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EGMR Nr. 33468/03 – (1. Kammer) – Urteil vom 10. Januar 2012 (Vulakh u.a. v. Russland)

Verletzung der Unschuldsvermutung eines Verstorbenen durch gerichtliche Schuldunterstellungen; Verletzung der Eigentumsfreiheit durch zivilrechtliche Verantwortlichkeit der Erben eines verstorbenen Angeklagten (Haftung des Erben nach Straftaten des Erblassers; Enteignung; Verfahrensrechte zum Schutz eigenen Eigentums).

Art. 6 Abs. 2 EMRK; Art. 1 Zusatzprotokoll Nr. 1 zur EMRK; Art. 1 Abs. 1 GG; Art. 14 GG; § 1967 BGB

Leitsätze des Bearbeiters

1. Die Unschuldsvermutung ist verletzt, wenn eine gerichtliche Entscheidung oder eine andere Verlautbarung staatlicher Stellen einen Beschuldigten für schuldig erklärt, bevor er nach dem Gesetz in einem Verfahren für schuldig befunden wurde. Art. 6 II EMRK ist auch dann verletzt, wenn der Beschuldigte Selbstmord begeht und ein Gericht nach seinem Tod seine Schuld behauptet, ohne diese förmlich zuvor festgestellt zu haben.

2. Ein Freispruch im Strafverfahren oder die endgültige Verfahrenseinstellung schließen eine zivilrechtliche Schadensersatzklage auf der Grundlage geringerer Beweisanforderungen nicht aus. Der Verletzte muss die Möglichkeit haben, nach den allgemeinen Maßstäben des zivilen Deliktsrechts zu klagen. Dies gilt auch nach dem Tod des Beschuldigten. Allerdings ist seinen Erben dann die Möglichkeit einer Verteidigung gegen erhobene Ansprüche einzuräumen. Auch gemäß Art. 1 Zusatzprotokoll Nr. 1 zur EMRK darf das urteilende Gericht die Schuld des Beschuldigten nicht lediglich unter Bezugnahme auf ein Strafverfahren gegen mögliche Mittäter des früheren Beschuldigten unterstellen, an dem die Erben nicht beteiligt waren. Wenn der Verstorbene in einem vorherigen Strafurteil gegen Mitbeschuldigte nur unter Verstoß gegen die Unschuldsvermutung als schuldig bezeichnet wurde, darf sich das urteilende Zivilgericht nicht allein auf das vorherige Strafurteil stützen.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are relatives of the late Mr Vitaliy Eduardovich Vulakh. The first two applicants are his father and mother, born in 1932 and 1939 respectively, and the third and fourth applicants are his children, born in 1985 and 1984 respectively. They lived in Kurganinsk in the Krasnodar Region. 1

A. Criminal proceedings involving Mr Vitaliy Vulakh

6. On an unspecified date a criminal investigation was opened into several counts of murder, robbery and destruction of property committed by a criminal syndicate. It appears that Mr Vitaliy Vulakh was suspected of being the leader of the syndicate. 2

7. On 25 March 2002 Mr S., Mr N. and Mr K. were arrested on suspicion of membership of the gang. On learning of their arrest, Mr Vitaliy Vulakh shot dead his fiancée and committed suicide. 3

8. On 20 June 2002 the criminal prosecution of Mr Vitaliy Vulakh was discontinued as a result of his death. 4

9. On 3 October 2002 the Krasnodar Regional Court convicted Mr S., Mr N. and Mr K. of serious criminal offences and sentenced them to lengthy terms of imprisonment. The judgment mentioned that Mr Vitaliy Vulakh had been the leader of a criminal enterprise and had told the defendants to murder his business competitor Mr G. It read, in particular, as follows: 5

“The person who had been the leader of the gang (Vitaliy Vulakh) in respect of whom the case was discontinued because of his death, had money at his disposal, he funded the gang and paid each gang member to commit crimes:

he bought cars, paid for their maintenance, petrol and travel expenses...”

