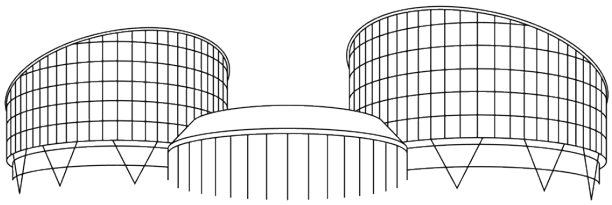

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KARPENKO v. RUSSIA

(Application no. 5605/04)

JUDGMENT

STRASBOURG

13 March 2012

FINAL

24/09/2012

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

In the case of Karpenko v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 21 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 5605/04) 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 Kirill Valeryevich Karpenko ("the applicant"), on 17 December 2003.

2. The applicant, who had been granted legal aid, was represented by Ms L. Churkina, a lawyer practising in Yekaterinburg. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been unable to confront prosecution witnesses in open court and that the authorities had refused to ensure his presence in proceedings concerning his parental rights.

4. On 24 October 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lived until his arrest in Yekaterinburg. He is serving a sentence in a correctional colony in the town of Nevyansk, in the Sverdlovsk Region.

A. Criminal proceedings in respect of the charge of robbery

1. Proceedings in 1998 against the applicant's presumed accomplices

6. On 8 April 1998 the Revdinsk Town Court found Mr Sh. and Mr B. guilty of several counts of aggravated robbery. In particular, the Town Court found it established that on 5 October 1995 the defendants, acting together with the applicant, the criminal proceedings against whom had been adjourned in view of his absconding during the investigation, and Mr O., the criminal case against whom had been closed following his death, had robbed a warehouse in the village of Vavozh in the Udmurtiya Republic. The Town Court further held that on 19 November 1995 defendant B., assisted by Mr R., the criminal proceedings against whom had been stayed following his escape, the applicant and Mr O. had robbed several warehouses in the village of Kungurka in the Sverdlovsk Region. At the same time, the court acquitted Mr Sh. of an additional robbery charge, having found no evidence in support of the accusation that on 17 September 1996 he and Mr R., Mr O., Mr V. and the applicant had participated in another robbery in the village of Novoye Selo in the Sverdlovsk Region

7. As regards the robbery in the village of Vavozh, the conviction was based on testimonies by defendant Sh. and the director general of the company and owner of the warehouse, Mr P., and on written depositions made during the pre-trial investigation by a warehouse guard, Mr M., and Mr O. The statements were as follows:

- defendant Sh. partly admitted his guilt. He argued that, having agreed to the applicant's proposal and acting on the latter's detailed instructions, he had gone to the warehouse. The applicant had forced him to watch over the warehouse guard, whom the applicant had beaten and tied up. Mr Sh. also admitted that he had helped the applicant and Mr R. to load stolen goods into a car and had received money from the applicant for his participation in the robbery;
- in his written statements Mr O. had given a similar account of the events;
- the company director stated that on the morning of 5 October 1995 he had been informed of the robbery. Having arrived at the warehouse, he had noticed that the guard had been severely beaten up;
- the warehouse guard testified that on 5 October 1995 two unknown individuals, whom he was unable to identify, had attacked him, beaten and tied him up. He had then heard someone robbing the warehouse.

8. As to the robberies in the village of Kungurka, the grounds for the conviction were testimonies made by defendant B. and the representative of the owner of the warehouse, Mr A., in open court and on written depositions by a warehouse guard, Mr Kh. and late Mr O., which they had made to the investigating authorities.

9. Defendant B. partly admitted his guilt and stated that in November 1995 the applicant, taking advantage of his trust, had asked him to help load a car. They had gone to the warehouse. Acting on the orders of the applicant, of whom he was afraid, Mr B. had helped to move the goods from the warehouse.

10. The representative of the owner of the warehouse confirmed that there had been a robbery at the warehouse.

11. In his statements to the investigators, Mr O. had admitted to having helped the applicant and Mr R. to rob the warehouse.

