



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

FIRST SECTION

CASE OF ANATOLIY TARASOV v. RUSSIA

(Application no. 3950/02)

JUDGMENT

STRASBOURG

18 February 2010

FINAL

18/05/2010

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

In the case of Anatoliy Tarasov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Sverre Erik Jebens,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 3950/02) 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 Anatoliy Valeryevich Tarasov (“the applicant”), on 22 November 2001.

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

3. On 9 May 2005 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). On 12 September 2005 the President of the Third Section requested the Government to submit further observations in connection with the applicant's complaint about the alleged hindrance of his right of petition.

4. Subsequently, the application was transferred to the First Section.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and is serving a prison sentence in correctional colony IK-3 in the Bashkortostan Republic.

A. The applicant's arrest and placement in custody.

7. On 14 September 1998 the applicant was arrested in the town of Glazov on suspicion of murder and several robberies. He was searched and police officers allegedly withheld his money and jewellery and beat him up. They took him to Glazov town police station where the beatings allegedly continued.

8. On an unspecified date the applicant was charged with aggravated robbery, murder, unlawful detention of an individual, extortion, unlawful possession of firearms and use of force against a State official – offences under Articles 162, 105, 127, 163, 222 and 318 of the Criminal Code. The applicant was placed in custody.

B. Trial

9. On 12 October 1999 the Supreme Court of the Udmurtiya Republic found the applicant guilty of robbery committed with a view to acquiring others' property on a large scale and accompanied by infliction of grievous bodily harm on the victim (Article 162 § (b) and (c)); unlawful detention of a person entailing grave consequences (Article 127 § 3); murder with a lucrative aim accompanied by a robbery (Article 105 § 2 (i)); extortion aimed at acquisition of others' property on a large scale (Article 163 § 3 (b)); unlawful possession of a firearm (Article 222 § 1) and assault on a State official (Article 318 § 1). The court established that the applicant had instigated his two co-defendants to rob employees of a trading company. Accompanied by the co-defendants and carrying a firearm, the applicant had stopped the employees' car, had robbed them, tied them to a tree in the forest and shot one of them dead. The court further found that the applicant had blackmailed another victim, extorting a sum of money from him and had assaulted police officers during his arrest. The court based the applicant's conviction on testimonies by his co-defendants, the surviving victims and witnesses and the material evidence. The applicant was sentenced to twenty-three years' imprisonment. He appealed against the judgment.

10. On an unspecified date in May 2000 the applicant was transferred to remand centre SIZO-3 in Moscow in order to secure his presence at the appeal hearing. He was allegedly placed in a cell where he was severely beaten by other inmates.

11. On 4 October 2000 the Supreme Court of the Russian Federation upheld the applicant's conviction on appeal.

C. Supervisory review

12. On 16 April 2001 a deputy Prosecutor General of the Russian Federation lodged with the Presidium of the Supreme Court of the Russian Federation an application for supervisory review of the judgments of 12 October 1999 and 4 October 2000. The prosecutor requested a different legal characterisation of the applicant's criminal acts, in particular that the charge of "unlawful detention of an individual by an organised group" under Article 127 § 3 of the Criminal Code be reclassified as "unlawful detention of two or more individuals by a group of persons with the use of weapons and violence dangerous to [their] health" under Article 127 § 2 (a), (c), (d) and (h). Furthermore, he requested that the charge of "murder for financial gain coupled with robbery" under Article 105 § 2 (i) be reclassified as "murder coupled with robbery" under the same provision.

13. According to the Government, a copy of the prosecutor's application was sent to the applicant "simultaneously" and on 27 July 2001 he was informed that the hearing before the Presidium was scheduled for 8 August 2001. They further submitted that the applicant had been subsequently notified that the hearing had been postponed. The copy of the application of the deputy Prosecutor General produced by the Government contained handwritten notes: "postponed [signature] 08.08.", "postponed [signature] 23.05", "postponed 27.06.2001 [signature]".

