



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

FIRST SECTION

CASE OF SHUGAYEV v. RUSSIA

(Application no. 11020/03)

JUDGMENT

STRASBOURG

14 January 2010

FINAL

14/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shugayev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 11020/03) 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 Mr Gennadiy Yuryevich Shugayev (“the applicant”), on 23 February 2003.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not been provided with legal assistance in the course of the criminal proceedings against him and that the Russian authorities had interfered with his correspondence with the Court.

4. On 6 September 2006 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. On 22 April 2008 the President of the First Section invited the Government to submit further written observations on the admissibility and merits of the application under Rule 54 § 2 (c) of the Rules of the Court.

6. The Government objected to the joint examination of the admissibility and merits of the application. The Court examined and dismissed their objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1961 and is serving a prison sentence in Orenburg.

A. Criminal proceedings against the applicant

1. Preliminary investigation

8. On 6 May 2001 the applicant was arrested on suspicion of murder. On 7 June 2001 he was released on an undertaking not to leave town.

9. The applicant was subsequently apprehended on suspicion of another murder. According to him, the arrest took place on 18 October 2001. The Government submitted that he was arrested on 19 October 2001. It appears that the applicant was not provided with any legal assistance when questioned by the investigator. A lawyer was appointed to represent him on 13 January 2002. It appears that the applicant was dissatisfied with the quality of the lawyer's services and dismissed him.

2. Criminal proceedings concerning the first charge of murder

10. On 17 January 2002 the Shadrinsk Town Court found the applicant guilty of murder and sentenced him to fourteen years' imprisonment. On 26 February 2002 the Kurgan Regional Court quashed the applicant's conviction on appeal and remitted the matter for fresh consideration.

11. On 6 May 2002 the Shadrinsk Town Court found the applicant guilty of murder and sentenced him to twelve years' imprisonment. On 28 May 2002 the Kurgan Regional Court upheld the conviction on appeal.

3. Criminal proceedings concerning the second charge of murder

12. On 15 February 2002 the Kurgan Regional Court opened another trial. Lawyer V. was appointed to represent the applicant.

13. On 26 February 2002 the applicant asked the court to dismiss the lawyer, alleging that he was not performing his duties properly. His request was denied.

14. On 13 June 2002 the Kurgan Regional Court found the applicant guilty of murder and sentenced him to life imprisonment. On 10 January 2003 the Supreme Court of the Russian Federation upheld his conviction on appeal. The applicant, who was not represented, made oral submissions to the court by means of a video teleconference. The prosecutor was present and argued in favour of dismissing the applicant's appeal.

15. On 21 September 2004 the Sol-Iletskiy District Court of the Orenburg Region commuted the applicant's sentence to twenty-two and a half years' imprisonment.

B. The applicant's correspondence with the Court

1. Alleged seizure of the documents at transit prison IZ-56/1 in Orenburg

16. Between 8 and 10 April 2003 the applicant was detained at transit prison IZ-56/1 in Orenburg. According to the Government, the relevant internal regulations required that, for the time of the applicant's stay there, his personal property was withheld from him for security reasons. His personal belongings were duly logged and then returned to him at the end of his stay. According to the applicant, neither the documents nor many of his personal belongings were returned to him.

17. The applicant lodged a complaint with the General Prosecutor's Office on 16 April 2003 alleging that his documents had been unlawfully seized and his personal property had been stolen. The complaint was transferred to the regional department of corrections. They questioned one of the guards and the applicant. The guard claimed that all the applicant's belongings had been returned to him against a signed receipt. According to the Government, the applicant withdrew his allegations. They submitted a copy of a statement by the applicant dated 22 September 2003 where he confirmed in writing that he did not have any claims against the administration of the transit prison.

18. On an unspecified date the applicant lodged a complaint with the Leninskiy District Court of Orenburg in respect of the loss of his personal effects. On 31 August 2005 the court dismissed it without consideration on the merits due to the applicant's failure to comply with certain procedural requirements. It appears that the applicant did not appeal.

2. Alleged failure of correctional institution IK-6 to dispatch the applicant's letters to the Court

19. Between 10 April 2003 and 16 December 2004 the applicant was detained at correctional institution IK-6 in Sol-Iletsk.

