CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KRASULYA v. RUSSIA

(Application no. 12365/03)

JUDGMENT

STRASBOURG

22 February 2007

FINAL

22/05/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Krasulya v. Russia,

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

Mr C.L. ROZAKIS, *President,*
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 12365/03) 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 Vasiliy Aleksandrovich Krasulya, on 4 April 2003.

2. The applicant was represented before the Court by Mr B. Dyakonov, a lawyer practising in Stavropol. 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 a violation of his right to impart information, and a violation of the principle of equality of arms because the domestic courts had not accepted the linguistic examination report in evidence.

4. By a decision of 9 December 2004 the Court declared the application admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and lives in Stavropol.

1. Publication in the applicant's newspaper

7. The applicant is the editor-in-chief of a regional newspaper "Noviy Grazhdanskiy Mir". On 4 January 2002 the newspaper published an editorial under the heading "Chernogorov stealthily approaches Stavropol. Thoughts about one decision of the town legislature." ("*Черногоров подбирается к Ставрополю. Размышления по поводу одного решения городской думы*"). The article was signed with the pseudonym of V. Nikolayev. Mr Chernogorov was the governor of the Stavropol region and the applicant's competitor in the election to that office in 2000.

8. The article lamented the decision by a majority of members of the Stavropol town legislative body to change the procedure of appointment of the town's mayor: the mayor would no longer be elected by the town's residents, but appointed by the town legislature. The publication alleged that the decision had been taken under pressure from Mr Chernogorov:

> "[Members of the legislature] were requested [to make the decision] by the governor himself, who attended the session, accompanied by many of his advisors, to try to persuade those in attendance...
>
> From that moment on, each member of the legislature has been caught in a web of sale-and-purchase transactions. We can only speculate what wonders they will be promised by Chernogorov's representatives. One thing is sure, nobody will offer the legislators more than the governor himself...
>
> Each member of the legislature will get his share and consume it on the sly."

9. The article concluded with a critical appraisal of the governor as politician and manager:

> "Having miraculously escaped defeat in the governor's election – only because the regional elites failed to reach an agreement and nominate a passable candidate – and having avoided, for the same reason, the formation of a powerful opposition in the regional legislature, our loud and ambitious, but completely incapable governor is about to lay his hands on [the town of Stavropol]."

2. Criminal prosecution of the applicant

10. On 5 February 2002 the prosecutor's office of the Stavropol Region granted the request of Governor Chernogorov and initiated criminal proceedings against the applicant for dissemination of defamatory statements in the mass-media (Article 129 § 2 of the Criminal Code).

11. On 6 March 2002 an investigator ordered a linguistic examination of the publication. The examination was performed on 18 March 2002 by Mr B., a professional journalist with degrees in language studies and law, teaching at the Language Studies and Journalism Department of Rostov State University. The expert came to the following conclusion:

> "General conclusion: The text of the article submitted for examination... conveys in a rather harsh and emotional form the author's opinion and his judgments on the role of the Stavropol Region's governor, Mr Chernogorov, in the forthcoming election of

> the Stavropol town mayor. The text does not contain any words or expressions that are insulting for the governor, with the exception of the controversial description 'incapable'."

12. The expert admitted that certain sentences conveyed a negative attitude towards the managerial abilities of the governor; however, he asserted, the publication did not contain any allegations about violations of laws, including electoral laws, by the governor or any statements damaging his professional reputation. The expert also pointed out, referring to an academic article by the Krasnodar town prosecutor, that ideas, opinions and value-judgments were not subject to a court-ordered refutation for being untrue, and the aggrieved person should instead exercise his right to a reply in the same medium.

13. On an unspecified date the applicant was charged with criminal defamation involving an allegation about the commission of a serious crime (Article 129 § 3 of the Criminal Code) and with publicly insulting a State official in connection with the performance of his duties (Article 319 of the Criminal Code). The case was referred to a court.

3. Criminal conviction of the applicant

14. Before the court the applicant pleaded not guilty. He maintained that the publication in question had not contained any statements of fact, which could be declared untrue.