10. In these proceedings the victims Mr G., Mr F., Ms B. and Ms V. brought civil claims against the three defendants, seeking compensation for pecuniary and non-pecuniary damage. The Regional Court indicated that these claims should be examined in separate civil proceedings. 6

11. On 14 October 2002 the first applicant lodged an appeal to the Supreme Court of the Russian Federation. He submitted that the decision on the discontinuation of criminal proceedings against his son had never been notified to him or to his son’s counsel, and that counsel had not been allowed to study the file or plead his son’s innocence. 7

12. On 6 November 2002 a judge of the Krasnodar Regional Court informed the first applicant that he had no right to lodge an appeal to the Supreme Court because he was not a party to the criminal case. The judge wrote to him that further appeals would also be rejected. 8

13. It appears that on 2 April 2003 the Supreme Court of the Russian Federation examined appeals by those convicted and upheld the judgment of 3 October 2002. A copy of this judgment was not made available to the Court. 9

B. Civil proceedings against the applicants

14. On 5 March 2003 a notary public issued the four applicants with a certificate of succession on intestacy, according to which they inherited Mr Vitaliy Vulakh’s house. 10

15. On an unspecified date Mr G., Mr F., Ms B., Ms V. and a private company sued the four applicants and the Kurganinskiy dairy factory, of which Mr Vitaliy Vulakh had been a minority shareholder, for pecuniary and non-pecuniary damages. 11

16. On 4 September 2003 the Kurganinskiy District Court of the Krasnodar Region found against the applicants and the dairy factory, finding as follows: 12

“According to Article 42 of the Code of Criminal Procedure of the Russian Federation, the victim shall be compensated for the pecuniary damage caused by the crime, as well as for the costs incurred during the pre-trial investigation and trial...”

According to Article 1064 of the Civil Code of the Russian Federation, damage inflicted on the person or property of an individual... shall be reimbursed in full by the person who inflicted the damage.

According to the judgment of the Krasnodar Regional Court of 3 October 2002 and the judgment of the Supreme Court of 2 April 2003, Mr V[it]aliy Vulakh had organised an armed group (gang) composed of Mr S., Mr N. and Mr K. who had committed, under his leadership, serious crimes: the murder of the head of the Kurganinskiy District Council Mr V. and repeated attempts to murder the director general of [a] private company, Mr G.

According to Resolution no. 1 of the Plenary Supreme Court of the USSR of [unreadable] March 1979, entitled ‘On the case-law on application of provisions for compensation for pecuniary damage caused by crime’, those who cause damage through their criminal activities shall be jointly liable for that damage. Thus, Mr V[it]aliy Vulakh, Mr K., Mr S., and Mr N. are jointly liable for the damage caused by their crimes.

According to Article 323 of the Civil Code, in cases of joint liability the creditor may claim satisfaction of debt, in full or in part, either from all the debtors or from each debtor individually.

Mr V[it]aliy Vulakh should have borne liability for the pecuniary and non-pecuniary damage caused by the crimes, but he committed suicide during the pre-trial investigation.

The defendants Mr E. Vulakh, Ms V. Vulakh, Mr S. Vulakh and Ms V. Vulakh are heirs to Mr V[it]aliy Vulakh after his death. According to Article 1175 of the Civil Code, heirs who have accepted an inheritance shall be jointly liable for the testator’s debts. Each heir is liable in proportion with the share of the inheritance he received.

Article 1152 of the Civil Code provides that the heir accepting a part of an inheritance is presumed to have accepted the entire inheritance, whatever its form or location... On 5 March 2003 [the four applicants] were issued with an inheritance certificate... in respect of the house.

According to Article 1176 of the Civil Code, the estate of a co-owner of a private company includes that co-owner’s part in the charter capital of the company. According to the audit report of 7 July 2003, the real value of Mr V[it]aliy Vulakh’s part corresponds to 37.49% of the value of the net assets of the Kurganinskiy dairy factory, which amounts to 18,705,260 Russian roubles (RUB).

For that reason, the defendants who have accepted a part of Mr V[it]aliy Vulakh’s estate in inheritance must be considered to have accepted his part in the charter capital of the Kurganinskiy dairy factory.

