



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

FIRST SECTION

CASE OF RYABOV v. RUSSIA

(Application no. 3896/04)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

07/07/2008

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 Ryabov v. Russia,

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

Christos Rozakis, *President*,

Anatoli Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 10 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 3896/04) 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 Andrei Yuryevich Ryabov (“the applicant”), on 8 November 2003.

2. The applicant, who had been granted legal aid, was represented before the Court by Mrs K. Moskalenko and Mrs M. Arutyunyan, lawyers of the Centre for Assistance to International Protection. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of Article 6 § 3 (d) of the Convention on account of his inability to examine the witnesses for the prosecution.

4. On 27 April 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 2 February 2006 the Court decided, under Rule 54 § 2 (c) of the Rules of Court, to invite the Government to submit written comments concerning the alleged interference with the applicant’s right of individual petition guaranteed under Article 34 of the Convention.

6. 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

7. The applicant was born in 1972 and lives in the Vologda Region.

A. Criminal proceedings against the applicant

8. On 9 December 2002 the applicant was charged with the rape of T., aged seven at the time of the offence in summer 2000. The charge was based on the investigator's interviews with the girl (T.), the girl's mother Mrs K. and a neighbour Mrs G., as well as on the findings of the medical examination carried out on the victim on 4 October 2002. The applicant asked the investigator to arrange for a confrontation with the prosecution witnesses and the medical expert. On 10 December 2002 the investigator refused his request. On 9 January 2003 the Vologda Regional Court upheld that decision as lawful, in the final instance.

9. At the beginning of the trial, once the applicant learned that the witness Mrs G. and the medical expert were not present, he asked the court to secure their attendance. The judge replied "Where shall I get them?" and refused his request.

10. The applicant pleaded not guilty. He admitted that in late July 2000 he had gone with T. to the village of Volodino where they had spent a night at his ex-wife's house but he denied having raped the girl.

11. Before the court Mrs K. testified that in October 2002 she had found a note written by T. In the note the girl wrote that the applicant had raped her in summer 2000 in the village of Volodino. She questioned the girl about the note and T. confirmed its contents.

12. At the trial T. confirmed that the applicant had raped her.

13. On 21 January 2003 the Vologda Regional Court convicted the applicant of aggravated rape, an offence under Article 131 § 3 (v) of the Russian Criminal Code, and sentenced him to twelve years and six months' imprisonment.

14. The Regional Court considered that the applicant's guilt had been sufficiently established on the basis of the victim's statements, which were corroborated by the following evidence:

- the findings of the medical examination carried out on 4 October 2002 which described scars on T.'s hymen. The scars might have been caused by impact of a hard object. It was not possible to establish when they had been caused;
- the written statement by the neighbour Mrs G. made during the pre-trial investigation. One summer night in 2000, Mrs G. – whose flat was separated from that of the applicant's ex-wife by a partition –

heard a girl shrieking and imploring her father to stop. The girl sobbed for a while. G. shouted at the applicant and told him to stop harassing the girl. At that time she thought that the girl was a daughter of the applicant, V. The sobs subsided but then the girl started crying again and begging her father to stop. The following day G. met the applicant and asked him what had happened. He replied that it was none of her business;

- the note written in a child's handwriting which stated that the author had been raped by "Andryukha" (a diminutive of the applicant's first name). T. confirmed that she had written the note.

15. In his statement of appeal the applicant complained, in particular, that the trial court had not secured the attendance of Mrs G. and the medical expert.

16. On 7 July 2003 the Supreme Court of the Russian Federation upheld the judgment of 21 January 2003 on appeal. It held that the court's conclusions had had a substantial basis in the statements by the victim which had been corroborated by other evidence, in particular, the child's note, Mrs G.'s testimony "before the court" [*sic*] and the findings of the medical examination.

17. On 25 July 2005 a deputy Prosecutor General lodged an application for supervisory review with the Presidium of the Supreme Court. He submitted that the Vologda Regional Court and the Supreme Court had infringed the applicant's right to have the witness Mrs G. and the medical expert examined.

18. On 1 March 2006 the Presidium of the Supreme Court granted the prosecutor's application in part. It found that the appeal court had not given any consideration to the applicant's argument that his request for examination of the witnesses for the prosecution had been groundlessly rejected. It also found that the appeal court had wrongly stated that Mrs G. had been heard in court. The Presidium quashed the appeal judgment of 7 July 2003 and remitted the case for a new appeal hearing.

