustained any injuries. The detainees did not make any complaints or requests.

II. RELEVANT DOMESTIC LAW

A. Code on Execution of Punishments (no. 1-FZ of 8 January 1997)

18. Detainees and the premises where they live may be searched (Article 82 §§ 5 and 6).

19. Physical force, special means or weapons may be used against detainees if they offer resistance to the officers, persistently disobey lawful demands of the officers, engage in riotous conduct, take part in mass disorders, take hostages, attack individuals or commit other publicly dangerous acts, escape from the penitentiary institution or attempt to harm themselves or others (Article 86 § 1). The procedure for application of these security measures is determined in Russian legislation (Article 86 § 2).

B. Penitentiary Institutions Act (no. 5473-I of 21 July 1993)

20. When using physical force, special means or weapons, the penitentiary officers must:

(1) state their intention to use them and afford the detainee(s) sufficient time to comply with their demands unless a delay would imperil life or limb of the officers or detainees;

(2) ensure the least possible harm to detainees and provide medical assistance;

(3) report every incident involving the use of physical force, special means or weapons to their immediate superiors (section 28).

21. Rubber truncheons may be used to

- (1) stop assaults on officers, detainees or civilians;
- (2) repress mass disorders or group violations of public order by detainees, as well as to apprehend (*задержание*) offenders who persistently disobey or resist the officers (section 30).

C. Supervisory review

22. Under Article 377 § 3 of the 1960 Code of Criminal Procedure, in force at the material time, a prosecutor took part in a hearing before a supervisory review court. A convict and his or her counsel could be summoned if the court found it necessary. If summoned, they were to be afforded an opportunity to take cognisance of the application for supervisory review and to make oral submissions at the hearing. By its ruling of 14 February 2000, the Constitutional Court declared Article 377 § 3 of the Code unconstitutional in so far as it allowed a supervisory-instance court to examine the case without providing the convicted or acquitted person and their counsel with an opportunity to know the contents of the request for supervisory review lodged by the prosecutor, if the latter sought annulment of the final judgment on grounds unfavourable to that person. The Constitutional Court made the same findings in respect of the lack of a legal requirement to notify the convicted or acquitted person and their counsel of the time when and place where the supervisory review hearing would take place. Failing that, the above persons would be unable to state their position to the court.

23. A supervisory review court was not bound by the scope of the application for supervisory review and was under an obligation to review the criminal case in its entirety (Article 380). It could uphold, amend or quash any of the earlier judgments, vary the sentence, discontinue the criminal proceedings or remit the matter for a new consideration by the trial or appeal court. It could not, however, increase the sentence or re-categorise the defendant's actions as a more serious offence (*ibid.*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained under Articles 3 and 13 of the Convention that he had been beaten up on 21 September 2001 and that there had been

no effective investigation into the matter. The Court will examine that complaint under Article 3, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

25. The Government argued that the use of force had been accounted for by the applicant’s attempt to impede the search in his cell and had not been disproportionate. They also contended that the applicant could not have complained before the Court about that on 10 September 2001 since the use of force had taken place on 21 September 2001. On the date he lodged his complaint the applicant had not had recourse to any domestic remedies.

26. The applicant submitted that no prohibited items had been seized in his cell and he had had no reason to resist some twenty officers present during the search on that date. Neither had there been any particular reason to bring a special-purpose squad in order to assist the colony officers in their routine search activities. A colony medical officer was not to be trusted, given his subordinate position *vis-à-vis* colony officers who were complicit in the beatings. According to the applicant, beatings by special-purpose squads had been a recurring problem in detention facilities in the Irkutsk Region.

27. The Court is mindful of the potential for violence that exists in penitentiary institutions and of the fact that disobedience by detainees may quickly degenerate into a riot which would require intervention by the security forces (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006). Nevertheless, recourse to physical force which has not been made strictly necessary by the detainee’s own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 38). The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

28. The Court observes at the outset that the applicant made no specific arguments in relation to the squad’s actions on 10 September 2001. Thus,

the Court will confine its analysis to the alleged use of force on 21 September 2001.

29. The Court does not have to rule on the Government's arguments relating to the alleged non-compliance with the six-month rule and the exhaustion requirement, since the applicant's complaint is in any event inadmissible for the following reason. The Court notes, and it is uncontested by the parties, that the officers had recourse to an immobilisation technique in respect of the applicant. At the same time, it was not established beyond reasonable doubt that the applicant had been beaten up or that rubber truncheons or other special means or weapons had been used against him (see, by contrast, *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 76-79, 15 May 2008). Neither is there any medical evidence for the applicant's argument that he sustained injuries or that the use of force against him exceeded the minimum level of severity required in order to raise an issue under Article 3 of the Convention and that it was disproportionate. The report on the use of force referred only to verbal insults and threats. Two out of three officers made statements justifying their use of force only with reference to those circumstances. One officer also mentioned that the applicant accompanied his utterances by swinging his hands and calling for a riot. It also appears that the squad's presence on the premises of the colony had been duly authorised and that the officers had been advised of the applicable rules on the use of force. During the search the applicant was warned that his unruly behaviour and resistance would give rise to the use of force against him. However, he failed to obey the lawful orders. In his decision of 21 January 2002 refusing institution of criminal proceedings against the officers the assistance prosecutor confirmed the above facts and also indicated that the applicant had assaulted the officers both verbally and physically (see paragraph 16 above).

