



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

FIRST SECTION

CASE OF SAKHNOVSKIY v. RUSSIA

(Application no. 21272/03)

JUDGMENT

STRASBOURG

5 February 2009

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
02/11/2010**

This judgment may be subject to editorial revision.

In the case of Sakhnovskiy v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 21272/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sergey Veniaminovich Sakhnovskiy ("the applicant"), on 18 April 2003.

2. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the criminal proceedings against him were conducted in violation of Article 6 §§ 1 and 3 (c) of the Convention, claiming that in the appeal proceedings he did not benefit from free legal assistance and, moreover, could not defend himself effectively because he communicated with the court of appeal by video link.

4. On 26 March 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. 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

6. The applicant was born in 1979 and lived in Novosibirsk.

7. On 30 April 2001 the applicant was arrested on suspicion of having murdered his father and uncle. The applicant made a written request to be provided with a legal aid lawyer. On the same day an expert examination of fingerprints and a forensic examination were ordered and on 3 May 2001 the applicant was remanded in custody.

8. On 4 May 2001 legal aid counsel, Ms P., was appointed to assist the applicant, and he was charged with aggravated murder on 10 May 2001.

9. From May to September a number of expert examinations were carried out. Subsequently the applicant received copies of orders for such examinations. He signed each of them confirming their receipt and indicating that he had no comments or requests.

10. On 30 September 2001 the detention order was lifted and replaced with an undertaking not to leave his place of residence.

11. In October 2001 the applicant's former cellmate in the detention facility, Mr Zh., testified that the applicant had told him in detail how he had murdered his father and another man.

12. On unidentified date the applicant's friend, Mr R., made a witness statement that the applicant had asked him to murder his father and when R. refused the applicant seemingly intended to do it himself.

13. On 5 November 2001 the applicant was again remanded in custody.

14. On 20 December 2001 the Novosibirskiy Regional Court examined the criminal charges against the applicant. The applicant pleaded not guilty. The court examined seventeen witnesses including Zh. and R., and found the applicant guilty of having murdered two persons and sentenced him to eighteen years' imprisonment. In its judgment the court referred to witness statements, forensic reports and extensive material evidence.

15. The applicant and his lawyer appealed, alleging that Zh. and R. had given their statements under pressure from the police and claiming that the investigation had been conducted with numerous violations of the applicant's defence rights. They also complained that the orders to appoint expert examinations had been received late.

16. On 12 May and 29 July 2002 the applicant requested to be assigned another lawyer to represent him in the appeal proceedings because Ms P. was unable to attend the hearing as she was already engaged in another trial.

17. On an unidentified date the applicant was informed that his participation in the appeal hearing would be ensured by video link. On 26 and 30 July 2002 he requested leave to attend the appeal proceedings in

person because he did not consider that the video link would provide him with an adequate opportunity to participate in the hearing.

18. On 16 October 2002 the Supreme Court of the Russian Federation ordered the Moscow IZ-77/3 detention centre to ensure the applicant's participation in the appeal hearing, which was to take place on 31 October 2002, by video link.

19. On 31 October 2002 the Supreme Court of the Russian Federation examined the applicant's appeal. The applicant participated in the proceedings by video link. No defence counsel attended the hearing. The court dismissed the applicant's appeal, having found no proof that Zh. and R.'s testimonies were false. As regards the alleged breach of his defence rights, the court found this to be unsubstantiated.

20. On 4 July 2007 the Presidium of the Supreme Court granted a request for supervisory review by the Deputy Prosecutor General and quashed the Supreme Court's appeal decision of 31 October 2002. The Presidium found that the applicant's right to legal assistance had been violated in the appeal hearing and remitted the case for a fresh examination before the court of appeal.

21. The applicant requested to take part in the appeal hearing in person. On 10 August 2007 the Supreme Court, sitting as a bench of three judges, granted leave to attend in person and ordered the applicant's temporary transfer from the prison in the Novosibirsk Region to a detention facility in Novosibirsk, apparently to avail him of the video link.

22. On 20 August 2007 the applicant made a new statement of appeal. He requested the Supreme Court to examine his appeal on the basis of this new statement only and also requested leave to attend the appeal hearing in person and not by video link.