19. On 19 July 2006 the Supreme Court held a new appeal hearing. It noted that the applicant had not been able to confront Mrs G. and the medical expert during the pre-trial investigation or in court. It found that the applicant's rights under Article 6 § 3 (d) had been infringed, quashed the conviction and ordered a new trial.

20. It appears that on 11 September 2006 the Vologda Regional Court issued a new judgment in the applicant's case. However, a copy was not made available to the Court. Although the applicant indicated his intention to lodge an appeal against it, he did not submit a copy of his statement of appeal. No further information about these proceedings was received.

B. Alleged interference with the applicant's right of individual petition

21. On 21 October 2005 the applicant's representatives, Mrs Moskalkenko and Mrs Arutyunyan, submitted observations in reply to the Government's memorandum and claims for just satisfaction. They enclosed, in particular, the following documents:

(a) legal-assistance agreement no. 032 of 28 September 2005, according to which the advocate Mrs Arutyunyan undertook to represent the applicant before the European Court for a fee of 21,000 Russian roubles (RUB). The field for the applicant's signature contained the note "in accordance with the authority form for the European Court" but no signature;

(b) legal-assistance agreement no. 2384 of 28 September 2005, under which Mrs Moskalkenko undertook to represent the applicant before the European Court for a fee of RUB 42,000. The field for the applicant's signature contained the note "in accordance with the authority form for the European Court" but no signature.

22. On 23 November 2005 the Government submitted their comments on the applicant's claim for just satisfaction. They alleged, in particular, that the above documents were "legally void and issued contrary to fundamental rules of preparation of legal documents" because there was no signature by the applicant or a person authorised to sign on his behalf. In their view, a power of attorney issued for representation of the applicant before courts did not allow Mrs Moskalkenko to sign, acting as the agent of the applicant, the legal-assistance agreement which bound the applicant to pay for her services.

23. On 25 November 2005 the Representative before the European Court Mr Laptev ("the Representative") sent a letter to the director of the Federal Registration Service of the Ministry of Justice, which enclosed a copy of legal-assistance agreement no. 2384 and contained the following request:

"...The said agreement is not signed by **either Mr Ryabov or a person authorised by him**... In this connection I request [you] to comment on the lawfulness of the actions by the advocate Mrs K. Moskalkenko who had compiled on behalf of her client (Mr Ryabov) and apparently **without his knowledge**, a legal-assistance agreement which **imposed** on Mr Ryabov, **also without his knowledge**, the obligation to pay a large amount (42,000 roubles).

On the basis of the Regulations on the Representative of the Russian Federation before the European Court of Human Rights, approved by President's Decree no. 310 of 29 March 1998, I request [you] to prepare and send the above information to my address **by 23 December 2005**". (bold-facing in the original letter)

24. On 9 December 2005 the acting first deputy director of the Economic Security Department of the Ministry of Internal Affairs Major-General S. sent a letter to the director of Advocates Office no. 10 where

Mrs Moskalkenko worked. He wrote that on 25 November 2005 the Ministry of Internal Affairs had received a request from the Representative, who had asked the Ministry to verify whether Mrs Moskalkenko had lawfully listed as taxable income the proceeds from legal-assistance agreement no. 2384 of 28 September 2005 concerning representation of Mr Ryabov before the Court. Referring to section 11 paragraph 1 (4) and (30) of the Police Act, Major-General S. requested the director to produce, within five days, a copy of the legal-assistance agreement, a copy of the power of attorney issued by Mr Ryabov and copies of all the existing documents concerning the implementation of that agreement and payments effected in its pursuance.

25. On 13 December 2005 Mrs Moskalkenko replied to Major-General S. that the requested documents were covered by lawyer-client privilege and could not be made available to the police unless a criminal case had been formally instituted.

26. On 19 December 2005 Mr K., a senior operational officer of the Economic Security Department of the Ministry of Internal Affairs, and his superior Mrs P., deputy head of the department, contacted Mrs Moskalkenko by telephone and asked her to provide the documents in connection with the inquiry conducted at the request of the Representative.

27. According to the applicant, in late December 2005 he was visited in prison by Mr V., an employee of the Economic Security Department of the Ministry of Internal Affairs, who asked him to reply to the following questions:

- “1. How did [the applicant] meet Mrs Moskalkenko and Mrs Arutyunyan?
2. Who gave [him] the address of the Centre for Assistance to International Protection and when did it happen?
3. Where and how was the legal-assistance agreement compiled?”

