

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT  
SERGEY ZOLOTUKHIN v. RUSSIA**

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment<sup>1</sup> in the case of *Sergey Zolotukhin v. Russia* (application no. 14939/03).

The Court held unanimously that there had been a **violation of Article 4 of Protocol No. 7** (right not to be tried or punished twice) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 1,500 euros (EUR) in respect of non-pecuniary damage and EUR 9,000 for costs and expenses. (The judgment is available in English and French.)

**1. Principal facts**

Sergey Aleksandrovich Zolotukhin is a Russian national who was born in 1966 and lives in Voronezh (Russia).

The case concerns administrative and criminal proceedings brought against Mr Zolotukhin in 2002 for disorderly conduct.

On 4 January 2002 Mr Zolotukhin was arrested for bringing his girlfriend into a military compound without authorisation. He was then taken to the Voronezh Leninskiy district police station. According to the police report the applicant, who was drunk, behaved insolently, used obscene language and attempted to escape. On the same day the Gribovskiy District Court found the applicant guilty of “minor disorderly acts” under Article 158 of the Code of Administrative Offences and sentenced him to three days’ detention.

Subsequently, criminal proceedings were brought against the applicant under Article 213 § 2 (b) of the Criminal Code in relation to his disorderly conduct before the police report was drawn up, and under Articles 318 and 319 of the Criminal Code in relation to his threatening and insulting behaviour during and after the drafting of the report. He was remanded in custody on 24 January 2002. On 2 December 2002 the same district court found the applicant guilty of the charges under Article 319 of the Criminal Code. He was, however, acquitted of the charges under Article 213, as the court found that his guilt had not been proven to the standard required in criminal proceedings.

**2. Procedure and composition of the Court**

The application was lodged with the European Court of Human Rights on 22 April 2003 and declared partly admissible on 8 September 2005.

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<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

In its Chamber judgment of 7 June 2007, the Court held unanimously that there had been a violation of Article 4 of Protocol No. 7.

On 5 September 2007 the Government requested that the case be referred to the Grand Chamber under Article 43<sup>1</sup> (referral to the Grand Chamber) and on 12 November 2007 the panel of the Grand Chamber accepted that request.

The President of the Court gave the Human Rights Training Institute of the Paris Bar Association leave to intervene as a third party in the Court's proceedings, under Article 36 § 2 of the Convention (third party intervention) and Rule 44 § 2 of the Rules of Court.

A hearing took place in public in the Human Rights Building, Strasbourg, on 26 March 2008.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), *President*,  
Nicolas **Bratza** (United Kingdom),  
Françoise **Tulkens** (Belgium),  
Josep **Casadevall** (Andorra),  
Corneliu **Bîrsan** (Romania),  
Karel **Jungwiert** (Czech Republic),  
Anatoly **Kovler** (Russia)  
Elisabeth **Steiner** (Austria),  
Stanislav **Pavlovschi** (Moldova),  
Egbert **Myjer** (Netherlands),  
Dragoljub **Popović** (Serbia),  
Isabelle **Berro-Lefèvre** (Monaco),  
Päivi **Hirvelä** (Finland),  
Giorgio **Malinverni** (Switzerland),  
Luis **López Guerra** (Spain),  
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),  
Ledi **Bianku** (Albania), *judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

### 3. Summary of the judgment<sup>2</sup>

#### Complaint

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

<sup>2</sup> This summary by the Registry does not bind the Court.

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice) of the European Convention on Human Rights, Mr Zolotukhin complained that, after having already served three days' detention for disorderly conduct as a result of administrative proceedings against him, he had been detained and tried again for the same offence in criminal proceedings.

### **Decision of the Court**

The Court reiterated that Article 4 of Protocol No. 7 imposed a prohibition on trying or punishing an individual twice in criminal proceedings for the same offence.

As to the existence of a "criminal charge" for the purposes of that Article, the Court, upholding the Chamber's findings, took the view that although the proceedings instituted against the applicant before the Gribovskiy District Court on 4 January 2002 were classified as administrative in national law, they were to be equated with criminal proceedings on account, in particular, of the nature of the offence and the severity of the penalty.

As to whether the offences were the same, the Court noted that it had adopted a variety of approaches in the past, placing the emphasis either on identity of the facts irrespective of their legal characterisation, on the legal classification, accepting that the same facts could give rise to different offences, or on the existence or otherwise of essential elements common to both offences. Taking the view that the existence of these different approaches was a source of legal uncertainty which was incompatible with the fundamental right guaranteed by Article 4 of Protocol No. 7, the Court decided to define in detail what was to be understood by the term "same offence" for the purposes of the Convention.

After examining the scope of the right not to be tried and punished twice as set forth in other international instruments, in particular the United Nations Covenant on Civil and Political Rights, the European Union's Charter of Fundamental Rights and the American Convention on Human Rights, the Court stated that Article 4 of Protocol No. 7 should be construed as prohibiting the prosecution or trial of an individual for a second offence in so far as it arose from identical facts or facts that were "substantially" the same as those underlying the first offence. This guarantee came into play where a new set of proceedings was instituted after the previous acquittal or conviction had acquired the force of *res judicata*.

In the instant case the Court considered that the facts underlying the two sets of administrative and criminal proceedings against the applicant differed in only one element, namely the threat to use violence against a police officer, and should therefore be regarded as substantially the same.

As to whether there had been a duplication of proceedings, the Court upheld the Chamber's conclusions, finding that the judgment in the "administrative" proceedings sentencing the applicant to three days' detention amounted to a final decision, as no ordinary appeal lay against it in domestic law. The Court further stressed that the fact that the applicant had been acquitted in the criminal proceedings had no bearing on his claim that he had been prosecuted twice for the same offence, nor did it deprive him of his victim status, as he had been acquitted not on account of the breach of his rights under Article 4 of Protocol No. 7, but solely on the ground of insufficient evidence against him.

The Court concluded that the proceedings instituted against the applicant under Article 213 § 2 (b) of the Criminal Code concerned essentially the same offence as that of which he had already been convicted under Article 158 of the Code of Administrative Offences, and that he had therefore been the victim of a breach of Article 4 of Protocol No. 7.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*