CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF LOBANOV v. RUSSIA

(Application no. 16159/03)

JUDGMENT

STRASBOURG

16 October 2008

FINAL

16/01/2009

This judgment may be subject to editorial revision.

In the case of Lobanov v. Russia,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges*,
and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 25 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 16159/03) 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 Igor Ivanovich Lobanov ("the applicant"), on 6 May 2003.

2. The applicant was represented by Ms K. Moskalenko, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev and Ms V. Milinchuk, former representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his detention in Russia after the remission of his sentence by a Kazakh court had been unlawful and unfounded and, therefore, had amounted to a violation of Article 5 § 1 of the Convention. He also alleged that the dismissal of his claim for compensation for the damage sustained as a result of that detention had violated Article 5 § 5 of the Convention.

4. By a decision of 28 September 2006 the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lives in Moscow.

A. The applicant's conviction in Kazakhstan and his transfer to Russia

7. By a judgment of 12 October 1998 the Shymkent Town Court of the Republic of Kazakhstan convicted the applicant of storing and transporting drugs and sentenced him to five years' imprisonment. The applicant started serving his sentence in Kazakhstan.

8. On 24 January 2000 the Prosecutor General's Office of the Russian Federation granted the applicant's request to be transferred to Russia, his country of citizenship and his mother's place of residence, to serve the rest of his sentence.

9. On 3 February 2000 the applicant's request to be transferred to Russia was granted by the Kazakhstan Prosecutor General's Office.

10. On 29 February 2000, following an agreement between the Russian and Kazakh authorities, the applicant was transferred to Russia.

B. The Kazakh court's decision to release the applicant

11. Following the applicant's request for supervisory review of his case, the Presidium of the Yuzhno-Kazakhstanskiy Regional Court, in its decision of 16 March 2000, varied the judgment of 12 October 1998 by reclassifying the offence and reducing the sentence. In the same decision the court applied the 1999 Amnesty Act, discharged the applicant from serving the remainder of his sentence and ordered as follows:

> "The convicted prisoner Lobanov is to be released from custody forthwith."

12. Next day the Regional Court sent a copy of its decision to the Yuzhno-Kazakhstanskiy regional prosecutor's office, which received it on the same day and, since no information about the place where the applicant was serving his sentence had yet been received from the Russian authorities, launched an inquiry about his location.

13. On 29 March 2000 the applicant arrived at correctional facility no. 8 (penitentiary establishment YaK-7/8) in Penza.

14. According to the applicant, on 18 April 2000, immediately after he had learned of the court decision of 16 March 2000, he notified it to the administration of his correctional facility and requested them to expedite his release.

15. On 10 May 2000, after having established the applicant's location, the Yuzhno-Kazakhstanskiy regional prosecutor's office sent a copy of the Yuzhno-Kazakhstanskiy Regional Court's decision of 16 March 2000 to Russia. According to the Government, the decision was sent to the Information Centre of the Penza Regional Police Department. According to the applicant, it was sent to Penza correctional facility no. 8.

C. The Russian authorities' actions on the applicant's release

16. According to the Government, a copy of the Yuzhno-Kazakhstanskiy Regional Court's decision of 16 March 2000 was received by the Information Centre of the Penza Regional Police Department on 18 May 2000.

17. On 23 May 2000 the Information Centre, which was located in Penza, after having established the applicant's location, forwarded the decision to Penza correctional facility no. 8, which received it on 26 May 2000 and forwarded it on the same day to the Prosecutor General's Office of the Russian Federation.

18. The Prosecutor General's Office received the decision on 7 June 2000. On 13 June 2000 a deputy Prosecutor General ordered that the applicant be discharged from serving the remainder of his sentence. The next day, the prosecutor's decision was sent to the Ministry of Justice of the Russian Federation for execution. On 6 July 2000 it was received by the Ministry of Justice's Penza Region Department for Execution of Sentences.

19. On 10 July 2000 the prosecutor's decision reached correctional facility no. 8 and the applicant was released on the same day.

D. The applicant's claim for compensation

20. On an unspecified date the applicant brought proceedings against the Ministry of Justice of Russia and the Ministry of Finance of Russia seeking compensation in respect of pecuniary and non-pecuniary damage sustained as a result of his allegedly unlawful and unfounded detention for three months and ten days after the decision of the Yuzhno-Kazakhstanskiy Regional Court. By a judgment of the Taganskiy District Court of Moscow of 9 October 2001 the applicant's action was dismissed. On 30 November 2001 the Moscow City Court quashed the judgment on appeal and remitted the case to the first-instance court for a fresh examination.

