**Just satisfaction claims**

**Application no. 40544/18 Safonov v. Russia**

**Non-pecuniary damage**

1. The applicant requests the Court to award him compensation for non-pecuniary damage, determining its amount by itself on an equitable basis, having regard to the standards which emerge from the Court's case-law.

2. However, in view of the increasing incidence of the Court's refusal to award monetary compensation for non-pecuniary damage when finding violations of the right to a fair trial in the determination of a criminal charge, the applicant wishes to draw attention to the following. Out of about fifty cases (found in the HUDOC database, using the terms "*sufficient just satisfaction*" and "*satisfaction équitable suffisante*") in which applicants who had made such claims were refused monetary compensation for non-pecuniary damage - following the announcement of the judgment in the case of *Zadumov v. Russia*, no. 2257/12, 12 December 2017, with reference to which this were done - only a handful concerned the violations other than those of the right to a fair trial in the determination of a criminal charge: *Paul and Borodin v. Russia*, no. 28508/14, 13 November 2018 and *Andreyevy v. Russia*, no. 83399/17, 28 January 2020, concerning violations of the principle of legal certainty, *Kargina and others v. Russia*, nos. 27670/07 and 5 others, 9 June 2020, concerning failures to pronounce publicly judgments, *Mikhail Mironov v. Russia*, no. 58138/09, 6 October 2020, on judicial bias, *Zhdanov and Others v. Russia*, nos. 12200/08 and 2 others, 16 July 2019, where compensation was only refused in respect of one of the applicants - a legal entity, *Shlykov and Others v. Russia*, nos. 78638/11 and 3 others, where compensation was not awarded to the applicant Kerekesha, with reference to the sufficiency of the fact that, on finding a violation - arbitrary use of handcuffs - general measures to change the law would be necessary to prevent similar violations in the future, *Tomov and Others v. Russia*, nos. 18255/10 and 5 others, 9 April 2019, in which compensation was refused to the applicant Rakov, in respect of whom the right to present his position in a civil case, concerning the conditions of transportation of prisoners, was found to have

been violated; it is difficult not to note, in connection with the following paragraph, that two of the seven cases concerned prisoners. Of course, these are only cases in which no other violations have been established for which monetary compensation for non-pecuniary damage could be awarded. In other words, in some other cases, applicants may also have been refused monetary compensation for non-pecuniary damage for one violations, but may have been awarded for other established violations - and such cases were not included in the selection provided. However, this applies equally to cases in which violations of right to a fair trial in the determination of a criminal charge have been established together with other violations for which such compensation has been awarded: these types of cases are also not counted in more than forty cases in which, over the past less than four years, applicants, seeking monetary compensation for non-pecuniary damage, have been denied it, when a violation of their right to a fair trial in the determination of a criminal charge has been found.

3. Such data cannot but raise suspicions that when deciding whether to award monetary compensation for non-pecuniary damage, victims of violations are perhaps divided into "bad" and "good" ones, into possible criminals in respect of whom procedural rules have been violated and all the others. Especially given that sometimes the Court, in refusing to award, among other things, monetary compensation for non-pecuniary damage, indicates that it cannot draw any conclusions as to what would have been the outcome of the criminal proceedings if the established violation of the right to a fair trial had not taken place (see, e.g., *Kravtsov v. Russia*, 47050/16, § 31, 9 March 2021, where reference is made to this kind of reasoning from the judgment in the case of *Ibrahim and Others v. the United Kingdom*, nos. 50541/08 and 3 others, § 315, 16 December 2014). Although in other cases, when expressing the same considerations in respect of refusal of compensation for damages, the Court nevertheless granted the request to award monetary compensation for non-pecuniary damage, even if there was a possibility of reopening of the case, which is described below (see *Vaneyev v. Russia*, no. 78168/13, § 27, 27 August 2018). And it hardly creates a sense of consistency in the Court's practice on the matter.

4. The court usually explains its refusal to award monetary compensation for non-pecuniary damage to victims of violations of the right to a fair trial in the determination of a criminal charge also by the fact that the Russian Code of Criminal Procedure (CCrP) provides that judicial acts in a case may be quashed by the Presidium of the Supreme Court when the Court finds violations of the Convention, whereas in principle the most appropriate form of redress for the established violation should be the reopening of the proceedings if this is requested, and the payment of monetary awards for non-pecuniary damage is designed to make reparation only for such consequences of a violation that cannot be remedied otherwise (see, e.g., *Zadumov v. Russia*, §§ 80-81).