The applicant refused to answer the questions or give any statements in the absence of his lawyers. The meeting lasted approximately one hour.

28. On 20 December 2005 the applicant gave a written statement to the director of Advocates Office no. 10. He stated that he had never made any complaint or inquiries either to the Ministry of Internal Affairs or any other State authorities in connection with his representation by Mrs Moskalkenko and Mrs Arutyunyan in the supervisory review and Strasbourg proceedings.

29. On the same date the applicant submitted a new power of attorney for his representation by Mrs Arutyunyan. In the covering letter he asked the Court not to believe the Government’s allegation that the previous power of attorney had been forged.

30. Also on 20 December 2005, the head of the Ministry of Justice’s Department for Inspection and Supervision of Advocates and Notaries Public sent a copy of legal-assistance agreement no. 2384 to the President of the Moscow City Bar. He claimed that the agreement had been entered into

in breach of the Civil Code and the Advocates' Act, as it had not been signed by either Mr Ryabov or a person authorised to act on his behalf. The President of the Moscow City Bar was told to carry out an inquiry into the situation and report to the Ministry of Justice as soon as possible. In reply, the President of the Moscow City Bar informed the Ministry of Justice that "Mrs Moskalkenko represented Mr Ryabov before the European Court on the basis of a duly completed form of authority" and that "her actions in the framework of the legal-assistance agreement had been approved by the applicant". He pointed out that financial aspects of the legal-assistance agreement were covered by lawyer-client privilege.

31. On 9 January 2006 Mrs Moskalkenko complained to the Court of a harassment campaign against her in connection with her representation of the applicant in the Strasbourg proceedings. She alleged a hindrance to the applicant's right of individual petition in breach of Article 34 of the Convention.

32. On 2 February 2006 the Court examined the matter and decided to obtain comments from the Government.

33. According to the applicant, on 23 February 2006 he was taken into the office of a prison operational officer, who did not introduce himself or indicate his rank. He insisted on obtaining a written statement about the applicant's relationship with Mrs Moskalkenko and Mrs Arutyunyan. On the officer's table the applicant saw documents with the letterhead of the Federal Registration Service with a note: "obtain a statement from the convict Mr Ryabov". The officer had refused the applicant's request to see these documents. He had put the following questions to the applicant:

- “1. Which amounts did [the applicant] pay to Mrs Moskalkenko and Mrs Arutyunyan for his representation?
2. Were these amounts mentioned in any written agreement?
3. When and where was such an agreement prepared?
4. Did [the applicant] agree to pay any amount in addition to that?
5. When and where did [the applicant] first meet his representatives?”

34. On 28 March 2006 the Government submitted their comments on their compliance with Article 34 of the Convention. They also asked the Court to stay the proceedings so as the applicant could choose another representative, and offered their assistance in this matter.

35. On 27 April 2006 the applicant submitted the following handwritten statement to the Court:

“I inform you as follows: on 27 April 2006 I was visited in remand centre no. 3, Moscow, by my lawyer Mrs Moskalkenko. She gave me the text and translation of the Government's comments of 27 March 2006. I am exasperated by Mr Laptev's letter of 27 March 2006 and would like to state the following:

1. I am well aware of the amounts indicated in the agreements with Mrs Moskalkenko and Mrs Arutyunyan. I would be happy to pay double or triple those amounts but I regret that I do not have that much money.

2. I have confirmed on many occasions, orally and in writing, and now confirm again, that I have been satisfied with the work by Mrs Moskalkenko and Mrs Arutyunyan. Statements by Mr Laptev are merely an attempt to mar the relationship between me and my lawyers.

3. I assure you that I fully trust my lawyers Mrs Moskalkenko and Mrs Arutyunyan as regards my representation before the European Court and other issues. I am categorically opposed to introducing other lawyers into the case, especially those suggested by Mr Laptev.”

II. RELEVANT DOMESTIC LAW

A. The Police Act (no. 1026-I of 18 April 1991)

36. The relevant parts of section 11 § 1 read as follows:

“For the performance of their duties, the police shall have the following rights:

...

(4) to obtain from citizens and State officials necessary statements, information, certificates, documents and copies thereof;

...