12. The guard Kh. stated that on 19 November 1995 two unknown persons had broken into the warehouse, tied him up and stolen goods.

13. The Town Court's decision to acquit defendant Sh. of the robbery charge pertaining to the events in the village of Novoye Selo was based on the testimony by Mr Sh. and written depositions by a warehouse guard, Mr Me., and by Mr O.

14. Mr Sh. insisted that in September 1996 the applicant had asked him to drive him to the village, having promised money for his help. He had agreed on the condition that his assistance would not involve any criminal activities. Mr Sh. claimed to have had no knowledge that the applicant and Mr R. had committed the robbery.

15. The warehouse guard, Mr Me., stated that on 17 September 1996 an unknown man had attacked him, beaten and tied him up. He did not remember the attacker.

16. In his written depositions Mr O. admitted having assisted the applicant and Mr R. in their plan to rob the warehouse.

17. The judgment of 8 April 1998 became final on 20 May 2000, having been upheld on appeal.

2. Proceedings in 2001-2004 against the applicant

18. As indicated above (see paragraph 6 above), the applicant had absconded and the criminal proceedings against him had therefore been adjourned. On 25 September 2001 he was arrested in the town of Neftekamsk. Two days later he was transferred to Yekaterinburg and placed in temporary detention facility no. 1.

19. A month later the Sverdlovsk Regional Prosecutor served the applicant with a bill of indictment, accusing him of organising the robberies of the warehouses in the villages of Vavozh, Kungurka and Novoye Selo. The charges were based, *inter alia*, on statements made by Mr Sh. and Mr B. during interrogations and confrontation interviews between them and the applicant in the course of the criminal proceedings against the applicant. The two accomplices maintained their testimony given during the 1998 criminal proceedings (see paragraphs 7, 9 and 14 above). In June 2002 the case was committed for trial.

20. On 19 February 2003 the Revdinsk Town Court held the first trial hearing, to which the applicant's alleged, and already convicted, accomplices in the robberies, Mr Sh. and Mr B., as well as other persons whose written depositions or testimony in open court had served as the basis for the judgment of 8 April 1998, were summoned as witnesses (see paragraphs 6-16 above). None of them attended. The Town Court noted in the minutes of the hearing that the guard of the warehouse in Novoye Selo had died, Mr B. had travelled to Chelyabinsk on a business matter and Mr Sh. lived in another town. The reasons for the absence of the remaining witnesses were unknown. The Government provided the Court with a typed copy of a letter of 27 January 2003 from Mr Sh. informing the Town Court that in view of financial difficulties and his inability to leave his business matters unattended he had been unable to attend the trial. The Government also submitted a copy of a telegram sent by Mr Sh. to the Town Court on 3 February 2003. Mr Sh. had confirmed his inability to appear at the trial against the applicant and fully maintained the statements he had made during the pre-trial investigation and the court proceedings leading to his conviction in 1998.

21. The applicant's lawyer successfully asked the Town Court to hear evidence from Mr V., an accomplice to the robbery committed in Novoye Selo on 17 September 1996, and Mr Ma.

22. During the hearing Mr V. testified that in 1995, having been approached by Mr R., he had driven to the warehouse. On arrival, he had witnessed Mr R., Mr O. and two unknown persons taking goods from the warehouse. The goods had been loaded up on his car. Mr V. had not seen the applicant and had not been aware of his alleged participation in the robbery.

23. Mr Ma. stated that in 1997 Mr R. had brought metal objects to him and had asked him to store them. He had subsequently learnt from the police that the goods had been stolen from a warehouse.

24. At the same hearing, the Town Court heard evidence from a representative of the owner of the warehouse in the village of Novoye Selo, Ms L., who confirmed the theft of goods from the warehouse on 17 September 1996.

25. Upon the parties' request, the Town Court again sent summonses to the witnesses. On 11 April and 19 May 2003 it issued orders to a bailiff's office requiring it to ensure Mr B.'s presence at the hearing. The orders indicated that Mr B. had been properly summoned to the hearings but had failed to attend.