15. Mr Chernogorov asserted that the statements in the publication to the effect that he had obtained a decision from the town legislature through bribes and that he had had a narrow escape at the 2000 election, as well as a reference to him as being "completely incapable", were libellous and damaging to his honour, dignity and professional reputation.

16. The court heard evidence from three members of the Stavropol town legislature, who denied that they had been offered any goods or benefits by the governor in exchange for their consent to the mayor's appointment. The governor's advisors testified in the same vein.

17. On 12 September 2002 the Oktyabrskiy District Court of Stavropol delivered a judgment in the applicant's case. In the judgment the court rejected the conclusions of the linguistic examination of 18 March 2002 on the ground that the report was a "subjective appraisal" by Mr B. of the publication and, in addition, that it had not been shown that Rostov State University or Mr B. had had a licence to carry out linguistic examinations. The court substituted its own assessment of the article's contents:

> "The court considers that the article contains not judgments and assumptions, as asserted by the defence, but precisely statements of fact... because the article specifies when, where and under what circumstances the decision on amendments to the Stavropol town charter was made and what the result of the voting was. The use of the future tense and infinitives in the text of the article is the author's way of writing and it does not indicate that the discourse is about hypothetical future events..."

18. The court further held that it was not possible to establish who had been the author of the article. The prosecution had not proven that it had been written by the applicant. However, he was responsible for its publication in the newspaper of which he was the editor.

19. The court found as follows:

> "The disseminated defamatory statements damage the honour and dignity of the Stavropol Region's governor Chernogorov, undermine his professional reputation, and accuse him of a serious crime. The repeated statements that 'each member of the legislature has been caught in a web of sale-and-purchase transactions', that 'they will be promised wonders by Chernogorov's representatives', that 'nobody will offer the legislators more than the governor himself', and that each member of the legislature 'will get his share and consume it on the sly' accuse the governor Chernogorov of bribing the members of the legislature for adoption of a desired decision. The statements that *each* member of the legislature has been caught in 'a web of sale-and-purchase transactions' and *each* member of the legislature 'will get his share' accuse Mr Chernogorov of bribing *each member of the legislature* who took part in the adoption of the decision, that is of a serious criminal offence under Article 291 § 2 of the Criminal Code, repeatedly committed [emphasis in the original].
>
> [The applicant's] statements that Mr Chernogorov 'has miraculously escaped defeat in the governor's election only because the regional elites failed to reach an agreement' and 'nominate a passable candidate' are also untrue, and [the applicant] knew that they were untrue. Being himself a candidate in the 2000 elections of the Stavropol Region's governor, [the applicant] could not be ignorant of the election results, in which Mr Chernogorov polled at least 20 per cent more votes than the other candidates... This result does not permit concluding that Mr Chernogorov has 'miraculously' won the elections. [The applicant] disseminated untrue statements that Mr Chernogorov's election as the Stavropol Region's governor had not been the product of an informed choice of a majority of the Region residents but had been brought about accidentally because of lack of consent between certain 'regional elites'. Those statements damage the reputation of the legitimately elected governor among the Region residents, denigrate and belittle his person.
>
> The court considers that [the applicant's] statement that 'our loud and ambitious, but completely incapable governor is about to lay his hands on [the town of Stavropol]' was also an untrue statement damaging Mr Chernogorov's honour and dignity and undermining his reputation. No one has ever established that Mr Chernogorov was incapable in the legal sense of this term. Moreover, as the Region residents re-elected Mr Chernogorov as the Stavropol Region's governor for a second term, it cannot be concluded that Mr Chernogorov is a 'completely incapable governor' in the sense of incapability to act."

20. The court found the applicant guilty of defamation. However, the applicant was acquitted of publicly insulting a State official because, in the court's opinion, the publication did not contain cynical or obscene language in respect of the governor.