30. In view of the above considerations, the Court finds that the use of force against the applicant was the result of legitimate actions taken by the officers and did not reach the threshold of an inhuman or degrading treatment. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

31. The applicant complained under Article 6 §§ 1 and 3 (b) and (c), Articles 13 and 14 of the Convention that the supervisory review proceedings had been unfair, that he had not been brought to the hearings on 2 July 2001 and 2 December 2002, that he had not been able to submit his arguments and that he had not had sufficient time to prepare his defence. He also complained about the outcome of those proceedings. The Court will examine these complaints under Article 6 of the Convention which, in the relevant parts, reads as follows:

“1. In the determination of...any criminal charge against him, everyone is entitled to a fair...hearing...[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...”

32. The Government submitted that the applicant could not raise a complaint in respect of a hearing on 2 December 2002 when he had first applied to the Court on 10 September 2001. The Government conceded that the applicant and his counsel had not been notified of and had not attended the above hearings. Until 1 January 2003 the procedure for supervisory review was prescribed by the 1960 Code of Criminal Procedure. According to Article 377 thereof, a supervisory-instance court had to decide whether the convict’s and/or his counsel’s presence was necessary at the hearing. If that presence was necessary, the attending persons had to be served with a copy of the supervisory review request. The Constitutional Court’s ruling of 14 February 2000 on Article 377 of the Code only concerned supervisory review requests which would be prejudicial to a convict’s position (see paragraph 22 above). On the contrary, the supervisory review proceedings were favourable to the applicant in the present case. Both sets of the review proceedings had been instituted in his interest and resulted in the reduction of his sentence and a favourable amendment of the prison regime. The applicant’s or his counsel’s presence at the hearings had not been necessary because all relevant arguments were fully presented in the supervisory review requests.

33. The applicant maintained his complaint.

A. Admissibility

34. Regarding the complaint in respect of the hearing on 2 December 2002, the Court notes that it was raised in substance on 16 January 2003, that is within the six-month time-limit.

35. The Court also observes that it was the applicant himself who had solicited the supervisory review of his conviction and sentence, and that the outcome of those proceedings was favourable to him (see paragraphs 7 - 9 above). The applicant alleged procedural violations in the supervisory review proceedings and did not complain that the principle of legal certainty had been breached as such (see, by contrast, *Fadin v. Russia*, no. 58079/00,

§ 34, 27 July 2006, and *Bratyakin v. Russia* (dec.), no. 72776/01, 9 March 2006).

36. Furthermore, in so far as the respondent Government may be understood to plead that the applicant is no longer a victim of the alleged violation of his procedural rights, the Court reiterates that following annulment of a conviction or termination of the proceedings against an applicant, he or she can no longer be considered a victim, within the meaning of Article 34 of the Convention, of a breach of his or her right to a fair trial in connection with these proceedings (see *Üstün v. Turkey*, no. 37685/02, § 26, 10 May 2007, and *Andrei Georgiev v. Bulgaria*, no. 61507/00, § 98, 26 July 2007). However, the mere fact that the applicant solicited a supervisory review which eventually ended with a partially favourable outcome does not deprive him of victim status in respect of the alleged violation of his procedural rights in the review proceedings (see, in a similar context, *Vanyan v. Russia*, no. 53203/99, §§ 23-25, 15 December 2005). The applicant sought supervisory review on larger grounds than those relied upon by the President of the Regional Court in 2001 and by the prosecution in their 2002 request. He also explicitly referred to the power of a supervisory review court to carry out a full review of the case.

37. Hence, the Court considers that the applicant can claim to be a victim of the alleged violation of his procedural rights under Article 6 of the Convention and that he has not lost victim status in respect of it.

38. The Court concludes that the complaints about the alleged violation of the applicant's procedural rights in the 2001 and 2002 supervisory-review proceedings are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

39. The Court has already found a violation of the fairness requirement of Article 6 § 1 of the Convention in the cases where the supervisory review courts adopted a different legal categorisation of the applicants' actions without summoning them to supervisory review hearings or affording them an opportunity to comment on the applications for supervisory review (see *Vanyan*, cited above, §§ 63-68; *Aldoshkina v. Russia*, no. 66041/01, §§ 23-25, 12 October 2006; and *Stanislav Zhukov v. Russia*, no. 54632/00, §§ 23-25, 12 October 2006).

40. The Court notes that in the *Vanyan* case (§§ 23-25 of the judgment) the applicant was convicted of procurement of drugs with a view to their sale, and possession or storage of "particularly large" quantities of drugs. The supervisory-instance court gave a different legal categorisation to his actions, considering that he had not acted with a view to selling drugs, and also substantially reduced his sentence. In the *Aldoshkina* case (§§ 9 and 13

of the judgment), the applicant was convicted of fraud committed in concert with another person through use of her official position. The supervisory-instance court re-categorised the applicant's actions as an attempt to commit fraud. Similarly, the applicant in the *Zhukov* case was found guilty of kidnapping committed by a group of persons with the use of violence. The supervisory-instance court re-examined the case and found him guilty of being an accomplice to kidnapping without the use of violence (§§ 8-14 of the judgment).