26. No witnesses appeared before the Town Court at the following hearing on 28 May 2003. In view of their absence, the prosecutor asked the Town Court to read out the statements they had made to the investigating authorities in the 1998 proceedings. The applicant and his lawyer objected to the reading out of the statements by the presumed accomplices in the

robberies, Mr Sh., Mr B., Mr R. and Mr O., noting that the applicant had been "denied an effective opportunity to confront those witnesses". At the same time, the applicant argued that during the confrontation interviews the investigator had warned Mr Sh. and Mr B. against changing their earlier statements, threatening them with revocation of their parole and criminal prosecution.

27. The Town Court rejected the objection. Having noted that it was impossible to hear certain witnesses in open court owing to their deaths, and having taken into account that the applicant had had confrontation interviews with Mr B. and Mr Sh. during the pre-trial investigation against him, the court proceeded with the reading out of the witnesses' statements.

28. On 29 May 2003 the Revdinsk Town Court found the applicant guilty of aggravated robbery committed in the village of Vavozh on 5 October 1995, in the village of Kungurka on 19 November 1995 and in the village of Novoye Selo on 17 September 1996 and sentenced him to eight years' imprisonment. In addition to the written depositions by the witnesses, the conviction was based on records of crime-scene examinations and inventories showing that goods had been stolen from the warehouses.

29. In the judgment of 29 May 2003 the Town Court addressed the applicant's objection to the use of the statements by witnesses whom he had been unable to cross-examine in open court. It held as follows:

> "The court cannot agree with [the applicant's] and his lawyer's statement that the accusations against him are based on statements by persons with a vested interest [in his conviction] and who cannot be trusted.
>
> The fact that Mr Sh., Mr B., Mr R. and Mr O. had taken part in the criminal acts of which [the applicant] stands accused cannot call into question the truthfulness of their statements. In exposing [the applicant] they, at the same time, [admitted to their own guilt] in [respect of] those crimes. In particular, Mr B. and Mr Sh. have already been punished for that.
>
> As the case-file materials show ... Mr R. willingly went to the Sverdlovsk Regional Police Department and wrote a confession statement in which he described the robberies he had committed together with [the applicant], Mr Sh., Mr O., Mr B. and Mr V.. At the same time, he did not play down the importance of his role in the criminal acts.
>
> [The applicant's] statement that Mr B., Mr Sh. and Mr O. had slandered him because Mr R. had forced them to do so is wanton and unsubstantiated. The fact that Mr Sh. had been convicted of having slandered other persons in the course of unrelated criminal proceedings cannot serve as an undisputable ground for doubting the truthfulness of his statements in the present case.
>
> The court cannot accept [the applicant's] and his lawyer's argument that the court has violated the principle of direct examination of evidence at a court hearing and the defendant's right to defend himself. The statements which were read out at the court hearing are admissible evidence because interrogations and confrontations with those persons had been conducted in accordance with the requirements of the Code of

Criminal Procedure. The court did not have an opportunity to question those persons at the court hearing because, despite every possible measure taken, it was unable to establish their places of residence.

However, the law allows the reading out in court of statements by defaulters."

30. The applicant and his lawyer appealed. In particular, they argued that the conviction was exclusively based on statements by the witnesses questioned by the investigating authorities whom the applicant had been unable to confront in open court.

31. On 19 September 2003 the Sverdlovsk Regional Court upheld the judgment, endorsing the reasons given by the Town Court. In response to the applicant's arguments concerning the admissibility of evidence, the Regional Court held as follows:

"The pre-trial investigation and trial were conducted thoroughly and objectively, in accordance with the requirements of the criminal procedural law and in compliance with the rights and lawful interests of the [applicant] and other parties to the criminal proceedings. [The applicant's] right to defence was not violated. Confrontations between [the applicant] and Mr B. and between [the applicant] and Mr Sh. were conducted in accordance with the requirements of Articles 162 and 163 of the RSFSR Code of Criminal Procedure, [and] the lawyer... protected the [applicant's] interests in the course of those investigative procedures.