It follows that compensation in respect of pecuniary and non-pecuniary damage must be recovered from the Kurganinskiy dairy factory whose charter capital comprises a part of the estate inherited by [the applicants]...”

The District Court awarded 33% of Mr Vitaliy Vulakh's share in the dairy factory to Mr G.'s company, 19.3% to Mr G., and 25.7% to Ms B., and ordered immediate enforcement of the judgment. 13

17. On 14 September 2003 the applicants lodged a statement of appeal. They submitted that that Mr Vitaliy Vulakh had not been found guilty by a court of law and should be presumed innocent. In the absence of a guilty verdict on Mr Vitaliy Vulakh there were no grounds to impose joint liability on his heirs. A civil claim should have been brought against him, and the court should have examined the matter of procedural succession. Furthermore, the dairy factory could not be held liable for the debts of its owners. 14

18. On 18 September 2003 the Krasnodar Regional Court examined the appeal and upheld the judgment, endorsing the District Court's approach and rejecting the applicants' arguments in the following terms: 15

"Although the prosecution of Mr V[itally] Vulakh was discontinued in connection with his death, on 3 October 2002 Mr S., Mr N. and Mr K. were convicted and the conviction entered into legal effect. According to the judgment, Mr V[itally] Vulakh had been the leader of an armed group (gang) which had committed, under his leadership, serious crimes: the murder of the head of the Kurganinskiy District Council, Mr V., and repeated attempts to murder the director general Mr G. This means that the conviction established that Mr V[itally] Vulakh's had been responsible for causing pecuniary and non-pecuniary damage to the plaintiffs."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. *The RSFSR Code of Criminal Procedure (in force at the material time)*

19. Criminal proceedings must be discontinued against a deceased person except where a continuation of the proceedings is necessary for his or her rehabilitation or for the reopening of the case in respect of others on account of newly discovered circumstances (Article 5 § 8). 16

B. *The Civil Code of the Russian Federation*

20. The Civil Code provides as follows: 17

Article 87. General provisions on private companies

"1. A private company is a company founded by one or more persons; its charter capital is divided into parts described in its articles of association. Participants of a private company are not liable for its debts..."

Article 93. Transfer of shares in a private company to another person

"6. Shares in the charter capital of a private company are transferred to the heirs of the company's participants... unless the articles of association provide that such a transfer requires the consent of the other participants..."

Article 1064. General grounds giving rise to liability for damages

"1. Damage inflicted on the person or property of an individual... shall be reimbursed in full by the person who inflicted the damage..."

2. The person who inflicted the damage shall be liable for it unless he proves that the damage was inflicted through no fault of his..."

C. *The Code of Civil Procedure of the Russian Federation*

21. The factual circumstances established by the final judicial decision in an earlier case, are binding on the court (Article 61 § 2). The final judicial decision in a criminal case concerning a particular person is binding on the court examining the civil-law consequences of that person's actions only to the extent that the criminal court determined whether or not such actions had been committed and whether or not they had been committed by that person (Article 61 § 4). 18

D. *Case-law*

22. On 13 June 2002 the Presidium of the Moscow City Court quashed the criminal judgment against three co-defendants in so far as it concerned the alleged participation of two other persons in the crimes. The Presidium held (decision reported in Bulletin of the Supreme Court, no. 9, 2003): 19

"In breach of Article 314 of the RSFSR Code of Criminal Procedure, the [trial] court erroneously declared Mr B. and Mr E. to have been accomplices to the crime. It follows from the case materials that, by the investigator's decision of 16 July 1998, the case against them had been severed into separate proceedings in connection with Mr E.'s grave illness and the failure to locate Mr B. A reference to them in the text of the judgment, describing them as persons who had been complicit in the criminal offences committed by the convicts, is not justified because... the merits of the criminal case against them have not been examined by a court of law."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

23. The applicants complained under Article 6 §§ 2 and 3 (c) of the Convention that the findings of the domestic courts had breached Mr Vitaliy Vulakh's presumption of innocence. The Court considers that this complaint falls to be examined under Article 6 § 2, which reads as follows: 20