14. According to the applicant, he obtained a copy of the deputy Prosecutor General's application only on 16 August 2001. On unspecified dates the applicant sent to the Prosecutor General's Office and the Presidium of the Supreme Court his observations in connection with the prosecutor's application. He also sought leave to appear at the supervisory review hearing. It appears that his requests were left without reply.

15. On 3 October 2001 the Presidium of the Supreme Court of the Russian Federation examined the application. After having heard the prosecutor and the judge rapporteur and examined the materials of the case, the Presidium granted the request, reclassified the applicant's acts as sought by the prosecutor and reduced the sentence to twenty-two years' imprisonment. The Presidium court's decision contained no reference to the applicant's observations or arguments raised therein. The applicant did not attend the hearing.

D. The alleged intimidation of the applicant

16. From 6 April to 16 October 2005 the applicant was held in colony LIU-2 in the Udmurtiya Republic.

17. On 5 May 2005 the Court decided to give notice of the application to the Government of the Russian Federation.

18. By a letter dated 20 May 2005 and sent through informal channels, the applicant informed the Court that on 16 May 2005 wardens Ch., Ya. and O. had had a conversation with him. According to the applicant, they told him that the Court had started its examination of the application lodged by Messrs Khyzhiny and that they did not want the applicant to complain about conditions of detention in Russian correctional colonies to the Strasbourg Court. They ordered him to write statements addressed to Mr Zheludov, head of the Federal Service of the Execution of Sentences in the Republic of Udmurtiya, and to Mr Mardanshin, a prosecutor. The applicant was to affirm that he had no complaints about the conditions of detention. The applicant refused and allegedly endured beatings for three days and received death threats. According to the applicant, there was no physical evidence of ill-treatment because he had been refused access to a doctor. On 19 May 2005 the applicant gave up and signed the declarations.

19. In his letter of 20 May 2005 he requested the Court not to accept any statement similar to the above, should the Government produce one.

E. The alleged opening of the Court's letter and seizure of its enclosures

20. By a letter of 10 May 2005 the Registry of the Court informed the applicant that notice of his application had been given to the Russian Government. The applicant was invited to designate a representative in the proceedings before the Court. The letter contained several enclosures, such as a statement of facts, questions to the parties, an information note to applicants on the proceedings after communication of an application, an authority form and a list of Russian bar associations to which the applicant could apply for representation before the Court.

21. By letter dated 30 May 2005 the applicant informed the Court that on 26 May 2005 a co-detainee had handed him the Registry's letter of 10 May 2005. The envelope had been unsealed. It contained the letter and the questions to the parties. Considering that certain documents were missing, the applicant requested the prison administration to explain why the letter had been opened. According to the applicant, on 26 May 2006 he had been placed for four months in so-called "PKT cell-type premises" [*помещение камерного типа*] with a stricter prison regime because of his questions.

F. Inquiries into the events of 16 and 26 May 2005

1. Internal Inquiry

22. On 27 June 2005 the applicant complained of censorship to the head of the colony who initiated an inquiry.

(a) Explanations by Z., Kh. and V.

23. On 27 June 2005 officer Z. submitted to the head of the colony an explanation which, in its relevant parts, read as follows:

“I hereby notify you that on 25 May 2005 a letter (incoming no. 1324) in a foreign language for convict Tarasov [the applicant] was received. I examined [the letter]. The documents in the envelope were inspected and put back into the envelope; they were not withheld. Other persons did not have access to the above letter and on the same day it was handed over against receipt to Kh., head of the brigade...”

24. The explanation compiled on 1 July 2005 by Kh., head of the applicant's brigade, went on as follows:

“On 25 May 2005 at around 3 p.m. officer Z. handed over to me a big envelope addressed to [the applicant]. The envelope was opened, I examined [*рассмотрел*] the documents contained therein and put them back. There were no documents in Russian there. I gave the envelope to V., the inmate on duty, for him to pass it to [the applicant]. I did not remove any documents from the envelope and did not give them to persons other than V.”