21. The applicant was given a suspended sentence of one year's imprisonment, conditional on six months' probation.

22. The applicant and his lawyer appealed against the conviction to the Stavropol Regional Court. Their grounds of appeal invoked, in particular, Article 10 of the Convention and referred to the special place of journalistic

freedom in a democratic society and wider limits of criticism in respect of a public figure, which the Stavropol Region's governor undeniably was. The applicant's lawyer also complained about the first-instance court's refusal to accept the linguistic examination report on the pretext that the expert did not have the required licence, whilst domestic law did not provide for such a requirement.

23. On 31 October 2002 the Criminal Division of the Stavropol Regional Court upheld the judgment of 12 September 2002. The Regional Court did not address the applicability of Article 10 of the Convention or the first-instance court's decision not to admit the linguistic examination report in evidence.

II. RELEVANT DOMESTIC LAW

24. Article 29 of the Constitution of the Russian Federation guarantees freedom of ideas and expression, as well as freedom of the mass-media.

25. Article 129 § 1 of the Criminal Code of the Russian Federation defines defamation as dissemination of information known to be untrue that damages the honour and dignity of another person or undermines the person's reputation. Article 129 § 2 provides that defamation disseminated in a public statement, publicly displayed work of art or in the mass-media is punishable by a fine and/or correctional work for a period of up to two years. Article 129 § 3 penalises defamation, involving an accusation against a person that he or she committed a serious or especially serious crime, by up to three years' imprisonment.

26. Article 57 § 1 of the Code of Criminal Procedure of the Russian Federation of 18 December 2001 establishes that a person having technical knowledge may be commissioned to give an expert opinion in a criminal case. Pursuant to Article 195 § 2 a forensic expert study may be carried out by a State court expert or by any other expert having relevant technical knowledge.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

27. In their additional observations of 15 February 2005, following the Court's decision as to the admissibility of the application on 9 December 2004, the Government contended for the first time that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. They submitted that he had not lodged an application for supervisory review of his conviction.

28. The Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). The Government's submissions referred to the events that had occurred before the application was lodged with the Court and there had been no relevant legal developments thereafter. There are no exceptional circumstances which would have absolved the Government from the obligation to raise their preliminary objection before the Court's decision as to the admissibility of the application on 9 December 2004.

29. Consequently, the Government are estopped from raising a preliminary objection of non-exhaustion of domestic remedies at the present stage of the proceedings. In any event, an application for supervisory review is not a remedy to be exhausted under Article 35 § 1 of the Convention (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004). The Government's objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. The applicant complained under Article 10 of the Convention about a violation of his right of freedom of expression. Article 10 provides as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Arguments by the parties

31. The Government submitted that the applicant had been convicted of deliberately imparting false information damaging another person's dignity, honour and reputation, because he had been the editor-in-chief and co-founder of the newspaper in which the article had been published. The applicant had failed in his duty, established under section 49 of the Russian

law on the mass-media, to verify the veracity of the imparted information or to obtain consent from the person concerned.

32. The applicant responded that the criminal proceedings in relation to his publication had been disproportionate to the purported aim of the protection of honour and reputation and, in any event, they had not been "necessary in a democratic society". The subject of the publication had been a professional politician and the limits of acceptable criticism were wider as regards politicians than those in the case of a private individual. He had exercised his journalistic freedom, which covered possible recourse to a degree of exaggeration, or even provocation.

B. The Court's assessment

33. The Court notes that it is common ground between the parties that the applicant's conviction constituted "interference" with his right to freedom of expression as protected by Article 10 § 1. It is not contested that the interference was "prescribed by law", namely by Article 129 of the Criminal Code, and "pursued a legitimate aim", that of protecting the reputation or rights of others, for the purposes of Article 10 § 2. It remains to be determined whether the interference was "necessary in a democratic society".

34. The test of necessity in a democratic society requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient. In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not however unlimited, but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their margin of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Grinberg v. Russia*, no. 23472/03, § 27, 21 July 2005).

35. In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicant, the position of the person against whom his criticism was directed, the subject matter of the publication, characterisation of the contested statement by the domestic courts, the wording used by the applicant, and the penalty imposed

on him (see, mutadis mutandis, *Jerusalem v. Austria*, no. 26958/95, § 35, ECHR 2001-II).