23. On 29 November 2007 the Supreme Court, sitting in Moscow, examined the case. First, it considered the applicant's requests of 20 August 2007. In a separate decision on procedure it found that there were no grounds to accept the applicant's new statement of appeal and decided to examine the case on the basis of the statement by the applicant's former counsel, Ms P., in 2002. It also rejected the applicant's request to attend in person, finding that the video link would be sufficient to ensure that the applicant could follow the proceedings and make objections or other submissions, and that this form of participation would be no less effective than if he was personally present in the courtroom. The Supreme Court then introduced the applicant to Ms A., his new legal aid counsel who was present in the Supreme Court's courtroom and then allowed them fifteen minutes of confidential communication by video link before the start of the hearing. All persons, both in the courtroom and in the detention facility, left the rooms.

24. The applicant rejected the assistance of Ms A. on the grounds that he needed to meet his counsel in person. The Supreme Court, having noted that

the applicant did not rely on divergence with Ms A. in his defence, did not request her replacement by another legal aid lawyer, did not accept the court's proposal to retain private counsel of his choice and, taking into account the quashing of the previous appeal decision on the grounds of lacking legal assistance, rejected the applicant's objection to the counsel's assistance. Accordingly, Ms A. represented the applicant in the appeal hearing.

25. On the same day the Supreme Court examined the merits of the case. It upheld the judgment of the Novosibirsk Regional court of 20 December 2001, making one correction in the text and excluding one piece of evidence. The substantive findings and the applicant's sentence remained unchanged.

II. RELEVANT DOMESTIC LAW

A. The Code of Criminal Procedure

26. Article 51 of the Code of Criminal Procedure of the Russian Federation (in force from 1 July 2002) provides for mandatory legal representation if the accused faces serious charges carrying a term of imprisonment exceeding fifteen years, life imprisonment or the death penalty. Unless the counsel is retained by the accused, it is the responsibility of the investigator, prosecutor or the court to appoint legal aid counsel.

27. Article 373 of the Code provides that the appeal instance examines appeals with a view to verifying the lawfulness, validity and fairness of judgments. Under Article 377 §§ 4 and 5 of the Code, the appeal instance may directly examine evidence, including additional material submitted by parties.

B. Case-law of the Constitutional Court of the Russian Federation

28. Examining the compatibility of Article 51 of the Code of Criminal Procedure with the Constitution, the Constitutional Court ruled as follows (decision no. 497-O of 18 December 2003):

“Article 51 § 1 of the Code of Criminal Procedure, which describes the circumstances in which the participation of defence counsel is mandatory, does not contain any indication that its requirements are not applicable in appeal proceedings or that the convict's right to legal assistance in such proceedings may be restricted.”

29. That position was subsequently confirmed and developed in seven decisions delivered by the Constitutional Court on 8 February 2007. It found that free legal assistance for the purpose of appellate proceedings should be provided on the same conditions as during the earlier stages in the

proceedings and is mandatory in situations listed in Article 51. It further underlined the obligation of courts to secure participation of defence counsel in appeal proceedings.

C. Case-law of the Supreme Court

30. In a number of cases (decisions of 13 October 2004 and 26 January, 6 April, 15 June and 21 December 2005) the Presidium of the Supreme Court of the Russian Federation quashed judgments of appeal courts and remitted cases for fresh consideration on the ground that the courts had failed to secure the presence of defence counsel in the appeal proceedings, although it was obligatory for the accused to be legally represented.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

31. The applicant complained that the criminal proceedings against him had been unfair, in particular that he was not provided with adequate legal assistance at the hearing before the court of appeal and that he could not effectively participate in that hearing in person as he could only connect with the courtroom by video link. He relied on Article 6 §§ 1 and 3 (c) of the Convention, which reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal ...

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

... (c) to defend himself in person or through legal assistance of his own choosing ...”

A. Admissibility

1. Victim status

32. The Government pointed out that on 4 July 2007 the Presidium of the Supreme Court quashed the judicial decision in question precisely on the grounds that the applicant had been deprived of the effective legal assistance and remitted the case for a fresh examination by the appeal instance. They therefore contended that the applicant had lost his victim status. In support of this statement they relied on the Court's case-law,

according to which the most appropriate form of redress for a violation of Article 6 in the criminal proceedings would, in principle, be trial *de novo* or the reopening of the proceedings. In this connection they claimed that the decision of the Presidium constituted an acknowledgment of a violation and afforded redress in the form of fresh proceedings before the court of appeal.