25. On 29 June 2005 inmate V. submitted to the head of the colony an explanation worded in the following terms:

“I ... handed over to [the applicant] a big envelope which had been given to me by Kh., head of the brigade. Some fifteen minutes after the envelope was given to me I handed it over to [the applicant]. I did not look into the envelope and did not take any documents out of it, I did not give the envelope to anybody.”

(b) Report by the head of the colony

26. On 4 July 2005 the acting head of the colony delivered a report [*закключение*]. It stated that in course of the inquiry it had been established that on 25 May 2005 the colony had received an envelope for the applicant with documents from the European Court. Officer Z. in charge of censoring the inmates' correspondence had automatically opened the envelope, not noticing the logo of the European Court of Human Rights. After the inspection [*осмотр*] of the documents she had put them back into the envelope and had passed it over to Kh., head of the applicant's brigade, who was supposed to hand it over to the applicant. The report concluded that Z. had breached Article 91 § 2 of the Penal Code prohibiting censorship of convicts' correspondence with the European Court of Human Rights. The report went on suggesting, among other things, reprimanding Z. for

negligence and conducting study courses on Article 91 of the Penal Code with the colony officers, followed by obligatory tests.

2. Inquiry by the Federal Service for Execution of Sentences

27. On 2 September 2005 the Court requested the Government to submit further observations in connection with the censorship of the Registry's letter and the alleged intimidation of the applicant.

28. On an unspecified date the regional office of the Federal Service for the Execution of Sentences in the Republic of Udmurtiya opened an inquiry in connection with the Court's communication of the applicant's complaints to the Government.

(a) Explanation by the applicant

29. On 25 October 2005 the regional prosecutor questioned the applicant. His explanation, in so far as relevant, read:

“On 26 May 2005 at around 12.10 on duty inmate V. handed over to me an opened envelope with the logo of the ECHR; there were three sheets of paper with a text in English. He told me that he had received the envelope from Kh.. At lunch I asked Kh. why the envelope had been opened. He answered that he had been given the opened envelope by the censor...

From the text of the documents I understood that not all documents had been given to me; in particular, some documents which I was supposed to fill in and to return to the ECHR were missing...

I think that the missing documents... had been withheld by the representatives of the administration of LIU-2. I cannot name specific persons because I don't know who they were. My suspicions in respect of the administration are based on the fact that directly after my complaint to Ya., deputy head of the colony, the administration acted in a strange way. Instead of attempting to find out what had happened to the missing documents, they placed me in a PKT. I think that if the administration had had nothing to do with the loss of the documents they would not be acting like that...

...In LIU-2 I was not pressurised directly. However it looks suspicious to me that I have suddenly become a persistent regime breaker. It is also alarming that measures are taken with a view to delaying my incoming correspondence from the ECHR and my outgoing correspondence. The attachments to the ECHR letter opened in May 2005 may have been withheld with this aim.”

(b) Report of 1 November 2005

30. On 1 November 2005 the regional office of the Federal Service for Execution of Sentences issued a report in which they acknowledged a breach of the rules concerning the confidentiality of the applicant's correspondence with the Court. At the same time it was noted that it had not been confirmed that documents had been removed from the Registry's envelope. It was further stated, with reference to the explanations of Z., the

then acting head of the colony, and Kh., that Z. had automatically opened the envelope, that she had not read the documents and that, in any event, she did not speak English. Had she noticed the European Court's logo, she would not have unsealed the envelope. Neither she nor other persons had removed the documents from the envelope; no such directions had ever been given to anybody. It had been impossible to reprimand Z. because by the relevant time her employment had already been terminated because of general measures to reduce the workforce.

31. As regards the applicant's allegation of pressure with a view to making him withdraw some of his complaints to the Court, the report noted that, according to his own explanation, he had only raised the issue of interference with his communication with the Court in connection with the opening of the Registry's letter. He had not referred to any other instances of intimidation or interference.

32. Lastly, during his detention before his conviction had become final he had been reprimanded fourteen times for various breaches of the detention regime. After the conviction had become final the applicant breached the prison regime on twenty-seven occasions: he was placed in a punishment cell, nine times, in a PKT twice, and was reprimanded seventeen times.