36. As regards the applicant's position, the Court observes that he was a journalist and the editor-in-chief of a newspaper. He was convicted for his publication, therefore the impugned interference must be seen in the context of the essential role of the press in ensuring the proper functioning of political democracy (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, § 41; *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 59, ECHR 1999-IV). The Court reiterates that the exceptions to journalistic freedom set out in Article 10 § 2 must be construed strictly and the need for any such restrictions must be established convincingly.

37. The applicant's criticism was directed against the regional governor Mr Chernogorov, a professional politician in respect of whom the limits of acceptable criticism are wider than in the case of a private individual (see *Lingens*, cited above, § 42). By standing in the governor's elections, Mr Chernogorov entered the political scene and inevitably and knowingly laid himself open to close scrutiny of his every word and deed by both journalists and the public at large. Therefore, he must have displayed a greater degree of tolerance.

38. The subject matter of the publication was the decision of the town legislature to abolish mayoral elections in the regional capital and the applicant's supposition that the regional governor had unduly interfered in the legislative process. The article also commented on the results of the governor's election and criticised the governor's managerial abilities. The issues raised in the article were of paramount importance for the regional community. That was a matter of public concern and the article contributed to an on-going political debate. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or debates on questions of public interest. It has been the Court's constant approach to require very strong reasons for justifying restrictions on political speech, for broad restrictions imposed in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned (see *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII; and *Sürek,* cited above, § 61).

39. The Court observes that the Russian courts characterised the applicant's statements as statements of fact and found him liable for his failure to show the veracity of those allegations. They rejected the applicant's argument that those statements were value judgments. In this respect the Court reiterates that a distinction has to be drawn between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Oberschlick v. Austria (no. 1)*, judgment of

23 May 1991, Series A no. 204, p. 27, § 63). The Court will examine each of the applicant's statements in turn.

40. The first contested extract began by announcing that the town legislature had voted for a decision to abolish mayoral elections. It further described the governor's appearance at the legislative session in the company of his aides. It was followed by a supposition that the governor and his advisors had lobbied the legislators for the decision (see paragraph 8). The domestic courts interpreted the latter allegation as an accusation of bribery. The Court cannot subscribe to that interpretation. In its view, the applicant's statement was too imprecise to constitute an accusation of bribery. It only alluded at the governor's influence on the lawmakers, without further details.

41. The Court finds it difficult to determine whether the applicant's statement about the governor's influence on the legislators was a statement of fact or a value judgment. The use of future tenses by the applicant suggests that the article contained suppositions rather than facts. However, under the Court's case-law a value judgment must be based on sufficient facts in order to constitute a fair comment under Article 10. The Court will examine whether there existed a sufficient factual basis for the statement. It is undisputed that the governor attended the session of the town legislature and endeavoured to persuade the lawmakers to vote for a law abolishing mayoral elections in the town. In the Court's view, the body of facts available constituted a sufficient factual basis for the applicant's allegations that the governor and his aides had interfered with the legislative process. Therefore, the Court considers that the applicant published a fair comment on an important matter of public interest.

42. As regards the statements that the governor had "miraculously escaped defeat in the governor's elections" and that he was "loud, ambitious and completely incapable", the Court considers that those statements were a quintessential example of a value judgment that represented the applicant's subjective appraisal of the governor's managerial abilities, and his own perception of the results of the elections. The domestic courts held that he had to prove the truth of those allegations. The burden of proof was obviously impossible to satisfy.

43. The Court further observes that, although the article published by the applicant was indeed strongly worded, it did not resort to offensive or intemperate language and did not go beyond the generally acceptable degree of exaggeration or provocation, recourse to which is covered by journalistic freedom (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38).