The court correctly established the factual circumstances and the conclusions set out in the judgment completely correspond to [the facts]. The judgment is based on evidence examined at the court hearing and the court gave a correct interpretation to it. The court fully and objectively examined the materials of the criminal case file ...

At the hearing the court examined the prosecutor's motion to read out the statements by [ten witnesses, including the four alleged accomplices]; it heard the parties' opinion concerning that issue and ... it issued a decision.

The decision taken by the court to read out the statements of the above-mentioned persons is appropriately reasoned, substantiated and correct. The court considered that the statements which were to be read out at the hearing had been collected in accordance with the requirements of the criminal procedural law, that by virtue of Article 128 of the Constitution of the Russian Federation justice is executed on the basis of equality of the parties, that by virtue of Article 15 § 1 of the Constitution of the Russian Federation [the Constitution] has supreme legal effect in the Russian Federation and other laws cannot contradict its principles and rules. Mr O. ... had died before the trial commenced, Mr R. absconded [and] his place of residence was unknown to the court, the other witnesses defaulted despite being summoned by the court, [the applicant] had confrontations with Mr Sh. and Mr B. during which they entirely confirmed their statements.

In such circumstances, the reading out of the statements by the abovementioned persons corresponded to the principle that criminal proceedings in the Russian Federation should be adversarial; the court compared the statements to other evidence in the case and evaluated them in accordance with the requirements of the law.

> [The applicant's] guilt was confirmed by the statements by the [witnesses, including those by the alleged accomplices] and evidence contained in the written materials of the file. The court examined the arguments of the defendant and his lawyer that [the alleged accomplices] had slandered [the applicant] and it correctly concluded that there were no grounds for doubting their statements because they completely correspond to the circumstances of the case and are corroborated by other evidence. [The alleged accomplices], while exposing [the applicant's] guilt, did not play down their own involvement in the case; Mr Sh. and Mr B. were convicted of the crimes committed. In such circumstances the court had no reason to doubt the statements by [those witnesses]."

B. Criminal proceedings in respect of the murder charge

32. On 20 May 2003, having studied the voluminous case file comprising material, documentary and expert evidence and having heard a substantial number of witnesses, the Sverdlovsk Regional Court found the applicant, who was represented by counsel throughout the proceedings, guilty of unlawful possession of a weapon and forgery of documents. The applicant was also found guilty of having aided and abetted aggravated murder and was sentenced to fifteen years' imprisonment.

33. The judgment became final on 9 October 2003 when the Supreme Court of the Russian Federation upheld the conviction for murder and unlawful possession of a weapon, discontinued the criminal proceedings in respect of the charge of forgery of documents and reduced the sentence by two months. The Supreme Court noted that the Regional Court's findings were based on a thorough and well-reasoned analysis of extensive evidence presented both by the prosecution and defence.

34. According to the applicant, while the criminal proceedings against him were still pending, local newspapers published several articles expressing the opinion that he was guilty of the murder.

C. Proceedings for termination of parental rights

35. While the applicant was serving his sentence, his former wife lodged an action before the Kirovskiy District Court of Yekaterinburg seeking termination of the applicant's parental rights over their child.

36. In January 2005 the District Court sent a copy of the statement of claim with attachments to the correctional colony where the applicant was held, asking him to provide observations in reply by 1 March 2005.

37. The observations from the applicant arrived on 14 April 2005. At the same time, the applicant asked the District Court to call Ms S. as his representative and provided a list of witnesses to be called on his behalf, including his parents and sister. Two weeks later Ms S. sought leave with the District Court for the applicant to appear in court.

38. On 25 October 2005 the applicant received a copy of a decision by which the Kirovskiy District Court had fixed a preliminary hearing. The applicant immediately sent a letter to the District Court explaining that he was serving a prison sentence and seeking leave to attend.

39. In November 2005 the applicant repeated his request. No reply followed.

40. A prosecutor who attended the hearings before the District Court sought dismissal of the action, arguing that the applicant had been unable to actively participate in his child's life for practical reasons but was interested in maintaining a relationship with the child. The prosecutor noted that the applicant's relatives regularly passed on information to him about his child.