33. By a final judgment of 15 December 2006 the applicant was convicted of having publicly assaulted a public official.

34. On an unspecified date he was transferred to serve his prison sentence to correctional colony IK-3 in the Republic of Bashkortostan.

G. Alleged censorship of the applicant's correspondence

35. On 12 September 2005 the Court, while giving notice of the applicant's complaints about the opening of its letter and the applicant's alleged intimidation under Article 34, of its own motion, raised the issue of whether the prison authorities censored the applicant's correspondence, in breach of Article 8 of the Convention.

36. According to the applicant, during his stay in LIU-2 the prison administration routinely censored his incoming mail from the domestic authorities that was not subject to censorship by virtue of the domestic law.

37. In particular, the applicant referred to the incoming mail from the following authorities: the Ombudsman of the Russian Federation (letters of 6 June and 14 October 2004), the Constitutional Court of the Russian Federation (letter of 26 August 1999), the Commission on Human Rights with the President of the Russian Federation (letter of 15 April 2004), the Prosecutor General's Office (letters of 11 November 2002 and 27 October 2005), the prosecutor's office of the Udmurtiya Republic (letters of 3 December 2002 and 11 May 2004), the Ministry of Justice of the Russian Federation (letter of 31 October 2002), the Supreme Court of the Russian

Federation (letter of 20 November 2002), the department of the Federal Service for Execution of Sentences in the Udmurtiya Republic (letters of 26 April, 3 and 10 June and 10 August 2004), the Mozghi District court (letter of 13 January 2004).

38. The letter of the Prosecutor General's Office dated 27 October 2005 was addressed to the head of LIU-2. He was requested to notify the applicant that the Prosecutor General's Office had examined the applicant's complaint, forwarded to them by the Office of the President of the Russian Federation, and dismissed it as unfounded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Supervisory review proceedings

39. 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.

40. 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 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.*).

B. Prisoners' correspondence

41. Article 91 § 2 of the Penal Code, as amended on 8 December 2003, as well as Rule 53 of the Internal Regulations of Correctional Facilities

adopted on 3 November 2005 by Decree no. 205 of the Russian Ministry of Justice, provide that all detainees' incoming and outgoing correspondence is subject to censorship by the administration of the correctional facility. Correspondence with courts, prosecutors, penitentiary officials, the Ombudsman, the public monitoring board and the European Court of Human Rights is not subject to censorship.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

42. The applicant complained under Article 6 § 3 (b)-(d) of the Convention that the decision of the Presidium of the Supreme Court of the Russian Federation, taken in his absence, had violated his right to fair trial. The Court will examine the applicant's complaint under Article 6 §§ 1 and 3 (b) and (c), the relevant parts of which read as follows:

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

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

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

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

A. Submissions by the parties

43. The Government submitted that the applicant had been duly notified of a scheduled hearing on 8 August 2001 and adjournment, as well as provided in due time with a copy of the application of 16 April 2001. Hence, he should have been aware of the fact and the aim of the re-examination of his conviction. By contrast to the case of *Pelissier and Sassi*, the examination of the case by the Presidium court should not be considered as levelling a new charge against the applicant because the relevant facts remained the same; they had only been given a different legal classification. Moreover, the reclassification had been favourable to the applicant because his sentence had been reduced. It had been up to the Presidium to decide whether or not to summon the applicant to the hearing; his presence had not been necessary, given that all facts had been correctly established at the

court of first instance. The prosecutor's intervention at the hearing was confined to a mere reading out of the application for review.

44. The applicant stressed that he had not requested a reclassification of his offence. The reduction of his sentence had not negated the fact that he had not been afforded an opportunity to participate effectively in the supervisory review hearing. Thus, he had not had sufficient time to prepare his comments on the prosecutor's application; in any event, although he had submitted them both to the prosecutor's office and the Presidium court, they had disregarded them which had been evident from the decision of 3 October 2001, which had not referred to any of his arguments. In the same vein, all his requests to attend the hearing had been disregarded, which had deprived him of an opportunity to attend the hearing and to defend his position. In his opinion, the decision, delivered after a hearing where he had not been able to present his arguments in person or through some form of legal representation, had breached his right to a fair trial and the principle of equality of arms.