33. The applicant maintained his complaints claiming that in the new proceedings following the quashing his rights had not been restored. In particular, he was not brought to the courtroom in person, despite his requests, and he was deprived of the effective communication with court-appointed legal counsel. He therefore requested the Court to confirm his victim status and to examine the merits of his application.

34. As regards the Government's objection regarding the victim status of the applicant, the Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-93, ECHR 2006-...).

35. As regards the first condition, namely the acknowledgement of a violation of the Convention, the Court considers that the Presidium's decision to quash the appeal decision of 31 October 2002 does amount to an acknowledgment that there had been a breach of Article 6 of the Convention.

36. With regard to the second condition, namely appropriate and sufficient redress, the Court must ascertain whether the measures taken by the authorities, in the particular circumstances of the instant case, afforded the applicant appropriate redress in order to determine whether he could still claim to be a victim. As the Government's objection under this head is closely linked to the merits of the applicant's complaints, the Court decides to join them.

2. Other points on admissibility

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

B. Merits

1. The parties' submissions

38. The applicant claimed that in the determination of the criminal charges against him there had been a breach of his right to legal assistance. In the proceedings before the Supreme Court on 31 October 2002 he had

had no lawyer at all, and in the subsequent retrial by the same instance the court-appointed lawyer was introduced to him at the hearing by video link and he therefore did not have the benefit of effective and confidential communication with her. He also complained that he had been deprived of the opportunity to participate in the appeal proceedings in person. In particular, the communication with the court by video link had been of poor quality and had not permitted him to effectively follow the proceedings and make his objections.

39. The Government, in their first set of observations, contended that the proceedings conducted by the Supreme Court on 31 October 2002 afforded the applicant sufficient guarantees of a fair trial, including the right to legal representation, and that his personal participation in the proceedings had been effectively ensured by the video link. As regards the use of the video link, the Government maintained that the use of this system of communication between the applicant and the court was, as such, compatible with Article 6 of the Convention and was justified in the circumstances of this case. They later amended their observations by informing the Court that on 4 July 2007 the Presidium of the Supreme Court had quashed the decision of 31 October 2002 on the grounds of a breach of the applicant's defence rights and therefore even if those criminal proceedings had involved a violation of Article 6, after the quashing the applicant could no longer claim to be a victim of that violation. The Government made no submissions as regards the proceedings conducted after the supervisory review.

2. *The Court's assessment*

(a) **General principles**

40. The Court notes at the outset that the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, and therefore the applicant's complaints under Article 6 §§ 1 and 3 should be examined together (see *Vacher v. France*, 17 December 1996, § 22, *Reports of Judgments and Decisions* 1996-VI).

41. The Court reiterates that while Article 6 § 3 (c) confers on everyone charged with a criminal offence the right to “defend himself in person or through legal assistance ...”, it does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Quaranta v. Switzerland*, 24 May 1991, § 30, Series A no. 205). In that connection it must be borne in mind that the Convention is intended to “guarantee not rights that are theoretical or illusory but rights that are practical and effective” and that assigning a counsel does not in itself ensure the effectiveness of the assistance he may

afford an accused (see *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275, and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

42. The Court also reiterates that a person charged with a criminal offence should, as a general principle based on the notion of a fair trial, be entitled to be present at the first-instance trial hearing. However, the attendance of the defendant in person does not necessarily take on the same significance for the appeal hearing. Indeed, even where an appellate court has full jurisdiction to review the case on questions of both fact and law, Article 6 does not always entail a right to be present in person. Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the appellant (see *Helmers v. Sweden*, 29 October 1991, §§ 31-32, Series A no. 212-A; *Belziuk v. Poland*, 25 March 1998, § 37, *Reports* 1998-II; *Pobornikoff v. Austria*, no. 28501/95, § 24, 3 October 2000; and *Kucera v. Austria*, no. 40072/98, § 25, 3 October 2002).