20. According to the applicant, he sent out two letters to the Court on 5 May and 9 July 2003. The letters never reached the Court. Nor were they registered in the outgoing correspondence log of the correctional institution submitted by the Government. The applicant's next letter of 27 October 2003 reached the Court. That letter was not registered in the log either.

21. The letter which the applicant dated as of 13 January 2003 was dispatched by the administration of the correctional colony on 31 March 2004.

22. The applicant allegedly tried to send another letter to the Court on 14 September 2004. He claimed that his letter was not accepted for dispatch and the guards beat him up for persisting in his correspondence with the Court.

23. The applicant further alleged that on 21 October 2004 the administration of the correctional institution refused to dispatch his letter of 12 October 2004 addressed to the Court. The letter was returned to the applicant with a handwritten note on the envelope which read “what kind of news is that?” («Что за новости?»).

24. According to the copies of the logs of outgoing correspondence submitted by the Government, the applicant asked the administration of the correctional institution to send out three letters in 2003 and seven letters in 2004 respectively. Two of the letters sent out in 2004 were addressed to the Court. Both of them reached their destination.

2. Alleged loss of the applicant's letters addressed to the Court and non-delivery of the communication mail

25. It appears that the applicant was repeatedly transferred from one correctional institution to another. Between 12 April 2005 and 1 March 2006 he served his sentence at correctional institution IK-4 in Nyrob in the Perm Region. Then he was taken to transit prison IZ-56/1 in Orenburg where he arrived on 6 April 2006. According to the applicant, he sent a letter to the Court notifying it of the change of his address. The letter never reached the Court.

26. On 26 May 2006 the applicant was transferred back to correctional institution IK-6 in Sol-Iletsk. On 27 June 2006 he arrived and stayed there for a month. On 5 September 2006 he arrived at correctional institution IK-8 in Orenburg where he has been detained to date. According to the applicant, on 7 and 9 September 2006 he sent two letters to the Court notifying it of the change of his address. The letters did not reach the Court.

27. On 6 September 2006 the Court decided to give notice of the application to the Government. The relevant letter addressed to the applicant did not reach him. The Court further sent two more letters to the applicant on 3 January and 12 February 2007. The applicant did not receive the letters. Once the time-limit established by the Court for the submission by the applicant of his observations had expired, on 22 November 2007 the Court requested the Government to submit further information confirming the receipt by the applicant of the Court's correspondence. A copy of the letter addressed to the applicant did not reach him. All the correspondence was forwarded to correctional institution IK-4 in Nyrob.

28. According to the copies of the incoming correspondence registration logs submitted by the Government, the above-mentioned letters from the Court did not reach the correctional institution to which they were addressed.

29. The Government also submitted copies of the outgoing correspondence registration log of IK-8, which indicated that the applicant sent out two letters to the Court on 10 April and 19 July 2007. The said letters did not reach the Court.

3. Opening of the Court's letter of 28 June 2007

30. On 28 June 2007 the Court sent another letter to the applicant by registered mail. It appears that correctional institution IK-4, to which the letter was addressed, forwarded it to correctional institution IK-8, where the applicant was actually detained. On 5 August 2008 the administration of IK-8 registered the letter in the incoming correspondence log as received for the applicant from the Federal Service of Corrections (UFSIN). The letter was opened by an officer on duty and the applicant refused to accept it. The administration of the penitentiary establishment interpreted his refusal as a decision not to pursue further his application lodged before the Court and informed the Government accordingly.

31. On 22 and 28 August and 5 September 2007 the administration of the correctional institution summoned the applicant in order to deliver the Court's letter to him. The applicant did not show up.

32. On 5 December 2007 the applicant had a meeting with one of the officers of the correctional institution concerning the updating of his personal file. The officer tried again to deliver the Court's letter to the applicant, who refused to take it. He agreed to accept the letter only on 1 February 2008.

33. It appears that the officer who was responsible for the opening of the applicant's letter was subjected to disciplinary dismissal.

4. Subsequent correspondence with the Court

34. The Court's letter of 8 January 2008 sent to correctional institution IK-4 by registered mail was returned to the Court by the post office with a note that the applicant had not been found at the address indicated.

35. According to the Government, the letters sent by the Court to the applicant on 25 April and 6 June 2008 did not reach correctional institution IK-8.

36. On 19 September 2008 the applicant received the Court's letter of 3 September 2008, as per the registration log submitted by the Government.