B. The Court's assessment

1. Admissibility

45. The Court notes that this complaint 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. It must therefore be declared admissible.

2. Merits

46. 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 classification of the applicants' offence without summoning them to supervisory review hearings or affording them an opportunity to comment on the applications for supervisory review (see *Vanyan v. Russia*, no. 53203/99, §§ 63-68, 15 December 2005; *Aldoshkina v. Russia*, no. 66041/01, §§ 23-25, 12 October 2006; and *Stanislav Zhukov v. Russia*, no. 54632/00, §§ 23-25, 12 October 2006). As regards the Government's submission that the reclassification was not to the applicant's detriment, the Court observes that it has already examined and rejected similar arguments in the above-mentioned *Vanyan* and *Stanislav Zhukov* cases (both cited above, §§ 53 and 24, respectively; see also *Sharomov v. Russia*, no. 8927/02, § 44, 15 January 2009).

47. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different

conclusion in the present case. The Presidium of the Supreme Court amended the applicant's sentence and adopted a different legal classification of his actions, thereby re-determining the criminal charge against him (see *Stanislav Zhukov* and *Aldoshkina*, both cited above, § 24 and § 24 respectively). The prosecution was present at the supervisory review hearing and made oral submissions in support of the reclassification. The Presidium court was under an obligation to exercise a full review of the case and could dismiss the application for supervisory review, quash the conviction and/or the previous judgments, discontinue the criminal proceedings, or amend any of the earlier decisions (see paragraph 40 above). In such circumstances the applicant should have been afforded an effective opportunity to have knowledge of and comment on the authorities' application for supervisory review and their oral submissions to the Presidium court and to plead his case in adversarial proceedings (see *Vanyan*, *Aldoshkina* and *Stanislav Zhukov*, all cited above, §§ 24, 24 and 67 respectively). However, nothing suggests that he was afforded such an opportunity. Firstly, the Government failed to substantiate their submission that the applicant had been apprised of the hearing on 8 August 2001 and of its adjournment until 3 October 2001. Furthermore, the authorities disregarded the applicant's requests for leave to appear before the Presidium court and thus he was absent from the hearing. Lastly, although the applicant submitted his written comments on the prosecution application, it does not transpire from the text of the judgment of 3 October 2001 that they were considered by the Presidium court.

48. In view of the above considerations the Court finds that the proceedings before the Presidium of the Supreme Court of the Russian Federation did not comply with the requirements of fairness. There has therefore been a breach of Article 6 § 1 of the Convention.

49. In light of this finding it is not necessary to examine separately whether the provisions of Article 6 § 3 have been complied with (see *Stanislav Zhukov* and *Aldoshkina*, both cited above, §§ 25 and 25 respectively).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

50. The applicant complained that the authorities had opened and inspected the Court's letter of 10 May 2005 and had seized documents enclosed there. The Court considers will examine the applicant's complaint under Article 8 of the Convention which reads as follows:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Submissions by the parties

51. The Government acknowledged that the censorship of the Court's letter to the applicant constituted a breach of Article 8 of the Convention. They stressed, however, that the measures taken by the authorities had remedied the situation. In particular, the responsible persons had been identified and the need for them to be made aware and to avoid similar incidents in future had been acknowledged. The acknowledgment of that “insignificant” breach of the applicant's rights had constituted, in their view, an adequate redress and thus, he was no longer a victim of the alleged violation. On the merits, they argued, with reference to a certificate issued by colony LIU-2, that throughout his detention before and after conviction the applicant had sent 296 letters and complaints to various public authorities and had received 204 replies, including his correspondence with the Court. In the Government's view, that fact refuted his allegation that LIU-2 had interfered with his correspondence with the Court. Relying on the results of the domestic inquiries, they submitted that Z. had automatically unsealed the Court's letter. Having seen that the letter and the enclosed documents were in the English language, she had immediately passed the envelope and all enclosed documents on to Kh., head of the applicant's brigade. She had never withheld any documents. The Government stressed that Z. had had no command of English and could not have grasped the contents of the documents. Had she seen the European Court's logo, she would not have unsealed it. Kh. and V. also submitted that they had immediately passed the envelope on and had never removed any documents from it.