43. As regards the use of the video link, the Court reiterates that this form of participation in proceedings is not as such incompatible with the notion of a fair and public hearing, but it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and effective and confidential communication with a lawyer must be provided for (see *Marcello Viola v. Italy*, no. 45106/04, ECHR 2006-... (extracts)).

44. Finally, neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, entitlement to the guarantees of a fair trial (see *Talat Tunç v. Turkey*, no. 32432/96, § 59, 27 March 2007). Such a waiver must however be established unequivocally and must not run counter to any important public interest (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-...).

(b) Application of the above principles to the instant case

45. The Court observes that in Russia the jurisdiction of appeal courts extends both to legal and factual issues. The Supreme Court thus had the power to fully review the case and to consider additional arguments which had not been examined in the first-instance proceedings. Given the seriousness of the charges against the applicant and the severity of the sentence to which he had been liable, the Court considers that the assistance of a legal-aid lawyer at this stage was essential for the applicant, as the former could effectively draw the appeal court's attention to any substantial argument in the applicant's favour which might influence the court's decision.

46. The Court further notes that according to the Russian Code of Criminal Procedure, as interpreted by the Russian Constitutional Court, the

onus of appointing a legal aid lawyer rested upon the relevant authority at each stage of the proceedings (see paragraphs 28-29 above). Thus it was incumbent on the judicial authorities to appoint a lawyer for the applicant to ensure that the latter received the effective benefit of his rights.

47. It has been acknowledged by the Government that the first set of proceedings that ended on 31 October 2002 fell short of the guarantees related to legal assistance. However, they contended that the supervisory review conducted in 2007 removed that procedural defect by quashing the appeal decision taken in the absence of the applicant's lawyer.

48. To assess whether the supervisory review has indeed remedied the defects of the original proceedings, as alleged by the Government, the Court will have to verify whether the guarantees in question have been afforded in the ensuing proceedings. It follows from the Supreme Court's decision of 29 November 2007, taken on the preliminary point of procedure, that in the new appeal proceedings the applicant was assigned a legal-aid counsel, Ms A., who was present in the courtroom in Moscow. However, the applicant, who followed the hearing from a detention facility in Novosibirsk by video link, attempted to refuse her assistance on the grounds that he had never met that counsel other than through the video link immediately before the start of the hearing. It had been noted by the Supreme Court that despite the guarantee of confidentiality of communication with Ms A. offered to the applicant at the beginning of the hearing (which was achieved by ordering everyone out of the courtroom in Moscow), the applicant insisted that he would not accept counsel he had not met in person. The Supreme Court also noted that the applicant had not requested replacement counsel or leave to retain one privately and concluded that the applicant's refusal had been unreasonable, confirming his representation by Ms A.

49. It follows that the defence counsel appointed to represent the applicant in the new proceedings had never met, or otherwise communicated with, the applicant in advance of the hearing. Her opportunity of discussing the case with her client was limited to a short communication by video link which took place within the same telecommunication session as the appeal hearing itself. The Court considers that the timing of Ms A.'s appointment made it difficult, if not impossible, to agree with the applicant on the line of defence she would pursue at the hearing.

50. The Court also notes that by a separate decision on the preliminary point of procedure the Supreme Court decided that it would not accept a new statement of appeal from the applicant and would consider his position on the basis of the submissions made by his former counsel, Ms P., before the previous appeal hearing in 2002. The Court considers that the lack of personal contact with the applicant at the hearing and the absence of any discussion with him in advance of the hearing, combined with the fact that she had to plead the case on the basis of the points of appeal lodged five

years earlier by another lawyer, reduced Ms A.'s appearance at the appeal hearing to a mere formality.

51. The Court further notes that the applicant's dissatisfaction with the manner in which his legal assistance was organised was made sufficiently clear to the Supreme Court. Unlike the latter, the Court considers that the reasons given by the applicant for his refusal to be assisted by Ms A. were legitimate and justified in the circumstances. Consequently, his conduct did not relieve the authorities of their obligation to take further steps to guarantee the effectiveness of his defence.

52. The foregoing considerations are sufficient to enable the Court to conclude that the Supreme Court failed to ensure the applicant's effective legal representation in the appeal hearing that took place on 29 November 2007, as it had in the earlier proceedings.