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

24. The Government claimed, for the first time in their additional observations in reply to those by the applicants, that the applicants had not exhausted domestic remedies, because they had not appealed against "the ruling on the dismissal of the criminal case". In the Government's submission, such an appeal "could have given legal reasons for reconsideration of the verdict on [account of] newly discovered circumstances and its prejudicial meaning for the decision on a civil matter". 21

25. As regards the question of exhaustion of the domestic remedies, the Court observes that the first applicant had attempted to lodge an appeal against the decision by which the proceedings concerning Mr Vitaliy Vulakh had been discontinued. However, that appeal had been rejected, on the ground that the first applicant had had no standing in the proceedings (see paragraph 12 above). The Government did not explain what newly discovered circumstances could have warranted a reconsideration of that decision. Accordingly, their objection must be dismissed. 22

26. A further admissibility issue relates to the question whether the applicants have standing as "victims" of the alleged violation. It has been the Court's constant approach that the principle of the presumption of innocence is intended to protect "everyone charged with a criminal offence" from having a guilty verdict passed on him without his guilt having been proved according to law. It does not follow, however, that a decision whereby the innocence of an individual "charged with a criminal offence" is put in issue after his or her death cannot be challenged by his or her close relatives. They may be able to show both a legitimate material interest in their capacity as the deceased's heirs and a non-pecuniary interest, on behalf of themselves and of the family, in having their late relative exonerated from any finding of guilt (see *Nölkenbockhoff v. Germany*, 25 August 1987, § 33, Series A no. 123). 23

27. The applicants in the instant case are the father, mother, son and daughter of the late Mr Vitaliy Vulakh, who was allegedly declared guilty after his death in criminal and civil proceedings. The applicants therefore may have a non-pecuniary interest in clearing the name of the deceased from the stigma of that declaration, as well as a pecuniary interest in their capacity as the deceased's heirs (see below for a detailed examination of the latter aspect from the standpoint of Article 1 of Protocol No. 1). 24

28. In the circumstances, the Court finds that the applicants may claim to be "victims" of the alleged violation of Article 6 § 2 of the Convention. It also considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. As no other grounds for inadmissibility have been established, the Court declares it admissible. 25

B. Merits

1. Submissions by the parties

29. The Government submitted that the criminal case could not have been comprehensively examined if the reference to the individual who had managed the criminal enterprise had been omitted. Such an omission would have made impossible the determination of the roles which each member of the gang had played. In the Government's view, this reference did not amount to a breach of the presumption of innocence. 26

30. As regards the civil proceedings, the Government indicated that the judgments of 4 and 18 September 2003 had proven Mr Vitaliy Vulakh "guilty in accordance with the law". His guilt had been established in the Regional Court judgment of 3 October 2002 in respect of other members of the gang, from which it transpired that Mr Vitaliy Vulakh had substantial funds at his disposal, that he had been the gang leader, had funded the gang and also paid to have crimes committed by gang members. There had therefore been a causal link between the criminal actions of Mr Vitaliy Vulakh and the pecuniary and non-pecuniary damage caused to the plaintiffs in the civil proceedings. 27

31. The applicants pointed out that Mr Vitaliy Vulakh had not been charged with any criminal offence or convicted by a court of law. Accordingly, his guilt could not have been established "in accordance with the law", as the Government 28

argued. The Regional Court judgment of 3 October 2002 had concerned others, rather than Mr Vitaliy Vulakh. In the applicants' view, a declaration that a deceased person was guilty was unacceptable in a State respecting the rule of law.