52. The applicant retorted that the certificate issued by the colony contained inaccurate information. Thus, whilst it mentioned in total eight letters received by the applicant from the Court, in reality he had received seventeen letters from it. He further submitted that two of the Court's letters had colony stamps disclosing that the correspondence had been routinely opened and inspected. His letters to and from the domestic authorities which should not have been censored by virtue of Article 91 of the Penal Code had also been stamped. There had been a month's delay in handing one of the Court's letters over to him; there were persistent delays in posting his letters to various authorities.

53. As regards the opening of the Court's letter, the applicant maintained that, for some unspecified reasons, it had been brought to the censorship

unit and that Kh. had passed it to a co-inmate instead of handing it over directly to him. Furthermore, while the letter had been received on 25 May 2005, it had been handed over to the applicant only a day later, there had been no explanation for that delay and several enclosures were missing from the envelope. From the statements of Z. and Kh. it was obvious that they had examined the contents of the envelope and thus the Government's argument about their negligence did not stand. The breach of his rights had never been remedied at the domestic level. The authorities had carried out a proper inquiry only after the Court had given notice of the application to the Government. Nobody had been punished for the breach of his rights and no adequate redress had been provided. On the contrary, he had been put in PKT for his attempt to find out what had happened to the documents.

B. The Court's assessment

1. Admissibility

54. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). In this connection the Court accepts the Government's argument that the breach of the applicant's right to respect for his correspondence had been, at least in substance, acknowledged by the domestic authorities and in the proceedings before it (see paragraphs 26, 30 and 51 above). As to the issue of redress, the Court does not exclude that in a situation like the one in the present case adequate redress would not necessarily imply monetary compensation but might take other forms, the adequacy of such redress being assessed with regard to the particular circumstances of each case. However, in the present case the Court finds nothing to suggest that there was any decision or measure on the part of the domestic authorities which could be regarded as adequate redress for the alleged breach of the applicant's rights under Article 8 of the Convention. In this connection the Court takes note of the applicant's submission, uncontested by the Government, that a proper inquiry had only been initiated after the Court had given notice of the applicant's complaints, that no measures had been taken in respect of the officials identified during the inquiry as responsible for the opening of the Court's letter and that no one had apologised to the applicant.

55. In view of the foregoing the Court concludes that the applicant has not lost victim status in relation to the alleged violation of Article 8 of the Convention. It further notes that the complaint is not manifestly ill-founded

and not inadmissible on any other grounds and should be declared admissible.

2. Merits

56. The Court reiterates that “interference by a public authority” with the exercise of the right to respect for his correspondence will contravene Article 8 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is “necessary in a democratic society” to achieve them (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 179, ECHR 2000-IV).

(a) Existence of an interference

57. The Court reiterates that the opening of one letter is sufficient to disclose an interference with the applicant's right to respect for his correspondence (see *Narinen v. Finland*, no. 45027/98, § 32, 1 June 2004).

58. The Court observes, and it was not disputed by the parties, that on 25 May 2005 colony official Z. had unsealed the Court's letter to the applicant dated 10 May 2005. In their explanations Z. and Kh. explicitly stated that they had taken the documents out of the envelope and had “examined” or “inspected” them (see paragraphs 23 and 24 above). In this connection the Government's argument that Z. and Kh. were unable to read the enclosures in English is without relevance for the Court. It is further not disputed by the parties that Z. had been the first to open the envelope and examine its contents, that Kh. had subsequently also examined them and had passed them on to V. before it had reached the applicant a day later, some documents being missing. In this connection it is to be noted that several days after the incident the applicant had written to the Court and put it on notice that he had received an opened envelope and that several documents were missing (see paragraph 21 above). In the ensuing correspondence and his observations he consistently confirmed his description of the events.