5. And the applicant, of course, in any case, requests the Court to mention in its judgment that the best way of remedying this kind of violations is indeed, in principle, the reopening of the criminal case.

6. However, not only the Russian CCrP, but four of the five Russian codes regulating proceedings in different spheres of law contain similar provisions expressly providing for the possibility of reopening a case if the Court finds a violation of the Convention: Article 392 of the Russian Code of Civil Procedure (CCP), Article 311 of the Russian Code of Arbitration Procedure and Article 350 of the Russian Code of Administrative Procedure - only the Russian Code of Administrative Offences does not contain them. And the Court is well aware of this, at least as far as the CCP is concerned. However, while explicitly mentioning the possibility of reopening civil cases and the fact that this would constitute the most appropriate form of redress for the established violations, the Court does not refuse to award monetary compensations for non-pecuniary damage, including in its recent case-law (see *Mutsayeva v. Russia*, no. 1667/11, §§ 33-34, 11 May 2021; *Zhirkova and Others v. Russia*, nos. 16203/13 and 4 others, §§ 52-53, 30 March 2021; *Agapov v. Russia*, no. 52464/15, §§ 67-68, 6 October 2020).

7. The applicant therefore expects that the approach to be adopted in his case would be one whereby the need to award monetary compensation for non-pecuniary damage is decided in the light of the particular circumstances of the case and the Court's case-law concerning similar circumstances in which such kind if

violations have been established, without a formal refusing - regardless of the circumstances of the case - with reference only to the possibility of reopening of a case at the national level. And in this connection, the applicant wishes to draw attention to the fact that the last time the Court awarded 7,800 euros for non-pecuniary damage in respect of this very type of violation (see *Kuzhil v. Russia*, no. 32702/13, § 37, 25 February 2020). In addition, and also following the judgment in the case of *Zadumov*, the Court awarded compensations for non-pecuniary damage for the violation of this kind in *Fefilov v. Russia*, no. 6587/07, 17 July 2018. Such compensation was sometimes not refused - after the judgment in the case of *Zadumov* had already been announced - in respect of certain other kinds of established violations of the right to a fair trial in the determination of a criminal charge (see *Vaneyev v. Russia*; *Bazanova and Mukhachev v. Russia*, 23493/12 and 32397/12, 30 October 2018; *Ledentsov v. Russia*, no. 47283/09, 25 May 2019; *Borisov v. Russia*, no. 48105/17, 9 July 2019).

8. Furthermore, the applicant can not but have to point out that the reopening of his criminal case as a result of the Court's finding of a violation of the Convention is only possible but not imminent. And it is not that it is up to the applicant to apply for a reopening. This is not the case in criminal proceedings. The Russian CCrP effectively provides for automatic, independent of the applicant's will, compulsory requesting by the President of the Supreme Court of the Presidium of the Supreme Court as to whether a reopening of the case, on such a new circumstance as the Court's finding of violations of the Convention, is necessary (see Article 415 § 5 of the CCrP). However, the submission of such an application by the President of the Supreme Court to the Presidium of the Supreme Court does not guarantee that the latter would quash the judicial acts in the case and terminate the criminal proceedings or refer the case for review - even if the Court established a violation of the Convention of the kind which is in question in the present case. See, as an example, the ruling of the Presidium of the Supreme Court of 19 February 2020 in case no. 153-P19, in which it - having formally reopened the criminal proceedings in view of new circumstances - upheld the judgment and the appeal decision in the criminal case of the applicant Utvenko, despite the Court's

establishing in its judgment in the case of *Utvenko and Borisov v. Russia*, nos. 45767/09 and 40452/10, 5 February 2019, of a violation of his right to defence by a counsel of his own choosing, including through the use of a confession given in the absence of a counsel of his own choosing (see appendix 12 below).

9. On 16 July 2021 the Presidium of the Supreme Court, according to its official website, considered the necessity to review the criminal case of the applicant Kuzhil, in respect of whom the Court had established a violation of the same type as the one the present case concerns (see *Kuzhil v. Russia*, cited above). Information about the results of the consideration of this issue has not been published by the Supreme Court (possibly due to the fact that the Kuzhil's case concerns crimes against sexual integrity). However, as of today, more than two months later, the official website of the Moscow courts that heard Kuzhil's case at first and second instance has not provided any new information on the case. On this basis, it is reasonable to assume that the Presidium of the Supreme Court refused to return Kuzhil's case for a new consideration. Although theoretically it can be assumed that his criminal case was terminated (together with referral for review, there are the only possible consequences of the Presidium's quashing of the judicial acts in the case), with regard to the circumstances of this case, as they are set out by the Court, including a significant number of evidence that would require reassessment if the applicant's confessions given in violation of the right to defence are to be declared inadmissible (which the Presidium of the Supreme Court does not deal with), this hardly seems likely.