41. It appears from the parties' submissions that the District Court called one witness from the applicant's witness list, his sister, having refused to call his parents.

42. On 16 December 2005 the Kirovskiy District Court, in the presence of the applicant's representative, upheld the action and terminated the applicant's parental rights, having considered that his absconding from the law-enforcement authorities and being on the run for a long time could not be accepted as a valid justification for his failure to fulfil his parental responsibilities. The District Court stressed that the applicant and his representative had not provided it with evidence to demonstrate that the applicant had effectively carried out his parental role.

43. A month later the applicant received a copy of the judgment. He lodged an appeal, arguing that he had been unable to present his arguments before the District Court due to his absence from the hearings. He further asked that his presence at the appeal hearing be ensured.

44. On 28 February 2006 the Sverdlovsk Regional Court, in the presence of the applicant's representative, upheld the judgment of 16 December 2005. Having ruled on the subject of the applicant's attendance, the Regional Court held that the law did not require civil courts to obtain attendance by the parties and that the District Court's responsibility was limited to duly notifying the parties of the hearings.

II. RELEVANT DOMESTIC LAW

A. Witnesses

1. Code of Criminal Procedure of 2001 in force since 1 July 2002

45. The reading out of earlier statements made by a victim or a witness is permitted if the parties give their consent to it and if (1) there are substantial discrepancies between the earlier statement and the later

statement before the court or (2) the victim or the witness is not present before the court (Article 281 § 1).

46. The court may, without seeking the consent of the parties, read out earlier statements by the absent victim or witness in the case of (1) death, (2) serious illness, (3) refusal to appear by the victim or the witness if they are citizens of other States or (4) natural disaster or other *force majeure* circumstances (Article 281 § 2).

47. If a witness or a victim does not obey a summons to appear without a valid reason, they may be brought to the courtroom under escort (Article 113).

48. Witnesses and victims are entitled to the reimbursement of costs and expenses incurred in connection with their participation in the criminal proceedings (Article 131).

B. Reopening of criminal proceedings

49. Article 413 of the Russian Code of Criminal Procedure, setting out the procedure for the reopening of criminal cases, reads, in so far as relevant, as follows:

> "1. Court judgments and decisions which became final should be quashed and proceedings in a criminal case should be reopened if there are new or newly discovered circumstances.
>
> ...
>
> 4. New circumstances are:
>
> ...
>
> (2) a violation of a provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms committed by a court of the Russian Federation during examination of a criminal case and established by the European Court of Human Rights, pertaining to:
>
> (a) application of a federal law which runs contrary to provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
>
> (b) other violations of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms;
>
> (c) other new circumstances."

C. Provisions on attendance at hearings

50. The Code of Civil Procedure of the Russian Federation ("the CCP") provides that individuals may appear in court in person or may act through a representative (Article 48 § 1).

51. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77 § 1). The Code does not mention any possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or a defendant.

52. On several occasions the Constitutional Court has dismissed as inadmissible complaints by detainees whose requests for leave to attend hearings were refused by civil courts. It has reasoned that the relevant provisions of the Code of Civil Procedure and the Penitentiary Code do not, as such, restrict a detainee's access to court. The Constitutional Court has emphasised nonetheless that an imprisoned person should be able to make submissions to a civil court, either through a representative or in any other way provided by law. If necessary, a hearing should be held at the convict's place of detention, or the court committed to hear the civil case may instruct the court with territorial jurisdiction over the convict's place of detention to obtain his/her submissions or to take any other procedural steps (decisions 478-O of 16 October 2003, 335-O of 14 October 2004 and 94-O of 21 February 2008).

D. Other relevant provisions of the CCP

53. Under Articles 58 and 184 of the CCP a court may hold a session elsewhere than in a courthouse if, for instance, it is necessary to examine evidence which cannot be brought to the courthouse.