(30) to receive from citizens and organisations information free of charge, except for situations where the law establishes a different procedure for obtaining information.”

B. Regulation on the Representative of the Russian Federation before the European Court of Human Rights

37. According to the Regulation on the Representative before the European Court approved by President’s Decree no. 310 of 29 March 1998, the Representative may obtain from federal, regional and municipal bodies the information on legal and factual aspects of the case which is required for effective representation of the Russian Federation before the European Court (section II.5).

C. Regulation on the Economic Security Department of the Ministry of Internal Affairs

38. The Economic Security Department has the following functions:

- identification of economic threats to the State;
- participation in defining the federal funding priorities;
- identification, prevention and detention of most dangerous inter-regional or international tax crimes or crimes against the State;
- identification, prevention and detention of most dangerous economic and tax crimes which have attracted public attention;
- taking preventive and operational measures for the protection of property against crimes;
- organisation of documentary inspections and revisions for detecting inter-regional or international economic or tax crimes;
- fighting against money laundering;
- fighting against funding of terrorist or extremist activities.

THE LAW

I. PROCEDURAL OBJECTIONS RAISED BY THE GOVERNMENT

A. Validity of the power of attorney issued to Mrs Moskalenko

39. The Government objected to the power of attorney issued by the applicant for his representation by Mrs Moskalenko on the ground that it had not been certified by the head of the penitentiary institution where the applicant was held. In their view, this amounted to a breach of the Russian Code of Civil Procedure.

40. The Court reiterates that, pursuant to Rule 45 of the Rules of Court, a written authority is valid for the purposes of proceedings before the Court. Neither the Convention nor the Rules of the Court require any form of certification of that document by any national authority. A similar objection by the Russian Government has been previously examined and rejected by the Court (see, among others, *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; and *Isayeva and Others v. Russia* (dec.), nos. 57947/00, 57948/00 and 57949/00, 19 December 2002).

41. The Court is satisfied that Mrs Moskalenko has been duly authorised to represent the applicant. The Government's objection on this point must therefore be dismissed.

B. Validity of the power of attorney issued to Mrs Arutyunyan

42. The Government claimed that the power of attorney issued for the applicant's representation by Mrs Arutyunyan was void because "the name of Mrs Arutyunyan [had been] clearly written not by the applicant but evidently by Mrs Arutyunyan herself" and because the applicant had designated as his representative the Centre for Assistance to International Protection rather than a specific individual.

43. The Court notes that neither the Convention nor the Rules impose any specific requirements on the manner in which the authority form must be drafted. The form may be filled in by typing or by hand, by the applicant, by his representative or by any third person. What is important for the Court is that the form of authority should clearly indicate that the applicant has entrusted his or her representation before the Court to a representative and that the representative has accepted that commission. In the instant case this condition was met since the standard authority form distributed by the Court's Registry was signed by both the applicant and Mrs Arutyunyan as his representative.

44. Furthermore, as regards the second limb of the Government's objection, the Court observes that it is not uncommon for applicants before the Court to be represented by a non-governmental organisation (see, for example, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 2, ECHR 2007-..., *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 2 and 216, 18 January 2007, and *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, §§ 2 and 176, 21 June 2007). In the instant case the applicant entrusted his representation to the Centre for Assistance to International Protection, a Russian non-governmental organisation. It was not disputed that Mrs Arutyunyan was a member of that organisation at the material time. She could therefore represent the applicant in the Strasbourg proceedings.

45. The Government's objection on this point is thus without merit and must also be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION

46. The applicant complained under Article 6 § 3 (d) of the Convention that at no stage of the proceedings he had been given an opportunity to examine the witness Mrs G. and the expert who had conducted the medical examination. The relevant parts of Article 6 read as follows:

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

...

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

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

47. Referring to the deputy Prosecutor General's application for supervisory review of the applicant's conviction, the Government claimed that steps had been taken to remedy the alleged violation of the applicant's rights at the domestic level.

48. The applicant maintained that a new examination of his case would not be capable of remedying the alleged violation of his rights. He feared that pressure would be exerted on the witnesses with a view to obtaining a new conviction.

49. 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 *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Constantinescu v. Romania*, no. 28871/95, § 40, ECHR 2000-VIII).

50. In the instant case, the Presidium of the Supreme Court and subsequently the Supreme Court in the appeal proceedings explicitly acknowledged that the applicant's right to examine the witnesses guaranteed under domestic law and the Convention had been infringed, and quashed the conviction. The effect of the proceedings which formed the basis for the applicant's complaints has thus been annulled.