2. The Court's assessment

32. The Court reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, for there to be some reasoning suggesting that the court or the official regards the accused as guilty. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008; *Neš?ák v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007; *Garycki v. Poland*, no. 14348/02, § 71, 6 February 2007; *Capeau v. Belgium*, no. 42914/98, § 22, ECHR 2005; *Böhmer v. Germany*, no. 37568/97, § 54, 3 October 2002; and *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). 29

33. The Court observes that Mr Vitaliy Vulakh did not stand trial. He committed suicide on 25 March 2002, the day his alleged accomplices were arrested. Three months after Mr Vitaliy Vulakh's death the criminal proceedings against him were discontinued. In this connection, it is observed that the scope of Article 6 § 2 is not limited to pending criminal proceedings but extends to judicial decisions taken after a prosecution has been discontinued (see *Nölkenbockhoff*, § 37, and *Capeau*, § 25, both cited above). 30

34. The Court reiterates that it is a fundamental rule of criminal law that criminal liability does not survive the person who committed the criminal act (see *A.P., M.P. and T.P. v. Switzerland*, 29 August 1997, Reports of Judgments and Decisions 1997V, §§ 46 and 48, and *E.L., R.L. and J.O.-L. v. Switzerland*, 29 August 1997, Reports 1997V, §§ 51 and 53). However, in the criminal proceedings against Mr Vitaliy Vulakh's co-defendants, the Krasnodar Regional Court expressed the view that Mr Vitaliy Vulakh had "organised the gang", that he had "had money at his disposal", and that he had "funded the gang and paid each member to commit the crimes" (see paragraph 9 above). Those statements were not limited to describing a "state of suspicion" against Mr Vitaliy Vulakh; they stated as an established fact, without any qualification or reservation, that he had been the leader of a criminal syndicate and that he had coordinated and funded the criminal activities of that syndicate. 31

35. The wording used in the subsequent civil proceedings concerning the victims' claims for pecuniary and non-pecuniary damage was even more explicit. Not only did the Kurganinskiy District Court repeat, by reference to the criminal judgment, that Mr Vitaliy Vulakh had "been the leader of an armed group (gang)" but it went much further and specified that the gang had "committed, under his leadership, serious crimes", including murder and attempted murder (see paragraph 16 above). The District Court's pronouncements were reproduced verbatim in the judgment of the Krasnodar Regional Court. 32

36. The Court emphasises that there is a fundamental distinction to be made between a statement that someone is merely suspected of having committed a crime and a clear judicial declaration, in the absence of a final conviction, that the individual has committed the crime in question. Having regard to the explicit and unqualified character of the impugned statements contained in both the District Court's and the Regional Court's judgments, the Court finds that they amounted to a pronouncement on Mr Vitaliy Vulakh's guilt before he was proved guilty according to law. The Court underlines that there can be no justification for a court of law to make a premature pronouncement of this kind (see the above-cited case-law, and also *Ka?mierczak v. Poland*, no. 4317/04, § 54, 10 March 2009; *Wojciechowski v. Poland*, no. 5422/04, § 54, 9 December 2008; *Del Latte v. the Netherlands*, no. 44760/98, § 31, 9 November 2004; and, as regards subsequent civil proceedings, *Y. v. Norway*, no. 56568/00, § 46, ECHR 2003II (extracts), and *Baars v. the Netherlands*, no. 44320/98, § 63, 28 October 2003). Such a pronouncement was also at variance with the case-law of Russian courts which considered inappropriate a reference in the criminal conviction to the identities of any alleged accomplices, the charges against whom had not yet been examined, even where such accomplices were designated by their first initials only (see paragraph 22 above). In the instant case Mr Vitaliy Vulakh's name was spelled out in full and he was clearly identified in all the judgments. In the circumstances, the Court finds that the declarations by the Russian courts to the effect that Mr Vitaliy Vulakh had been the head of a criminal gang which had committed serious crimes under his leadership, before he was convicted, amounted to a breach of his right to be presumed innocent (compare *Popovici v. Moldova*, nos. 289/04 and 41194/04, §§ 76-79, 27 November 2007). 33

37. There has therefore been a violation of Article 6 § 2 of the Convention. 34

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

38. The applicants complained that their rights to a fair trial and to the peaceful enjoyment of property had been violated by the domestic courts' decisions holding them financially liable for the crimes allegedly committed by Mr Vitaliy Vulakh. The Court considers that this complaint falls to be examined under Article 1 of Protocol No. 1, which reads as follows: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

39. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

40. The Government claimed that there was no violation of Article 1 of Protocol No. 1 because the applicants had been deprived of their inherited possessions in the public interest and on lawful grounds. Pursuant to Article 1175 § 1 of the Civil Code, the heirs who had accepted the estate were jointly liable for the debts of the testator.