54. Article 392 of the CCP contains a list of situations which may justify the reopening of a finalised case on account of newly discovered circumstances. A judgment of the European Court of Human Rights finding a violation of the European Convention on Human Rights in a case in respect of which an applicant lodged a complaint with the Court should be considered a new circumstance warranting a reopening (Article 392 § 4 (4)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF INABILITY TO CONFRONT WITNESSES IN THE PROCEEDINGS ON ROBBERY CHARGES

55. The applicant complained, under Article 6 §§ 1 and 3 (d) of the Convention, that he had been denied a fair hearing in that he had not been given an opportunity to confront, in open court, his four alleged accomplices in the robberies he was charged with. Article 6 reads, in so far as relevant:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;"

A. Submissions by the parties

56. The Government argued that the Redvinsk Town Court had read out statements by ten witnesses. The applicant and his lawyer had only opposed the reading out of the statements by his four presumed accomplices in the series of robberies carried out in 1995 and 1996. The Town Court had thoroughly examined the objection and dismissed it, having found that the statements had been made in compliance with the requirements of the Russian Code of Criminal Procedure and that it had been impossible to obtain attendance by those four witnesses. One of the former accomplices had died and the whereabouts of the remaining three had been unknown. The Government pointed out that the Town Court had taken every possible measure to ensure the witnesses' attendance. Summonses had been sent and the trial court had ordered that Mr Sh. and Mr B. be brought to the hearings under escort. However, the court's orders could not be followed through as Mr Sh. had moved to another city and his relatives had not known his new address and Mr B. had been on a business trip outside the Sverdlovsk Region. Failing all the attempts to obtain the witnesses' testimony in open court, the Town Court had had no choice but to accept the prosecutor's

request for the statements they had made to the investigating authorities to be read out.

57. The Government considered it important that the applicant had been afforded the opportunity to confront Mr Sh. and Mr B. during the pre-trial investigation. He had also been able to challenge their written depositions in open court. In conclusion, the Government drew the Court's attention to its findings in the cases of *Lüdi v. Switzerland* (15 June 1992, Series A no. 238) and *Lucà v. Italy*, (no. 33354/96, ECHR 2001-II). They stressed that it had been the Court's long-standing position that evidence obtained at earlier stages of proceedings could be used at trial on the condition that the defendant be given an adequate opportunity to challenge it, either at the moment when such evidence was collected or at a later stage of the proceedings.

58. The applicant stated that with the admission of the pre-trial statements by his four alleged accomplices the Town Court had violated the requirements of the Russian law on criminal procedure. He insisted that such an admission would only have been possible upon his consent, which he had not given. The applicant further argued that it should have been evident to the Town Court that the witnesses had been forced to slander him. In that situation, it had been particularly important to hear evidence from those witnesses in person, to observe their demeanour and verify their credibility.

B. The Court's assessment

1. Admissibility

59. Given that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial set forth in paragraph 1, it is appropriate to examine this complaint under the two provisions taken together (see *Asch v. Austria*, 26 April 1991, § 25, Series A no. 203).

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

2. Merits

(a) General principles

61. According to the Court's case-law, the right to a fair trial presupposes that all the evidence must normally be produced at a public hearing, in the presence of an accused, with a view to adversarial argument. The Court reiterates the principles laid down in its judgment of *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06,

§ 147, 15 December 2011), according to which where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance in the case.

62. The Court further observes that the rights of the defence require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him or her either when the statements were made or at a later stage of the proceedings (see *Saïdi v. France*, 20 September 1993, § 43, Series A no. 261-C, and *A.M. v. Italy*, no. 37019/97, § 25, ECHR 1999-IX). The use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected. In particular, in the event that the witnesses cannot be examined and that this is due to the fact that they are missing, the authorities must make a reasonable effort to secure their presence (see *Artner v. Austria*, 28 August 1992, § 21 in fine, Series A no. 242-A; *Delta v. France*, 19 December 1990, § 37, Series A no. 191-A; and *Rachdad v. France*, no. 71846/01, § 25, 13 November 2003).