10. Finally, the applicant wishes to point out that the need for monetary compensation in the event of finding of a violation plays an important role as a financial incentive to adopt measures of a general nature aimed at preventing similar violations in the future. This seems particularly important in respect of the state, which, judging by its well-known slowness in adopting measures of a general nature, may indeed need such incentives.

11. The applicant requests that any monetary compensation for non-pecuniary damage awarded to him is to be transferred directly to his mother, Maya Vladimirovna Safonova.

**Costs and expenses**

12. The applicant further requests the Court to award him compensation for the following costs and expenses, totalling 2,755 euros, incurred by his mother, Maya Vladimirovna Safonova, and transfer that sum also directly to her (cf. *Singla v. Russia*, no. 9183/16, §§ 48-49, 19 May 2020):

- for legal services for the preparation of a cassation appeal in his criminal case - in the amount of 55,000 rubles, for the preparation of an application to the Court - in the amount of 60,000 rubles, for representing the applicant's interests in the Court, including the preparation of written observations and these claims for just satisfaction in Russian and English and consulting the client - in the amount of 120,000 rubles, and in total - 235,000 rubles, which according to the official exchange rate of the Central Bank of Russia on 18 August 2021, amounting to 86.4804 rubles per euro, corresponds to 2,717 euros (see appendices 1-3, 5-9, 11 and 13-16 below);
- for payment for sending correspondence to the Court in the amount of 1,445 rubles and 1,860 rubles (see appendices 4 and 10 below), and in total - 3,305 rubles, which corresponds to 38 euros.

Oleg Olegovich Anishchik

Appendices:

1. A copy of the contract for paid legal services of 10 May 2018 concluded by the applicant's mother with Oleg Olegovich Anishchik for the preparation of an application to the Court for a fee of 60,000 rubles.

2. A copy of the payment order of 10 May 2018 confirming the transfer of 60,000 rubles under the contract referred to in § 1 above.

3. A copy of the act of acceptance and transfer of services of 18 July 2018 to the contract referred to in § 1 above.

4. A copy of the courier mail receipt of 13 August 2018 for sending the application to the Court - in the amount of 1,445 rubles.

5. A copy of the sales slip of 13 August 2018 to the receipt referred to in § 4 above.

6. A copy of the agreement of 20 June 2019 concluded by the applicant's mother with counsel Bondarchuk V.Y. for the preparation of a cassation appeal in the applicant's criminal case, as well as the relevant examination of the case file, preparation of a legal opinion on it and developing of a legal position with the consent of the client - for a fee of 55,000 rubles.

7. A copy of the receipt of 21 June 2019 confirming the payment of 35,000 rubles under the agreement referred to in § 6 above.

8. A copy of the receipt of 5 July 2019 confirming the payment of 20,000 rubles under the agreement referred to in § 6 above.

9. A copy of the act of acceptance and transfer of services of 14 January 2020 to the agreement referred to in § 6 above.

10. A copy of the courier mail receipt of 1 February 2020 for sending to the Court copies of the cassation appeal and the decision adopted as a result of its consideration - in the amount of 1,860 rubles.

11. A copy of the sales slip of 1 February 2020 to the receipt referred to in § 10 above.

12. A copy of the ruling of the Presidium of the Supreme Court of the Russian Federation of 19 February 2020 in case no. 153-P19.

13. A copy of the contract for paid legal services of 8 January 2021 concluded by the applicant's mother with Oleg Olegovich Anishchik to represent the applicant's interests before the Court, including the preparation of written observations and claims for just satisfaction in Russian and English for a fee of 120,000 rubles.

14. A copy of the receipt of 9 January 2021 confirming the payment of 70,000 rubles under the contract referred to in § 13 above.

15. A copy of the receipt of 10 January 2021 confirming the payment of 50,000 rubles under the contract referred to in § 13 above.

16. The official exchange rates of the Central Bank of the Russian Federation as of 18 August 2021, according to which the euro exchange rate as of the indicated date is 86.4804 rubles.