59. Having regard to the foregoing, the Court considers that the censorship of the letter amounted to an “interference” by a public authority, within the meaning of Article 8 § 2, with the exercise of the applicant's right to respect for his correspondence.

(b) Whether the interference was “in accordance with the law”

60. The Court notes that Article 91 § 2 of the Penal Code, as in force at the material time, expressly prohibited censoring of detainees' correspondence with the European Court of Human Rights. It takes into account that the Government acknowledged that the interference with the applicant's correspondence had been in breach of Article 8. It follows that censoring of the above letter was not “in accordance with the law”.

61. There has therefore been a breach of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

62. The applicant also complained that on 19 May 2005 wardens had forced him to write a statement to the effect that he had no complaints about the conditions of his detention. He did not refer to any Convention provision. The Court will examine the complaint under Article 34 of the Convention which provides as follows:

Article 34

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

A. Submissions by the parties

63. The Government stated that the applicant had not been subjected to any pressure because no statement, as described by him, had been received by the Court or the Representative of the Russian Federation at the Court. Furthermore, in his statement of 25 October 2005 the applicant himself submitted that no one in colony LIU-2 had told him that he should withdraw his application to the Court. He had also stated that he had not been subjected to direct pressure in that colony. Moreover, the applicant was able to write and send to the Court a letter describing the incident with the Court's letter. His submissions were refuted by the results of the inquiries showing that the administration of the colony had not tolerated breaches of detainees' Convention rights and had not interfered with their correspondence with the Court. According to statements of the applicant's co-detainees, the colony administration had always been polite to them and they had been able to resolve all issues in close contact with it. The Government produced statements from four detainees and stressed that they had, in particular, emphasised that the colony officials had never pressurised the applicant. In their statements the detainees had also expressed a negative attitude towards the applicant because he had been constantly trying to find occasions to complain about something.

64. The applicant claimed that he had been obliged to transfer his letter about the pressurising through informal channels because he had feared persecution by the colony administration. It was hardly thinkable that the authorities would send his statements, obtained under duress, to the Court after he had requested it not to accept them. While questioned about the alleged pressure he had not wanted to give any further information because

he had not trusted the officials. Furthermore, on 26 May 2005 he had been placed in a PKT for four months for his attempts to find out what had happened to the missing documents and who had opened the Registry's envelope. In the PKT he had been refused an English-Russian dictionary and law books and had received them only after a six-day hunger strike. That unjustified punishment was a further proof that he had been pressurised. As regards the written statements by four detainees produced by the Government, other detainees to whom the applicant had read them had been appalled by the lies contained therein and the hypocrisy of their authors. In support of his position the applicant produced an "opinion" signed by twenty inmates who had confirmed his submissions concerning the untrustworthiness of the detainees' statements submitted by the Government.

B. The Court's assessment

65. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports of Judgments and Decisions* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 105, *Reports of Judgments and Decisions* 1996-VI). In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 159, *Reports of Judgments and Decisions* 1998-III).

66. Whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see *Akdivar and Others* and *Kurt*, both cited above, §§ 105 and 160 respectively). The applicant's position might be particularly vulnerable when he is held in custody with limited contacts with his family or the outside world (see *Coteț v. Romania*, no. 38565/97, § 71, 3 June 2003).

67. Turning to the circumstances of the present case, the Court observes that the parties produced little or no evidence in connection with the above complaint. At the same time they furnished numerous opposing statements from detainees of the colony suggesting, on the one hand, that the administration respected the inmates and, on the other, that it was not true. However, in the present case the Court is not dealing with the general

situation in the above colony but with a specific complaint concerning the alleged breach of the obligations under Article 34 on account of pressure being put on the applicant with a view to having him sign a specific statement. Hence, it will focus on the applicant's specific allegations in this respect and examine whether they can be found to be well-founded.

68. The Court notes that the applicant alleged that on 16 May 2005 colony officials had ordered him to sign a statement addressed to a prosecutor and the regional department of the Federal Service of Execution of Sentences to the effect that he had no complaints about the conditions of his detention and, when he refused, had allegedly beaten him. They had allegedly prevented him from seeing doctors to record his injuries and he had finally signed the declarations to avoid further beatings.