37. On 29 October 2008 the applicant submitted another letter to be dispatched to the Court. The letter was returned to him. The post office had allegedly refused to mail it because the envelope was covered with adhesive

tape. The applicant resubmitted the letter in a new envelope without adhesive tape on 24 November 2008. It was duly sent to the Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal assistance in criminal proceedings

1. The Code of Criminal Procedure

38. The Code of Criminal Procedure of the Russian Federation (in force from 1 July 2002) provides:

Article 51

“1. Participation of legal counsel in criminal proceedings is mandatory if:

1) the suspect or the accused has not waived legal representation in accordance with Article 52 of this Code;

...

5) the suspect or the accused faces serious charges carrying a term of imprisonment exceeding fifteen years, life imprisonment or the death penalty;

...

2. ...

3. In the circumstances as set forth in paragraph 1 above, unless counsel is retained by the suspect or the accused, or his lawful representative, or other persons on the request of, or with the consent of, the suspect or the accused, it is incumbent on the investigator, prosecutor or the court to ensure participation of legal counsel in the proceedings.”

Article 52

“1. The suspect or the accused may refuse legal assistance at any stage of criminal proceedings. Such a waiver may only be accepted if made on the suspect or accused’s own initiative. The waiver must be filed in writing and must be recorded in the official minutes of the relevant procedural act.

...”

39. Pursuant to Article 373, the appeal court 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 court may directly examine evidence, including additional material submitted by the parties.

40. In accordance with Article 376, upon receipt of the criminal case and the statements of appeal, the judge fixes the date, time and place for a hearing. The parties shall be notified of the date, time and place of the hearing no later than fourteen days before the scheduled hearing. The court determines whether the detained convict should be summoned to the hearing. If the convict has expressed the wish to be present at the examination of his appeal, he has the right to participate in person or to state his case via video link. The manner of his participation in the hearing is to be determined by the court.

2. Case-law of the Constitutional Court

41. Examining the compatibility of Article 51 of the Code of Criminal Procedure with the Constitution, the Constitutional Court of the Russian Federation 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.”

42. 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 the participation of defence counsel in appeal proceedings.

3. Case-law of the Supreme Court

43. 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 participation of defence counsel in the appeal proceedings, although it was obligatory for the accused to be legally represented.

B. Correspondence of the persons serving a prison sentence with the Court

1. The Code of Corrections

44. The Code of Corrections of the Russian Federation (in force from 1997) provides:

Article 91

“2. The incoming and outgoing correspondence of persons serving a prison sentence is subject to censorship by the administration of the correctional institution. The correspondence maintained with a court, a prosecutor’s office, a supervising body of corrections, as well as with the Ombudsman of the Russian Federation, a public monitoring commission established in accordance with applicable legislation of the Russian Federation, and the European Court of Human Rights shall be free of censorship.”

2. Internal Regulations of Correctional Institutions

45. The Internal Regulations of Correctional Institutions (in force from 3 November 2005) provides:

“53. The letters addressed to a person serving a prison sentence and received after his departure from a correctional institution shall be forwarded to his new address within three days of their receipt.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE STATE’S FAILURE TO PROVIDE LEGAL ASSISTANCE TO THE APPLICANT IN THE APPEAL PROCEEDINGS

46. The applicant complained that he was not provided with legal assistance in the appeal proceedings. He relied on Article 6 §§ 2 and 3 (b), (c) and (d) and Article 2 § 1 of Protocol No. 7. The Court considers that the complaint falls to be examined under Article 6 §§ 1 and 3 (c) of the Convention, which, in so far as relevant, 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 ... through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

...”

A. Admissibility

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

B. Merits

1. *The parties' submissions*

48. The applicant submitted that he had asked the Supreme Court of Russia in writing to appoint him a lawyer. However, his letter never reached the court. His similar request made orally at the appeal hearing was simply ignored.

49. The Government contested the applicant's argument. They submitted that on 15 August 2002 the applicant had lodged an additional statement of appeal and asked the court to ensure his participation in the appeal hearing. He was duly informed of the date and time of the appeal hearing on 26 December 2002 and his effective participation in the appeal hearing was ensured. On 10 January 2003 the applicant was able to make oral submissions to the appeal court. At no time did he ask the judicial authorities to provide legal assistance.