44. In assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see *Skałka v. Poland*, no. 43425/98, § 38, 27 May 2003). In this respect, the Court notes that the applicant was convicted and sentenced to one year's imprisonment in criminal proceedings. Notwithstanding the fact that the

sentence was suspended, the applicant was faced with the threat of imprisonment. The sentence was suspended on the condition that he did not commit any further offence in his capacity as editor within six months. That condition had a chilling effect on the applicant by restricting his journalistic freedom and reducing his ability to impart information and ideas on matters of public interest (see *Şener v. Turkey*, no. 26680/95, § 46, 18 July 2000, with further references). The Court considers that the sentence was disproportionately severe.

45. In the light of the above considerations and taking into account the role of a journalist and press of imparting information and ideas on matters of public concern, even those that may offend, shock or disturb, the Court finds that the applicant's publication did not exceed the acceptable limits of criticism. His conviction was not compatible with the principles embodied in Article 10 since the Russian courts did not adduce "sufficient" reasons justifying the interference at issue. Therefore, the Court considers that the domestic courts overstepped the narrow margin of appreciation afforded to them for restrictions on debates of public interest and that the interference was disproportionate to the aim pursued and not "necessary in a democratic society".

46. There has therefore been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

47. The applicant complained under Article 6 § 1 of the Convention about a violation of the principle of equality of arms. He alleged that the first-instance court had unlawfully rejected the linguistic examination report and that the appeal court had not made good that alleged violation and had failed to address this issue. The relevant part of Article 6 § 1 reads as follows:

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

48. The Government claimed that the linguistic report had only touched upon the charge of proffering insults, of which the applicant had been acquitted.

49. The applicant challenged the Government's claims as factually inaccurate and rebutted by the contents of the report itself. He emphasised that the main conclusion of the report had been that the article had contained opinions and value judgments concerning the role of Governor Chernogorov in the forthcoming mayoral election. Had the domestic courts agreed to examine the report, he would have been acquitted of libel because the article had included no statements of fact, whilst the truth of value judgments was not susceptible of proof.

50. The Court reiterates that while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the

admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Nevertheless for the proceedings to be fair as required by Article 6 § 1, the "tribunal" must conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision (see *Van Kück v. Germany*, no. 35968/97, §§ 47, 48, ECHR 2003-VII; *Kraska v. Switzerland*, judgment of 19 April 1993, Series A no. 254-B, § 30). Article 6 § 1 of the Convention obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29).

51. In the present case the prosecutor commissioned a linguistic expert examination of the article published by the applicant. The expert opined that the article had not contained any statement of fact amenable to proof, but rather conveyed the author's opinions and value-judgments. The trial court refused to admit the report in evidence because the expert did not have a special licence to perform a linguistic study. In his grounds of appeal the applicant pleaded that the rejection of the report had no grounds in domestic law because there was no requirement that the expert should have a special licence to perform a linguistic examination. The appeal court did not address the applicant's arguments in its judgment.

52. The Court considers that the expert report was an important piece of evidence which supported the position of the defence adopted by the applicant and which could have been decisive for determining whether the imputed acts had been criminal in nature. The applicant's argument before the appeal court that the report had been unlawfully rejected by the trial court was formulated in a clear and precise manner. The Court considers that that argument required a specific and explicit reply. In the absence of such a reply, it is impossible to ascertain whether the appeal court simply neglected to deal with the applicant's submission or whether it intended to dismiss it and, if that were its intention, what its reasons were for so deciding. The complete silence of the appeal court judgment on the lawfulness of the rejection of the expert report is inconsistent with the concept of a fair trial which is the basis of Article 6 (see, *mutadis mutandis*, *Ruiz Torija,* cited above, § 30; *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, § 34).

53. There has therefore been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government considered that the claim was excessive and unsubstantiated. The finding of a violation would in itself constitute sufficient just satisfaction.

57. The Court accepts that the applicant has suffered non-pecuniary damage – such as distress and frustration resulting from unfair criminal trial and a conviction and sentence incompatible with Article 10 – which is not sufficiently compensated for by the finding of a violation of the Convention. However, it finds the particular amount claimed by the applicant excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

58. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

59. 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;

(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 22 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President