69. It observes that in the course of an inquiry into the opening of the Court's letter, while questioned by the prosecutor about the alleged pressure, the applicant explicitly stated that he had not been directly pressurised in LIU-2. He further explained that he had considered as pressure the fact of having suddenly become a persistent regime breaker, the delays in posting his correspondence to the Court and the opening of the Court's letter. Nowhere in his explanation did he refer to statements he had been allegedly forced to sign, the beatings which had allegedly accompanied them or the related refusals of access to a doctor (see paragraph 29 above). In this connection, the Court reiterates that it is fully aware of the vulnerability of the applicant, as a prisoner who sought to accuse officials of his own colony of putting him under pressure (see *Cotlet*, cited above, § 71). However, it cannot but observe that in the same conversation with the prosecutor the applicant complained vigorously and raised all his considerations and suspicions in connection with the censorship of the Court's letter. The Court does not find convincing the applicant's explanation that he "did not want" to raise the issue before the prosecutor because he did not trust him (see paragraph 64 above). Lastly, even being mindful of the problems the applicant might have encountered in getting access to doctors after his alleged intimidation, the Court cannot but observe that he produced statements by twenty inmates contesting the credibility of the witnesses whose statements had been furnished by the Government (see *ibid.*).

70. As regards the applicant's submission that he had "suddenly" and arbitrarily been classified as a "regime breaker", although the Court will not look in depth at this matter, it nonetheless cannot disregard the findings of the inquiry, uncontested by the applicant, to the effect that he had had a long record of breaches of regime before as well as after his conviction (see paragraph 32 above). In the same vein, the Court finds unsubstantiated his submission that he had been placed in a PKT in connection with his complaints about the opening of the Court's letter.

71. In the light of the above facts and considerations the Court considers that an alleged breach of the State's obligation under Article 34 of the Convention has not been established.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

72. Lastly, the applicant alleged violation of his rights under Articles 2, 3, 4, 5, 6, 7, 8, 13 and 17 of the Convention, Article 1 of Protocol No. 1 and Article 4 of Protocol No. 7 on various grounds.

73. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed compensation in respect of pecuniary and non-pecuniary damage, without specifying its amount.

76. The Government submitted that the applicant's claims should be dismissed because he had failed to indicate either the grounds for the compensation sought or the particular amount under each head of his claims. They also stressed that his claims in respect of non-pecuniary damage had apparently related to his mental and emotional suffering as a result of his criminal prosecution as such, and invited the Court to dismiss them. Lastly, they considered that, should the Court find a violation of any Convention provision, a finding of a violation would constitute sufficient just satisfaction.

77. Having regard to the applicant's observations, the Court does not agree with the Government that his claims in respect of non-pecuniary damage relate solely to the fact of his criminal prosecution. It accepts that the applicant must have suffered distress and frustration resulting from the violation of his right to a fair trial and the right to respect for the correspondence and considers that they cannot be compensated for by a

mere finding of violation of the relevant Convention provisions. Making its assessment on an equitable basis, the Court awards the applicant 2,500 euros (EUR), plus any tax that may be chargeable to the applicant.

B. Costs and expenses

78. The applicant also claimed EUR 250 for photocopying of the documents for the proceedings before the Court.

79. The Government contested the claim as unsubstantiated.

80. 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 finds that the applicant failed to substantiate his claims and therefore dismisses them.

C. Default interest

81. 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 Articles 6 and 8 of the Convention concerning, respectively, the unfairness of the supervisory review proceedings and the censorship of the Court's letter admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unfairness of the supervisory review proceedings;
3. *Holds* that there has been a violation of Article 8 of the Convention on account of the censorship of the Court's letter;
4. *Holds* that the respondent State has not failed to comply with their obligation under Article 34 of the Convention in respect of the applicant's alleged intimidation;
5. *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 2,500 (two thousand and five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

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

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

Done in English, and notified in writing on 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President