21. On 15 August 2002 the Taganskiy District Court of Moscow examined the case anew. It established what the Russian authorities had done in respect of the Yuzhno-Kazakhstanskiy Regional Court's decision. In particular, it noted that the decision had been received by correctional facility no. 8 from the Penza Regional Police Department on 26 May 2000. It found that the Convention of the Commonwealth of Independent States of

6 March 1998 on the Transfer of Convicted Persons for Further Serving of their Sentences was not applicable to the applicant's case as it had not come into force in respect of Russia at the relevant time. It held that the Prosecutor General's Office had issued the order for the applicant's release on 13 June 2000 by virtue of its competence and relevant regulations, notably the decree of the Presidium of the Supreme Council of the USSR of 10 August 1979 on the Procedure for Execution of Obligations arising for the USSR from the Convention on the Transfer of Convicted Persons to Serve their Sentences in a State of their Citizenship, signed in Berlin on 19 May 1978, and instructions of 25 October 1979 on enforcement of that decree. The court stated that the decision of the Prosecutor General's Office discharging the applicant from serving the remainder of his sentence had been lawful. It held that there had been no fault on the part of the defendant authorities and that therefore there was no basis to grant the applicant's claim for compensation in respect of non-pecuniary damage. Nor did it find grounds for granting the applicant's claim for compensation in respect of pecuniary damage based on the loss of employment income. It noted that the applicant, who had been employed six months after his release, had failed to prove that he had been unable to find employment earlier through the fault of the defendant authorities. In rejecting the applicant's claims the court relied on Articles 151, 1069-1071 and 1099 of the Civil Code.

22. The applicant appealed. On 26 December 2002 the Moscow City Court upheld the judgment. It noted, in particular, that the District Court had established no unjustified delay on the part of the defendant authorities in executing the Kazakh court decision. There had thus been no fault on the part of the authorities, and the applicant's claims had been rightly dismissed.

23. On 10 April 2003 the applicant lodged an application for supervisory review of the case. On 13 May 2003 the Moscow City Court rejected his application.

II. RELEVANT DOMESTIC LAW

24. Under Article 15 § 4 of the Russian Constitution, the generally recognised principles and norms of international law and international agreements form part of Russia's legal order. International agreements prevail over national statutes in the event of conflict.

25. The Civil Code of the Russian Federation contains the following provisions on liability for damage caused by State bodies.

A court may award compensation for non-pecuniary damage (physical or mental suffering) to a person who sustained such damage as a result of a violation of his or her personal non-pecuniary rights. In order to determine the amount of compensation for non-pecuniary damage the court must have regard to the extent to which the perpetrator was at fault and the intensity of

any mental anguish or physical suffering caused, bearing in mind the individual characteristics of the victim (Article 151).

Article 1069. Liability for harm caused by State bodies, local self-government bodies and their officials

"Damage caused to an individual or a legal entity as a result of an unlawful act (failure to act) of State bodies, local self-government bodies or of their officials, including as a result of the issuance of an act of a State or self-government body which is contrary to the law or any other legal act, shall be subject to compensation. The damage shall be compensated for at the expense, respectively, of the treasury of the Russian Federation, the treasury of the subject of the Russian Federation or the treasury of the municipal authority."

Article 1070. Liability for harm caused by unlawful actions of agencies of inquiry and preliminary investigation, prosecutor's offices and the courts

"1. Damage caused to an individual as a result of his or her wrongful conviction or unlawful criminal prosecution, or the unlawful application, as a measure of restraint, of remand in custody or of a written undertaking not to leave a specified place, or the unlawful imposition of an administrative penalty in the form of arrest or corrective labour, shall be compensated for in full at the expense of the treasury of the Russian Federation and in certain cases, stipulated by law, at the expense of the treasury of the subject of the Russian Federation or of the municipal authority, regardless of the fault of the officials of agencies of inquiry or preliminary investigation, prosecutor's offices or courts in the procedure established by law.

2. Damage caused to an individual or a legal entity as a result of the unlawful activity of agencies of inquiry or preliminary investigation or prosecutor's offices, which has not entailed the consequences specified in paragraph 1 of this Article, shall be compensated for on the grounds and according to the procedure provided for by Article 1069 of this Code ..."