51. Therefore, having regard to the contents of the Presidium's decision of 1 March 2006 and the appeal judgment of 19 July 2006 which indicated that a new trial should be held, the Court finds that the national authorities have acknowledged, and then afforded redress for, the alleged breach of the Convention (compare *Babunidze v. Russia* (dec.), no. 3040/03, 15 May 2007; *Fedosov v. Russia* (dec.), no. 42237/02, 5 January 2007; *Nikishina v. Russia* (dec.), no. 45665/99, 12 September 2000; and *Wong v. Luxembourg* (dec.), no. 38871/02, 30 August 2005).

52. It follows that the applicant can no longer claim to be a "victim" of the alleged violation of Article 6 § 3 (d) of the Convention within the meaning of Article 34 of the Convention and that this complaint must be rejected pursuant to Articles 34 and 35 §§ 3 and 4.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

53. The applicant complained that the measures taken by the Government against his representatives had been in breach of Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person... 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.”

54. The Government claimed that there had been no interference with the applicant’s right of individual petition because he had not been prevented from corresponding with the Court either directly or through his representative. They alleged that Mrs Moskalenko had “evidently abused” her status as the applicant’s representative and had unlawfully attempted to obtain a “special status for herself and for [the] organisation where she work[ed]”, seeking immunity from tax-related and other inquiries carried out in full compliance with Russian laws. The Government maintained that legal-assistance agreements signed by Mrs Moskalenko and Mrs Arutyunyan were void because they contradicted the imperative provision of the Civil Code prohibiting an agent from making a private profit from the agency relationship. The Government expressed doubt that the applicant was aware of his obligation to disburse a considerable amount of money to his representatives. They insisted that the sole purpose of their inquiries had been to obtain an official opinion from the competent national authorities as to the validity of the legal-assistance agreement with Mrs Moskalenko. They denied that the Representative had attempted to initiate an investigation, because neither the Representative nor the authorities he had contacted had the right to institute criminal proceedings.

55. In addition to his statements cited in paragraphs 28 and 35 above, the applicant pointed out that the Representative had requested the Ministry of Internal Affairs and the Ministry of Justice to carry out inquiries into the financial arrangements between him and his representatives. The Government had not explained the purpose of these inquiries, given that they had obviously encroached on lawyer-client privilege. Furthermore, Mr Laptev’s request had contained factually untrue information, such as the allegation that the applicant had not been aware of the legal-assistance agreements with his lawyers. The applicant also pointed out that in December 2005 and February 2006 State officials had compelled him to give statements concerning his relationship with his representatives before the Court. The applicant insisted that harassment of his representatives amounted to hindrance to his right of individual petition under Article 34 of the Convention.

56. The Court reiterates at the outset that a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000, and *Ergi v. Turkey*, judgment of 28 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 105).

57. The Court further reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by

Article 34 that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression “any form of pressure” must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, § 160, and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references). The threat of criminal or disciplinary proceedings invoked against an applicant’s lawyer concerning the contents of a statement submitted to the Court has previously been found to interfere with the applicant’s right of petition (see *Kurt*, cited above, §§ 160 and 164, and *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002) as has the institution of criminal proceedings against a lawyer involved in the preparation of an application to the Commission (see *Şarli v. Turkey*, no. 24490/94, §§ 85-86, 22 May 2001). The Russian Government was found to be in breach of their obligations under Article 34 of the Convention in a case where the applicant’s representative and translator had been summoned by the local police for an interview in connection with the applicant’s claims for just satisfaction (see *Fedotova v. Russia*, no. 73225/01, §§ 49-52, 13 April 2006).

58. In the instant case the documents at the Court’s disposal reveal that on 25 November 2005 the Representative of the Russian Government at the European Court, following the submission of the comments on the applicant’s claims for just satisfaction, asked the Economic Security Department of the Ministry of Internal Affairs and the Federal Registration Service of the Ministry of Justice to verify the lawfulness of the legal-assistance agreement between the applicant and his representative before the Court, Mrs Moskalenko. The request contained the assertion that Mrs Moskalenko had imposed a financial obligation on the applicant without his knowledge (see paragraphs 23 and 24 above). In fulfilment of the above request the police officers required the director of Mrs Moskalenko’s office and subsequently Mrs Moskalenko herself to produce documents concerning her legal relationship with the applicant. They also visited the applicant in prison and attempted to compel him to give a written statement about his contacts with Mrs Moskalenko. The Federal Registration Service, for its part, determined that the legal-assistance agreement between the applicant and Mrs Moskalenko had been in breach of the Civil Code and the Advocates Act and requested the President of the Moscow City Bar to take measures against Mrs Moskalenko and to report back.