53. In sum, the Court finds that the measures taken by the authorities failed to provide appropriate redress for the applicant. He may therefore still claim to be a victim within the meaning of Article 34 of the Convention. The Court therefore rejects the Government's objections under this head and finds that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

54. As regards the complaint concerning the conduct of the appeal hearing by video link, the Court notes that the exercise of the right to legal assistance takes on particular significance where the applicant communicates with the courtroom by video link (see case-law cited in paragraph 43). Given the overlap between the two complaints, and in view of the finding above that the applicant did not receive adequate legal assistance at the appeal hearing, the Court does not consider it necessary to examine separately the question whether in the circumstance of this case the applicant's participation in the appeal hearing by video link complied with Article 6.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. Lastly, the applicant complained under Article 5 alleging unlawfulness of his pre-trial detention. He also complained under Article 6 about the late notification about the expert appointments, the allegedly wrong assessment of evidence and about the outcome of the trial. Finally, he complained under Article 2 of Protocol No. 7 that he had been denied a right to appeal.

56. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

58. The applicant requested the Court to make an award for non-pecuniary damage in the amount to be determined by the Court.

59. The Government considered that any finding of a violation by the Court would constitute sufficient just satisfaction in the present case.

60. The Court considers that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. Making its assessment on an equitable basis, it awards the applicant 2,000 euros (EUR), plus any tax that may be chargeable on that amount.

B. Costs and expenses

61. The applicant also claimed EUR 300 for the costs and expenses incurred before the Court.

62. The Government contested the claims indicating that the applicant had only submitted receipts in respect of 4,189 Russian roubles.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 120 covering costs and expenses for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's objection concerning the victim status of the applicant and *rejects* it;
2. *Declares* the complaints concerning the lack of adequate legal assistance at the hearing before the court of appeal and the applicant's participation in that hearing by means of the video link admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention in that the applicant did not receive effective legal assistance during the appeal proceedings;
4. *Holds* that it is not necessary to examine separately the question whether the applicant's participation in the appeal hearing by video link complied with Article 6 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 120 (one hundred and twenty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable to the applicant on the above amounts;
 - (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint concurring opinion of Judges Rozakis, Spielmann and Malinverni is annexed to this judgment.

C.L.R.

S.N.

JOINT CONCURRING OPINION OF JUDGES ROZAKIS,
SPIELMANN AND MALINVERNI

1. We voted in favour of finding a violation of Article 6 §§ 1 and 3 (c) of the Convention in that the applicant did not receive effective legal assistance during the appeal proceedings.

2. Our reasoning differs, however, from the majority's approach.

3. We would like to recall that on 31 October 2002 the Supreme Court of the Russian Federation examined the applicant's appeal. The applicant participated in the proceedings by video link but no defence counsel attended the hearing. The appeal was dismissed.

4. On 4 July 2007 the Presidium of the Supreme Court granted a request for supervisory review and quashed the Supreme Court's decision on the applicant's appeal. The Presidium found that the applicant's right to legal assistance had been breached in the appeal hearing and remitted the case for a fresh examination before the Court of Appeal. In our view this decision of the Presidium constituted an acknowledgment, at least in substance, of a violation and afforded redress in the form of fresh proceedings before the Court of Appeal. In paragraph 35 of the judgment, the majority rightly emphasises that the decision to quash the appeal judgment does amount to an acknowledgment that there had been a breach of Article 6 of the Convention.

5. However we cannot agree with the majority's conclusion that the applicant's rights under Article 6 of the Convention “in the earlier proceedings” (paragraph 52) were not sufficiently redressed. Indeed, we do not look at the trial as a whole. In our view, the authorities properly redressed the shortcomings of the appeal proceedings that led to the judgment of 31 October 2002, but they committed a new violation of Article 6 during the proceedings held after the quashing, as presented in paragraphs 21 to 25 of the judgment. This approach was taken by the Court, for example, in the case of *Ponushkov v. Russia* (no. 30209/04, 6 November 2008). It is in the interest of the subsidiary nature of the system established under the European Convention of Human Rights that national authorities are to be encouraged to redress procedural shortcomings at domestic level.