41. In the present case, the applicant was convicted of theft. In 2001 the President of the Regional Court lodged a request for supervisory review indicating that there had been an error in the calculation of the applicant's prison term. On 2 July 2001 the Presidium of the Regional Court upheld the conviction but reduced the applicant's sentence to four years and six months because of an error in the calculation of the term.

42. The Court further observes that in November 2002 the prosecutor's office applied for supervisory review of the trial and appeal judgments, contending that the trial court had erred in determining the prison regime to be applied to the applicant without having regard to the cancellation of his conviction in 1992 for another offence. On 2 December 2002 the Presidium of the Regional Court held that the 1992 conviction had indeed been cancelled in 1997 and should not have been taken into consideration when the trial court decided whether there had been recidivism. It concluded that the applicant's acts under review had constituted dangerous rather than "particularly" dangerous recidivism, and changed the type of the correctional facility in which the applicant was to serve his sentence. The prison term, however, remained unchanged. Although the scope of the above proceedings was limited to the questions of the applicant's sentence and the prison regime rather than amendment of the conviction due to a different legal categorisation of his actions, the Court considers that those proceedings nevertheless concerned a determination of the "criminal charge" against the applicant (see *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 279, § 69; see, by contrast, *Gutfreund v. France*, no. 45681/99, § 32, ECHR 2003-VII, and *Aydin v. Turkey* (dec.), no. 41954/98, 14 September 2000). Indeed, there was no disagreement between the parties on that point. Under the applicable legislation, a supervisory-instance court was not bound by the scope of a request for supervisory review and was under an obligation to exercise a full review of the case (see paragraph 23 above). It could dismiss the application for supervisory review, quash the conviction and/or the appeal judgment, discontinue the criminal proceedings, or amend any of the earlier decisions. As can be seen from the text of the supervisory review ruling in the applicant's case, the supervisory-instance court not only amended the trial and appeal judgments but also upheld them "in the

remaining part". Thus, the Court has no doubts that the proceedings in question fell within the ambit of Article 6.

43. Thus, the Court has to determine whether the authorities' omission to afford the applicant an opportunity to make written and/or oral submissions to the supervisory-instance courts in 2001 and 2002, complied with the guarantees of Article 6 of the Convention.

44. In that connection, the Court reiterates that the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, and therefore the applicant's complaints under Article 6 §§ 1 and 3 should be examined together (see *Vacher v. France*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2147, § 22). According to the Court's case-law, the principle of equality of arms requires that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among other authorities, *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 238, § 53). The Court also reiterates that the principle of equality of arms does not depend on further, quantifiable unfairness flowing from a procedural inequality (see *Bulut v. Austria*, judgment of 22 February 1996, *Reports of Judgments and Decisions* 1996-II, § 49, and *Asnar v. France (no. 2)*, no. 12316/04, §§ 24-28, 18 October 2007). It is a matter for the defence to assess whether a submission deserves a reaction. It is therefore unfair for the prosecution to make submissions to a court without the knowledge of the defence (see *APEH Üldözötteinek Szövetsége and Others v. Hungary*, no. 32367/96, § 42, ECHR 2000-X). This position is not altered when the observations are neutral on the issue to be decided by the court (see *Göç v. Turkey [GC]*, no. 36590/97, § 55, ECHR 2002-V). The Court considers that this principle does not lose its importance when the submissions in question appear to be favourable to the defence.

45. The Court notes that the applicant was not apprised of the 2001 supervisory review proceedings and was not brought to the hearing on 2 July 2001. It also observes that in late November 2002 the applicant was put on notice that supervisory review proceedings had been instituted at the request of the prosecutor. Although the applicant had not been served with a copy of that request and was unaware of its contents, he did lodge his observations in relation to it. However, having not been informed of the date when a hearing would be held, he did so only after the Presidium of the Regional Court had delivered its judgment, on 2 December 2002. The Court also notes that the prosecution was present at the supervisory review hearing and made oral submissions in support of their request for review.

46. Having regard to its case-law on the subject and the material submitted by the parties, the Court considers that the applicant was not afforded an effective opportunity to have knowledge of and comment on the

authorities' requests for supervisory review and their oral submissions to the Presidium court, and to plead his own case in adversarial proceedings.

47. In view of the above considerations the Court finds that both sets of proceedings before the Presidium of the Irkutsk Regional Court did not comply with the requirements of fairness. There has therefore been a breach of Article 6 § 1 of the Convention. In the light of this finding it is not necessary to examine separately whether the provisions of Article 6 § 3 have been complied with.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicant further complained under Article 8 of the Convention that the colony staff had opened and inspected his letters, and had not dispatched them to addressees. He also complained under Article 7 of the Convention that the Regional Court had incorrectly calculated his sentence. The Court has examined those complaints, as submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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.”

50. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to make an award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the supervisory review proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no call to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President