59. The Court would emphasise at the outset that it is not appropriate for the authorities of a respondent State to enter into direct contact with an applicant on the pretext that “forged documents have been submitted in

other cases” (see *Fedotova*, § 51, and *Tanrıku*, § 131, both cited above). If the Government had reason to believe that in a particular case the right of individual petition had been abused, the appropriate course of action was for that Government to alert the Court and to inform it of its misgivings (*ibid.*). The Russian Government, however, did not confine themselves to mentioning the alleged invalidity of legal-assistance agreements in their comments on the applicant’s claim for just satisfaction but, following the submission of their comments, they asked two domestic authorities to carry out certain inquiries into the applicant’s arrangements with his representative Mrs Moskalenko.

60. That those requests were sent out *after* the submission of the Government’s comments on the claim for just satisfaction obviously undermines the credibility of the Government’s claim that their sole purpose was to obtain the official view of competent domestic bodies on the validity of the agreements. The Court observes that the applicant consistently maintained that he was satisfied with the work of his representatives before the Court and that he was fully aware of the legal-assistance agreements and the amounts indicated therein. This also was confirmed by the President of the Moscow City Bar (see paragraph 30 above). The Representative’s allegations that the agreements had been signed without the applicant’s knowledge were thus mere personal conjecture without any basis in fact.

61. The Court considers it unacceptable from the standpoint of the protection of the right of individual petition that the Economic Security Department of the Russian police attempted to obtain privileged material from the law office of which Mrs Moskalenko was a member. Their request did not refer to any ongoing criminal inquiry or investigation or any judicial decision authorising such a course of action. Furthermore, given that the jurisdiction of the Economic Security Department only extended to inter-regional or international tax and economic crimes or highly publicised criminal offences (see paragraph 38 above), apparently the Department was not competent to carry out such an inquiry but nevertheless did so on obviously spurious legal grounds. In any event, the Court sees no plausible reason as to why, in the absence of any apparent indication of a criminal offence or criminal-law complaint, any inquiry should have been conducted by the police (compare *Ergi*, § 105, and *Fedotova*, § 50, both cited above). As noted above, the applicant never stated that the legal-assistance agreements had been signed fraudulently or without his knowledge. In these circumstances, even assuming there was a legal defect in the agreements, this would be a matter *inter partes* and it would not justify the involvement of the police.

62. Furthermore, it is of particular concern for the Court that the applicant was visited in prison by State officials who attempted to obtain written statements from him concerning his representation in the Strasbourg proceedings. It also transpires that the questions asked were not confined to

financial matters but probed into all aspects of his relationship with his counsel, with a particular emphasis on how he had first got in contact with them. In the Court's view, such a contact was grossly inappropriate and could very well have been interpreted by the applicant as an attempt to intimidate him.

63. Finally, the Court observes that the inquiries launched at the initiative of the Representative only concerned the agreement signed by Mrs Moskalkenko, whereas a similar document signed by Mrs Arutyunyan was not subject to any such scrutiny. Furthermore, it is noteworthy that the Government specifically asked the Court to remove Mrs Moskalkenko from the proceedings before it (see paragraph 34 above).

64. Having regard to the above, the Court finds that the moves made by the Russian Government lacked a basis in law or fact, that they specifically targeted the applicant's representative Mrs Moskalkenko and were calculated to prevent her from effectively participating in the Strasbourg proceedings. They must therefore be considered an interference with the exercise of the applicant's right of individual petition and incompatible with the respondent State's obligation under Article 34 of the Convention (compare *Kurt*, § 164, and *Fedotova*, § 51, both cited above).

65. In view of the foregoing, the Court considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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.”

67. The applicant only made a claim for just satisfaction in connection with his complaint under Article 6 of the Convention. Since this complaint was declared inadmissible and the applicant has received legal aid for his representation before the Court, the Court rejects the claim.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the examination of witnesses inadmissible;
2. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

3. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President