Article 1071 of the Civil Code authorises certain State financial authorities to act on behalf of the respective treasury in cases where the State has been found liable for damages. Article 1099 of the Civil Code states, in particular, that non-pecuniary damage shall be compensated for irrespective of any award for pecuniary damage.

26. Under Article 8 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (signed in Minsk on 22 January 1993, entered into force on 19 May 1994 in respect of Kazakhstan and on 10 December 1994 in respect of Russia), if an authority which receives another contracting State's request for legal assistance is not competent to deal with the request, it has to forward the request to the relevant competent authority. An authority which executes such a request normally has to apply the legislation of its own country.

27. Under Government Decree no. 1239 of 26 September 1997, in force at the material time, the Government's mail was to be delivered with priority. Under Government Decree no. 472 of 15 April 1996, in force at the

material time, the Government's mail was to be delivered on the day of its arrival throughout the working day in question. The statutory time-limit for the postal delivery of normal letters between Moscow and Penza was five days.

THE LAW

I. SCOPE OF THE CASE

28. The Court notes that in his observations on the merits of the case the applicant requested the Court to examine his complaint concerning his allegedly unlawful detention after the Yuzhno-Kazakhstanskiy Regional Court's decision of 16 March 2000, under Articles 4 and 5 § 1 of the Convention. It further notes that in its decision as to the admissibility of the present application it held that the above complaint fell to be examined under Article 5 § 1 and declared the complaints under Article 5 §§ 1 and 5 admissible.

29. The Court reiterates that the admissibility decision delimits the scope of the case before it (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 59, ECHR 2001-IX). It follows that the complaint under Article 4 of the Convention falls outside the scope of the present application.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

30. The applicant complained that his detention after the Yuzhno-Kazakhstanskiy Regional Court's decision ordering his release had been unlawful within the meaning of Article 5 § 1 of the Convention, which reads as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. The parties' submissions

1. The Government

31. The Government noted that Russia's execution of the Yuzhno-Kazakhstanskiy Regional Court's decision had been governed by the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, which did not set a time-limit for release from serving a sentence on the basis of a foreign state court's decision.

32. The Government submitted that the delay in the applicant's release had been caused by the fact that the authorities of Kazakhstan had sent the Yuzhno-Kazakhstanskiy Regional Court's decision to a Russian authority that was not competent to deal with it. They should have sent it to the Prosecutor General's Office which, according to domestic law, had been competent to order a person's release on the basis of a foreign state court's decision. Therefore, the applicant should have addressed his claims to the relevant authorities of Kazakhstan.

33. The Government further noted that the administration of penitentiary establishment YaK-7/8 had released the applicant immediately after the receipt of the Deputy Prosecutor General's decision of 13 June 2000. The Government considered that the applicant had been released within a reasonable time, namely within one month and twenty-two days, a period which had been required for the legalisation of the Yuzhno-Kazakhstanskiy Regional Court's decision of 16 March 2000 and its delivery by mail.

34. The Government explained that under the Instruction on clerical work approved by the Prosecutor General's order no. 93 of 28 December 1998, all correspondence from the prosecutor's office was sent by mail in accordance with the Rules on provision of postal services approved by Government Decree no. 1239 of 26 September 1997 in force at the material time. Under paragraph 5.12.6 of section 5 of the Instruction, documents transmitted by fax had no legal force. Furthermore, under Russian legislation, a person could only be released from serving his sentence on the basis of an original document duly signed and stamped.

2. The applicant

35. The applicant submitted that the lack of clear regulations in international agreements between Russia and Kazakhstan in respect of release from serving a sentence on the basis of a foreign state court's decision had adversely affected his rights under Article 5 of the Convention. Furthermore, according to the applicant, there had been no mechanism in Russia, and in particular no provision in the domestic law, to ensure the enforcement without delay of a foreign court decision ordering immediate release from custody.

36. The applicant pointed out the Government's failure to submit a stamped envelope in which the court decision of 16 March 2000 had allegedly arrived at the Information Centre of the Penza Region Police department, or the relevant cover letter, and alleged that the Centre had received a different document and that the Russian authorities had received the court decision earlier than 18 May 2000.

37. The applicant noted that from 18 April 2000 onwards he had repeatedly requested his prison administration to expedite his release.

38. He further submitted that the Kazakh authorities had been unable to send their decision without delay because the Russian authorities had failed to inform them in good time of his location, in particular during his long (one month) transportation to the permanent place of his imprisonment.