41. The applicants contended that Article 1175 of the Civil Code was not applicable in the instant case because late Mr Vitaliy Vulakh had not contracted any debts. The plaintiffs' claim had only concerned the damage allegedly caused to them by the actions of Mr Vitaliy Vulakh. However, his liability for that damage had never been proven or established.

2. The Court's assessment

42. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, inter alia, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004V).

43. The "possession" at issue in the present case was a minority share in a dairy factory which the applicants inherited from the late Mr Vitaliy Vulakh by way of succession on intestacy (see paragraph 14 above). Their status as heirs in respect of that property was upheld by the District and Regional Court's judgments of 4 and 18 September 2003 respectively. By the same judgments, the courts ordered a transfer of the applicants' share in the factory to the individual plaintiffs as a compensation for pecuniary and non-pecuniary damage caused by Mr Vitaliy Vulakh's criminal activities.

44. The present complaint is distinguishable from other cases that have come before the Court in that it does not concern the taking of property by the State or any form of State-imposed control of use. This was a dispute between private parties concerning a compensation claim, and the role of the State was limited to providing, through its judicial system, a forum for the determination of the applicants' civil rights and obligations. The Court reiterates that the provision of a judicial forum does not automatically engage the State's responsibility under Article 1 of Protocol No. 1. Nevertheless, the State may be held responsible for losses caused by such determinations if the court decisions were not given in accordance with domestic law or if they were flawed by arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1 (see, among others, *Melnychuk v. Ukraine* (dec.), no. 28743/03, ECHR 2005-IX, and *Breierova and Others v. the Czech Republic* (dec.), no. 57321/00, 8 October 2002). The situation obtaining in the instant case thus falls to be examined from the standpoint of the first rule, set in the first sentence of the first paragraph of Article 1 of Protocol No. 1, that of the principle of the peaceful enjoyment of property.

45. The Court reiterates that even in cases involving litigation between individuals or companies, Article 1 of Protocol No. 1 may entail certain measures necessary to protect the right of property. This means, in particular, that the States are under an obligation to afford judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private persons (see

Sovtransavto Holding v. Ukraine, no. 48553/99, § 96, ECHR 2002VII). In other words, the State must ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights (see *Blumberga v. Latvia*, no. 70930/01, § 67, 14 October 2008).

46. The Court observes at the outset that, by contrast with the situation obtaining in certain previous cases (see, for instance, *Denisova and Moiseyeva v. Russia*, no. 16903/03, 1 April 2010; *Phillips v. the United Kingdom*, no. 41087/98, § 52, ECHR 2001-VII; and *Raimondo v. Italy*, 22 February 1994, Series A no. 281A), the present case does not contain any facts or evidence which could lead the Court to conclude that it concerned confiscation of money or assets obtained through illegal activities or paid for with the proceeds of crime. It has never been claimed that Mr Vitaliy Vulakh's share in the dairy factory was obtained fraudulently or purchased with the proceeds of any criminal activities. The cause of action in those civil proceedings was a delictual claim against the applicants arising out of the wrongful conduct of their deceased relative, which had allegedly caused financial prejudice to the plaintiffs. 43

47. The Court reiterates that an acquittal in criminal proceedings or their procedural termination should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof (see *Ringvold v. Norway*, no. 34964/97, § 38, ECHR 2003II, with further references). In such circumstances the injured party should be able to submit a claim for compensation for the damage under the general principles on the law of torts. By contrast with criminal proceedings, which cannot continue after the defendant's death, a civil claim for compensation may be brought against the estate of the deceased defendant, and decided upon in accordance with the general rules of civil proceedings to the standard of proof required in those proceedings. 44

