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**For immediate release**

### **European Court formulates new law on 'double jeopardy' cases**

Today, in its ruling in the case of *Zolotukhin v Russia* the Grand Chamber of the European Court of Human Rights unanimously found that Russia had violated Art. 4 of Protocol 7 of the European Convention on Human Rights by having tried Sergey Zolotukhin twice for the same offence. Mr Zolotukhin was represented before the Court by the European Human Rights Advocacy Centre (EHRAC), based at London Metropolitan University and the Russian NGO, Memorial.

On 4 January 2002, Mr Zolotukhin was taken to police station no. 9 in the Leninskiy District of Voronezh to clarify how his girlfriend had been found in a restricted military compound. At the police station he was verbally abusive and ignored warnings issued to him by police officers. This conduct led to him being sentenced, on the same day, to three days' administrative detention for "minor disorderly acts".

On 23 January 2002, a separate criminal case was opened against Mr Zolotukhin concerning his "disorderly acts" allegedly committed on 4 January 2002. On 1 February 2002 two further sets of criminal proceedings were opened against him, also regarding his actions on 4 January 2002. On 2 December 2002, Mr Zolotukhin was acquitted of the first criminal charge, but found guilty of the other two. This was upheld on appeal.

On 22 April 2003, Mr Zolotukhin complained to the European Court that he had been tried twice for the same offence. On 7 June 2007, a chamber of the Court ruled unanimously in his favour, however, on the request of the Russian Government the case was referred to the Grand Chamber.

In considering the case, the Grand Chamber noted that the Court had historically applied three different approaches to 'double jeopardy' cases. This had led to legal uncertainty and so the Court decided to formulate a new interpretation of what constitutes the "same offence". The Court concluded that:

"... Article 4 of Protocol 7 must be understood as prohibiting the prosecution or trial of a second 'offence' in so far as it arises from identical facts or facts which are substantially the same."

In applying this test to the *Zolotukhin* case, the Grand Chamber ruled that the first criminal charge of "disorderly acts" against the applicant (swearing and breaching public order immediately after arriving at police station no. 9) referred to the same conduct as the administrative conviction for "minor disorderly acts" and was based on primarily the same facts. The other two charges, although based on similar conduct later on the same day, were spatially and temporally isolated from the acts in the administrative case and therefore could be the subject of separate proceedings.

The fact that the applicant had eventually been acquitted was immaterial as Art. 4 of Protocol 7 upholds the right not to be *prosecuted* or *tried* twice, as well as not to be *punished* twice. Furthermore, his acquittal was on substantive grounds and did not result from any acknowledgment of the duplicated proceedings against him.

EHRAC's Director, Prof. Philip Leach said:

"The Court has clearly identified an aspect of the Russian legal system that is incompatible with the ECHR, and which will now have to be carefully reviewed. The decision will also have similar implications for the domestic legal systems of a number of Council of Europe countries."