39. The Russian authorities had not been diligent in dealing with the decision on his release. In particular, they should have used the latest and most efficient means of communication for sending the documents for his release. The applicant concluded that the delay in his release by the Russian authorities had been unjustified.

B. The Court's assessment

40. The Court reiterates that the requirement of "lawfulness" under Article 5 § 1 of the Convention presupposes not only conformity with the material and procedural rules of domestic law but also conformity with the purpose of the restrictions permissible under Article 5 § 1 or Article 5 generally, in particular to protect the individual from arbitrariness (see, among other authorities, *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, pp. 17-18 and 19-20, §§ 39 and 45, and *Bouamar v. Belgium*, judgment of 29 February 1988, Series A no. 129, p. 20, § 47). The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision. The Court must, therefore, scrutinise complaints of delays in the release of detainees with particular vigilance. It is incumbent on the respondent Government to

provide a detailed account of the relevant facts (see *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV).

41. Some delay in carrying out a decision to release a detainee is often inevitable, although it must be kept to a minimum (see *Giulia Manzoni v. Italy*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1191, § 25). Administrative formalities connected with release cannot justify a delay of more than several hours (see *Nikolov v. Bulgaria*, no. 38884/97, § 82, 30 January 2003). Thus, the Court has found a violation of Article 5 § 1 where the time taken to execute a domestic decision ordering the release of a detainee was 11 hours (see *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 18, § 42), 12 hours (see *Labita*, cited above, §§ 172-74), one day (see *Bojinov v. Bulgaria*, no. 47799/99, §§ 38-40, 28 October 2004) and seven days (see *Nikolov v. Bulgaria*, cited above, §§ 83-85).

42. The present case concerns a foreign court's decision to release a detainee. The Court has to examine whether the execution of the Yuzhno-Kazakhstanskiy Regional Court's decision of 16 March 2000 ordering the applicant's immediate release complied with the requirement of "lawfulness" under Article 5 § 1 of the Convention as explained above.

43. The Government submitted that the Russian authorities had received the Yuzhno-Kazakhstanskiy Regional Court's decision on 18 May 2000. They submitted an extract from an incoming mail register of the Penza Regional Police Department Information Centre, according to which on 18 May 2000 the Centre had received "a copy of a decision in respect of I.I. Lobanov", which had been sent by the Yuzhno-Kazakhstanskiy Regional Prosecutor's Office on 10 May 2000. Other documents submitted by the Government confirm that correctional facility no. 8, in which the applicant had been serving his sentence, had received a copy of the Yuzhno-Kazakhstanskiy Regional Court's decision of 16 March 2000 from the Information Centre and had forwarded it to the prosecutor's office for legalisation. The Court notes that the applicant doubted the truthfulness of the Government's account of events and suggested that the Russian authorities had received the Yuzhno-Kazakhstanskiy Regional Court's decision earlier than 18 May 2000. However, nothing in his submissions supports this allegation. The Court will therefore assume that the Russian authorities received the Yuzhno-Kazakhstanskiy Regional Court's decision on 18 May 2000.

44. It observes that five days passed before the Information Centre of the Penza Regional Police Department sent the court decision to correctional facility no. 8. The Government provided no information as to why it took the police this period of time to establish the applicant's location in the same town. It further notes that the Government blamed the Kazakh authorities for not sending the court decision directly to the Prosecutor General's Office. It appears that the same criticism can be addressed to

Russia's own police department, which should have been aware of the domestic law which conferred powers in respect of foreign court orders for release on the Prosecutor General's Office.

45. The Court observes that three more days passed before the court decision was received by correctional facility no. 8 and a further twelve days elapsed before it was received by the Prosecutor General's Office in Moscow. The Court finds it striking that the delivery of documents from Penza to Moscow did not even comply with the domestic time-limit of five days fixed for ordinary letters (see paragraph 27 above). It appears that there had been a mechanism in place to ensure same-day delivery or, at least, priority delivery of the Government's correspondence, which had not, to all appearance, been implemented in the applicant's case (ibid.). The Court considers that the documents for the applicant's release from imprisonment required urgent delivery and that such delays were unacceptable.

46. Six more days elapsed before the Prosecutor General's Office ordered the applicant's release on the basis of the Yuzhno-Kazakhstanskiy Regional Court's decision. The Government submitted no information to show that this period was justified.