48. Article 1064 of the Russian Civil Code (cited in paragraph 20 above) governed distribution of the burden of proof in compensation proceedings. It was incumbent on the claimant to show that he or she suffered legal injury which was the consequence of wrongful conduct on the part of the alleged perpetrator. The perpetrator could only be relieved from liability if he or she was able to demonstrate the absence of his or her fault, that is that he or she did not act intentionally or negligently or that there was no causal link between the impugned conduct and the injury. 45

49. Since the alleged perpetrator Mr Vitaliy Vulakh had died before any proceedings were instituted, it is obvious that he could not be expected to plead the absence of fault himself. The question therefore arises whether such an opportunity was afforded to the applicants, who were named as the respondent party in the compensation proceedings. It appears from the judgment of 4 September 2003 that, in adjudicating the compensation claim, the District Court did not make any independent findings as to the fault of Mr Vitaliy Vulakh or the applicants, but merely referred back to the judgments pronounced by different courts in the criminal proceedings against Mr S., Mr N. and Mr K. Neither the applicants, nor the late Mr Vitaliy Vulakh had been a party to those criminal proceedings and, as the Court has found above, the declaration of Mr Vitaliy Vulakh's guilt in the criminal judgments - in the absence of a conviction - amounted to a breach of his presumption of innocence. The applicants pointed out this defect in their statement of appeal against the District Court's judgment, but the Regional Court maintained that the criminal judgment had already established Mr Vitaliy Vulakh's guilt. It follows that the domestic proceedings did not offer the applicants the necessary procedural guarantees for a vindication of their property rights. 46

50. There has therefore been a violation of Article 1 of Protocol No. 1. 47

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides: 48
"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."

52. The applicants claimed 5,832,000 euros (EUR) in respect of pecuniary damage, representing the estimated value of the dairy factory and other assets, as well as the estimated loss of profit. They further claimed EUR 21,550 for each applicant in respect of non-pecuniary damage. They did not make a claim for costs or expenses. 49

53. The Government submitted that the applicants' claims had been unreasonable and unsubstantiated. 50

54. As regards the applicants' claims in respect of pecuniary damage, the Court observes that the applicants' possessions were transferred to their procedural adversaries as a result of the judicial decisions which it found to have been incompatible with Article 1 of Protocol No. 1. The Court cannot speculate what the outcome of the civil 51

proceedings could have been, had the judges in the civil proceedings avoided relying on the criminal judgment which had allegedly established Mr Vitaliy Vulakh's guilt. It is noted that, pursuant to the Russian Constitutional Court's judgment no. 4-P of 26 February 2010, the Court's judgments are binding on Russia and a finding of a violation of the Convention or its Protocols by the Court is a ground for reopening civil proceedings under Article 392 of the Code of Civil Procedure and review of the domestic judgments in the light of the Convention principles established by the Court. The Court considers that a re-opening of the civil proceedings and review of the matter in the light of the principles it has identified in this judgment would be the most appropriate means of affording reparation to the injured party. Accordingly, it rejects the applicants' claim in respect of pecuniary damage.

55. As to non-pecuniary damage, the Court reiterates its constant position that an applicant cannot be required to furnish any proof of non-pecuniary damage he or she has sustained (see, among many others, *Antipenkov v. Russia*, no. 33470/03, § 82, 15 October 2009; *Pshenichnyy v. Russia*, no. 30422/03, § 35, 14 February 2008; *Garabayev v. Russia*, no. 38411/02, § 113, ECHR 2007VII (extracts); and *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It further considers that the applicants must have suffered anxiety and frustration on account of the authorities' declaration that their late relative was guilty and the loss of their possessions in the civil proceedings. Making its assessment on an equitable basis, the Court awards each applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it. 52

FOR THESE REASONS, THE COURT UNANIMOUSLY

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1. Declares the application admissible;
2. Holds that there has been a violation of Article 6 § 2 of the Convention;
3. Holds that there has been a violation of Article 1 of Protocol No. 1;
4. Holds
 - (a) that the respondent State is to pay each applicant, within three months of 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, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (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 applicants' claim for just satisfaction.