3. *The Court's assessment*

50. The Court notes at the outset that the requirements of paragraph 3 (c) of Article 6 of the Convention constitute specific aspects of the right to a fair trial, guaranteed under paragraph 1. Accordingly it will examine the applicant's complaint under those provisions taken together (see *Vacher v. France*, 17 December 1996, § 22, Reports 1996-VI).

51. The Court reiterates that the manner in which Article 6 §§ 1 and 3 (c) is to be applied in relation to appellate or cassation courts depends upon the particular features of the proceedings involved; account must be taken of the entirety of the proceedings conducted in the domestic legal order and the role of the appellate or cassation court therein (see *Twalib v. Greece*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, § 46, and *Granger v. the United Kingdom*, judgment of 28 March 1990, Series A no. 174, p. 17, § 44).

52. The Court further reiterates that 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, the entitlement to the guarantees of a fair trial. However, such a waiver must, if it is to be effective for Convention purposes, be established in an unequivocal manner and be attended by

minimum safeguards commensurate with its importance. In addition, it must not run counter to any important public interest (see *Hermi v. Italy* [GC], no. 18114/02, § 73 *in fine*, ECHR 2006-XII).

53. The Court observes that, in Russia, the jurisdiction of appeal courts extends both to legal and factual issues. The Supreme Court of Russia 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 severity of the sentence imposed on him by the trial court, the Court considers that the assistance of a lawyer at this stage was essential for the applicant.

54. Moreover, the applicant appeared before the appeal court by videoconference from the prison facility and the prosecutor appeared in the courtroom in person, hence the fact that the applicant communicated with the court without any representation in the courtroom put him at a certain disadvantage (see *Shulepov v. Russia*, no. 15435/03, § 35, 26 June 2008).

55. Having regard to the above, the Court considers that, in the circumstances of the case, the interests of justice demanded that, in order to receive a fair hearing, the applicant should have benefited from legal representation at the appeal hearing.

56. The Court further notes that according to the Russian Code of Criminal Procedure, as interpreted by the Russian Constitutional Court, the onus of ensuring legal representation of a defendant rested with the relevant authority at each stage of the proceedings (see paragraphs 38, 41 and 42 above).

57. Turning to the Government's argument that it was for the applicant to ask the court to appoint a lawyer to represent him before the appeal court, the Court considers that this cannot be taken into account. On the contrary, the effectiveness of the guarantee of legal representation by default ("unless waived") contained in Article 51 of the Russian Code of Criminal Procedure would be undermined without a corresponding obligation on the part of the court to verify in each individual case whether it is lawful to proceed with the hearing in the absence of legal counsel for the accused. Indeed, persons incapable of conducting their own defence before the court (such as those listed in subparagraphs 2-4 of Article 51 § 1 of the Russian Code of Criminal Procedure) may also be unable to draw the court's attention to the lack of legal assistance unless the question is raised by the court itself.

58. The Court therefore concludes that it was incumbent on the appeal court to verify whether there had been a valid waiver of legal assistance by the applicant and, if there had not, to appoint a lawyer as required by Article 51 §§ 1(1) and 3 of the Russian Code of Criminal Procedure. However, as it follows from the appeal decision of 10 January 2003, the appeal court did not verify whether the applicant had indeed chosen not to be represented at the hearing. In such circumstances, the Court considers

that it cannot be said that the applicant had waived his right to legal assistance in an unequivocal manner.

59. The Court has already held that the situation in a case involving a heavy penalty where an appellant was left to present his own defence unassisted before the highest instance of appeal was not in conformity with the requirements of Article 6 (see *Maxwell v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-C, § 40). It discerns nothing in the material in its possession, to find otherwise in the present case.

60. In view of the aforementioned considerations the Court concludes that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. ALLEGATION OF HINDRANCE IN THE EXERCISE OF THE RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

61. The applicant complained that on many occasions the authorities had interfered with his correspondence with the Court. In particular, he alleged that his copies of documents concerning the criminal proceedings against him had been unlawfully confiscated by the prison administration, that the authorities had refused to send some of his letters, that the Court's letter of 28 June 2007 had been opened by an officer of the correctional institution and that he had not received many of the Court's letters. The Court decided to examine his complaint from the standpoint of the right of individual petition guaranteed by Article 34 of the Convention, which reads:

“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.”