47. For the next twenty-two days after its dispatch by the Prosecutor General's Office, the order for the applicant's release was on its way to the Penza Regional Department for Execution of Sentences. This delay clearly shows neglect on the part of the Russian authorities in respect of the applicant's right to liberty.

48. Four more days passed before the order reached the applicant's detention facility, which was located in the same town.

49. Thus, it took the Russian authorities one month and twenty-two days to release the applicant based on the decision of the court of Kazakhstan ordering his immediate release. Admittedly, the formalities needed to execute a decision of a foreign court ordering release from imprisonment require more time than those needed to execute a decision of a domestic authority. However, the State must put in place a legislative and administrative framework which would ensure that each and every step required for a person's release in such a situation is taken promptly and diligently. In scrutinising with "particular vigilance" the steps and formalities carried out by the Russian authorities, as required by Article 5 § 1, the Court considers that the delay in the applicant's release from imprisonment was incompatible with the requirements of this provision.

50. Therefore, there has been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

51. The applicant complained of the domestic courts' refusal to grant him compensation for damage sustained as a result of his unlawful detention. He relied on Article 5 § 5, which reads:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. The parties' submissions

52. The Government submitted that the Taganskiy District Court's judgment had been well-founded. It had taken into consideration the Kazakh authorities' failure to send the Yuzhno-Kazakhstanskiy Regional Court's decision to the Prosecutor General's Office and had found no unjustified delay in the execution of that decision by the Russian authorities.

53. In addition to his submissions under Article 5 § 1 the applicant argued that the domestic courts' assessment of the length of the proceedings for his release had not been based on obvious facts.

B. The Court's assessment

54. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 of Article 5 where that deprivation has been established, either by a domestic authority or by the Court (see *Vachev v. Bulgaria*, no. 42987/98, § 78, 8 July 2004). The effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see *Ciulla v. Italy*, judgment of 22 February 1989, Series A no. 148, pp. 18-19, § 44; *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2626, § 60; and *N.C. v. Italy* [GC], no. 24952/94, § 52, ECHR 2002-X).

55. In the present case the Court has found that the applicant's right not to be arbitrarily deprived of his liberty was infringed. It follows that Article 5 § 5 of the Convention is applicable.

56. In rejecting the applicant's claim for compensation the domestic courts relied on Articles 151, 1069, 1070, 1071 and 1099 of the Civil Code, which required State organs' actions or inactivity to have been unlawful for damages to be payable (see paragraph 25 above).

57. The applicant's detention had been in accordance with Russian law, as the domestic courts had found and the Government conceded. In principle, the Convention forms part of domestic law (see paragraph 24 above). However, as the finding of a violation of one of the other

paragraphs of Article 5 is a prerequisite for a compensation claim under Article 5 § 5, relying directly on the Convention would not have secured to the applicant a right to compensation, given the domestic courts' finding that his detention was lawful. Indeed, the Government have not made any argument to the contrary.

58. In conclusion, the applicant did not have an enforceable right to compensation for his deprivation of liberty in breach of Article 5 § 1 of the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 17,400 euros (EUR) in respect of non-pecuniary damage as a result of his unlawful imprisonment (see *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports* 1997-II, p. 545, § 52).

62. The Government regarded the sum claimed as manifestly excessive and as relating only to the alleged violation of Article 5 § 1 of the Convention. They further argued, with reference to the Convention case-law, that a finding of a violation of Article 5 § 5 should in any event constitute sufficient just satisfaction.

63. The Court agrees with the Government that the applicant only claimed damages in respect of the violation of Article 5 § 1. It considers that the applicant must have suffered distress and frustration as a result of the delay in his release from imprisonment which cannot be compensated for by the finding of a violation. Deciding on an equitable basis, it awards the applicant EUR 7,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

64. The applicant claimed EUR 3,000, an equivalent of 105,000 Russian roubles, for his lawyer's fees in respect of the proceedings before the Court.

65. The Government noted that the applicant had failed to submit payment receipts. They considered that the sum claimed was excessive.

66. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the applicant was paid EUR 850 in legal aid by the Council of Europe. It further notes that the applicant undertook to pay his lawyer's fees after the Court's delivery of a final judgment in his case on the basis of the relevant agreement between them dated 7 April 2005. Having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the whole sum sought by the applicant (EUR 3,000) for the proceedings before it, less the amount received by way of legal aid from the Council of Europe. The Court thus awards EUR 2,150 for costs and expenses, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

67. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

3. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,150 (two thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 16 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President