A. The parties' submissions

1. *The applicant*

62. The applicant submitted that on 8 April 2003 the guards at transit prison IZ-56/1 took all the documents he had prepared to submit as part of his application to the Court. The documents included witnesses' statements, minutes of the courts' hearings and courts' rulings. He further submitted that on several occasions the administration of correctional institution IK-6 refused to dispatch his letters addressed to the Court on different pretexts. For example, once a letter was returned because the envelope was dirty.

63. As regards the Court's letter of 28 June 2007, the applicant refused to accept it because it had been presented to him in an open envelope. The

administration made a photocopy of the letter and tried to make him accept it on 5 December 2007.

64. As regards the alleged refusal of the post office to send his letter in an envelope covered with adhesive tape on 29 October 2008, the applicant considered that explanation to be the authorities' conjecture. In his opinion, the administration of the correctional facility had intended to open his letter to read its content. However, it had not been possible for them to do so as the envelope had been covered with adhesive tape. Accordingly, they had asked him to resubmit the letter in another envelope which they could have opened without any difficulty.

65. Lastly, he observed that many of the Court's letters concerning the communication of his application had not been delivered to him. He noted that all of them had been addressed to his previous address since his notifications of the change of address had never reached the Court on account of the authorities' failure to dispatch his letters.

2. The Government

66. The Government contested the applicant's arguments. In their opinion, the applicant had fully exercised his right to apply to the Court. They relied on the copies of the incoming and outgoing correspondence logs submitted and the certificates prepared by the correctional institutions where the applicant had been serving his sentence.

67. As regards the events of 8 April 2003, they submitted that all the personal effects and documents had been duly returned to the applicant against a signed receipt. In response to the applicant's complaint, the regional department of corrections carried out an inquiry. When questioned, one of the guards reported that the applicant had received all his property and signed the log and the receipt accordingly. The Government submitted a copy of the guard's report of 17 September 2003 (his name is illegible). No copy of the log or the receipt signed by the applicant was provided. The Government further submitted a copy of the applicant's statement of 22 September 2003 that he did not have any claims against the administration of transit prison IZ-56/1.

68. The Government denied that the applicant tried to send any letters to the Court on 5 May and 9 July 2003 or 14 September 2004. According to the outgoing correspondence log, the applicant sent out twelve letters in 2003-2004. However, the log did not contain any entry confirming that the applicant sent out any of the three letters in question. Nor were the applicant's allegations true with regard to the authorities' failure to send his letter of 13 January 2003 to the Court promptly. The letter in question was submitted for dispatch only on 30 March 2004 and it went out on the next day. In any event, the applicant's allegations were untrue given that he was not detained at correctional institution IK-6 on 13 January 2003. He arrived

there only on 10 April 2003 and could not, therefore, have asked the administration of the institution to send his letter in January 2003.

69. As regards the non-delivery of the Court's letters of 7 September 2006, 3 January and 12 February 2007, the Government conceded that they did not reach the applicant. However, this fact alone could not be regarded as the hindrance of the applicant's right to individual petition. Besides, there is no proof, such as a DHL receipt, confirming that the letters had actually been delivered to the correctional institution indicated in the address. The applicant had been in part responsible for their loss since he had failed to inform the Court of the change in his address. The Government also noted that the Court's letter of 28 June 2007 had been duly received by correctional institution IK-4 and forwarded to correctional institution IK-8 where the applicant was serving his sentence at the time.

70. As regards the opening of the Court's letter of 28 June 2007, in the Government's view it had been an honest mistake on behalf of the officer in charge who, incidentally, had no knowledge of English and could not have read the letter. For her failure to carry out her duties, she was subjected to a disciplinary action and subsequently dismissed. The applicant refused to accept the opened letter and the subsequent attempts of the administration to meet with him to deliver the letter were to no avail. The administration's actions should not be construed as attempts to intimidate the applicant or put undue pressure on him with regard to his application before the Court. When the applicant failed to respond to the summonses, no action was taken against him. The purpose of the meeting held on 5 December 2007 was to add certain information to the applicant's personal file. Since the file also contained the Court's letter addressed to the applicant who had earlier refused to accept it, the officer tried to deliver the letter to the applicant one more time.

71. Referring to the refusal of the post office to dispatch the applicant's letter of 28 October 2008 to the Court, the Government submitted that the envelope had not been in compliance with applicable standards since it had been covered with adhesive tape. Once the applicant resubmitted the letter in a standard envelope, it was duly sent to the Court.

72. In sum, the Government opined that the facts complained of by the applicant did not support his allegations of the hindrance of his right of individual petition. Nor was any undue physical or psychological pressure put on him by the authorities with regard to his application to the Court.

B. The Court's assessment

73. The Court notes that the applicant referred to many acts and omissions on the part of the authorities which had allegedly amounted to the hindrance of his right of individual petition. Having regard to the arguments of the parties, the Court does not consider it necessary to examine all of

them. Instead, the Court will concentrate on the non-delivery of the Court's correspondence to the applicant.

74. The Court reiterates that the right of individual petition under Article 34 of the Convention will operate effectively only if an applicant can interact with the Court freely, without being subjected to any form of pressure from the authorities to withdraw or modify his or her complaints (see *Akdivar and Others v. Turkey*, no. 21893/93, § 105, ECHR 1996-IV). 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 or having a "chilling effect" on the exercise of the right of individual petition by applicants and their representatives (see *Fedotova v. Russia*, no. 73225/01, §§ 48-51, 13 April 2006; *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002; and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV).

75. The Court observes that in 2006-2008 seven of the Court's letters never reached the applicant. It is true that the applicant was transferred from one correctional institution to another on several occasions and the Court was not informed accordingly of the change of his address. Admittedly, the dispatch of the letters to the applicant's previous address contributed to the risk of their non-delivery. Even though, under the domestic regulations, it was incumbent on the correctional institutions to forward the letters to the applicant after the change of his address (see paragraph 45), the Court is prepared to accept that some of these letters might have been lost through malfunctioning of the postal service. However, the total number of the letters lost is too high to be viewed as merely accidental. Furthermore, the Court notes that the two letters that had been sent by registered mail were not lost. The first letter of 28 June 2007 arrived at correctional institution IK-4 when the applicant was no longer detained there. Nevertheless, the authorities made sufficient efforts to forward the letter to his new place of detention. The other letter of 8 January 2008 was returned to the Court with a postal note stating that the applicant could not be found at the address indicated. In this respect the Court notes that the Government did not provide any explanation as to why the administration of IK-4 had failed to comply with their obligation to forward the letter to another correctional institution where the applicant was detained at the time.

76. The Court further observes that the non-delivery of the Court's letters to the applicant caused serious delays in the examination of his case. In 2006-2007 the four letters concerning the communication of the case to the Government did not reach the applicant at all, which resulted in a delay of over a year in the proceedings pending before the Court. Another delay of approximately nine months occurred on account of the authorities' failure to deliver the Court's letters to the applicant in 2008.

77. In view of the foregoing, the Court finds that, by causing, through their acts and omissions, the non-delivery of the Court's correspondence to the applicant, the Russian authorities failed to ensure his effective and open access to the Court. The Court therefore concludes that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. Lastly, the applicant complained under Article 6 § 3 (c) that he had been denied legal assistance during the preliminary investigation, that the legal assistance of a state-appointed lawyer during the trial had not been effective and under Article 1 of Protocol No. 1 that his personal property had been stolen in April 2003.

79. Having regard to all the material in its possession and in so far as it falls within its competence, the Court finds that the evidence discloses no 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed that he had incurred pecuniary and non-pecuniary damage as a result of the infringement of his rights set out in the Convention. He did not indicate any specific amount asking the Court to determine it.

82. The Government noted that the applicant had failed to submit any document to substantiate his claims for pecuniary damage. As regards his claims for non-pecuniary damage, the Government submitted that the applicant's allegations should not give rise to an award of any compensation under this head. In any event, they considered that the finding of a violation would constitute sufficient just satisfaction.

83. The Court considers that the applicant has failed to substantiate his claim of pecuniary damage incurred and, therefore, rejects it. On the other hand, the Court considers that the applicant must have suffered non-

pecuniary damage as a result of the authorities' failure to provide him with legal assistance during the appeal proceedings and to comply with their obligations under Article 34 of the Convention, and that this would not be adequately compensated by the finding of a violation alone. Making its assessment on an equitable basis, it awards him EUR 1,500 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

84. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

85. 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. *Declares* the complaint concerning lack of legal assistance in the appeal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
3. *Holds* that the State has failed to meet its obligation under Article 34 of the Convention;
4. *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, EUR 1,500 (one thousand and five hundred euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President