(b) Application of the general principles to the present case

63. The Court observes that the Revdinsk Town Court read out statements by ten prosecution witnesses, including Mr Sh., Mr B., Mr O. and Mr R., the applicant's alleged accomplices in the robberies. None of them attended the trial or gave statements in open court. In the light of the applicant's complaints, the Court must establish whether the use of the statements made by the four accomplice witnesses to the investigating authorities, coupled with the fact that the applicant was not able to confront them in court, amounted to a violation of his right to a fair trial.

64. The Court reiterates that in addition to the pre-trial depositions by the ten witnesses, the Town Court relied on material evidence. Another witness for the prosecution, Ms L., testified before the trial court that the warehouse had been robbed on 17 September 1996. The two witnesses for the defence, Mr V. and Mr Ma., denied any knowledge of the applicant's involvement in the robberies and implicated Mr R. The applicant pleaded innocent.

65. As to the statements by the prosecution witnesses, excluding the four accomplice witnesses, the Court observes that those witnesses did not provide any information which could have, even remotely, implicated the applicant in the robberies and only made observations on the fact of the commission of the crimes. None of them identified the applicant as the

alleged perpetrator. The material evidence presented by the prosecution had the same evidentiary weight. The records, materials and inventories were species of proof that the robberies had, in fact, taken place. They did not have any probative value which would allow the conclusion that the applicant had committed the criminal offences in question.

66. The conclusion is, however, different when the Court comes to examine the statements made by the four remaining witnesses for the prosecution. At the same time, the Court considers it necessary to distinguish the depositions made by Mr O. and Mr R. from those made by Mr B. and Mr Sh.. It reiterates that, unlike Mr B. and Mr Sh., who testified both as defendants during the criminal proceedings against them and as witnesses in the course of the pre-trial investigation against the applicant, Mr O. and Mr R. were only questioned as co-accused in the criminal case against them (see paragraphs 6 and 19 above). Mr O.'s death and Mr R.'s escape made their questioning or confrontation with the applicant at a later stage impossible. In this respect, the Court reiterates that a higher degree of scrutiny should be applied to the assessment of statements by co-accused, because the position in which accomplices find themselves while testifying is different from that of ordinary witnesses. They do not testify under oath, that is, without any affirmation of the truth of their statements which could render them punishable for perjury for wilfully making untrue statements. The Court has already held on a number of occasions that for the guarantees of Article 6 of the Convention to be respected on account of the admissibility of a guilty plea by a co-accused, such a plea should only be admitted to establish the fact of the commission of a crime by the person making the plea, and not the other defendant, and a judge should make it clear that the guilty plea by itself does not prove that the defendant was involved in that crime (see, for instance, *Vladimir Romanov v. Russia*, no. 41461/02, § 102, 24 July 2008, with further references). The Court, therefore, considers that neither Mr O. nor Mr R. was a material witness whose evidence was crucial for the applicant's conviction. Given this finding, it does not consider it necessary to look any further into the reasons for their absence from the trial and the applicant's inability to confront them. Having regard to the evidential value of the witnesses' statements and material evidence, the Court considers that the depositions made by Mr B. and Mr Sh. during the pre-trial investigation and read out by the Town Court constituted virtually the sole direct and objective evidence on which the courts' findings of the applicant's guilt were based.

67. The Court observes that the main thrust of the applicant's complaint was the alleged lack of an adequate opportunity to examine Mr B. and Mr Sh., or have them examined, in court, in particular on account of the alleged lack of any reasonable effort on the part of the national authorities to ensure their presence at the trial. In this respect, the Court reiterates that the applicant took part in confrontation interviews with Mr B. and Mr Sh.

during the pre-trial investigation which, according to the Government, dispensed the Town Court from the obligation to obtain their attendance (see paragraph 19 above).

68. The Court, however, considers that a close look at its case-law does not allow it to conclude that the very fact of an accused's participation in confrontation interviews with witnesses at the pre-trial stage can, in itself, strip him or her of the right to have those witnesses examined in court. The Court has consistently held that the evidence must be produced "live" before the body called upon to assess the case and determine the facts. This relates in the first place to the trial, which is the central aspect of criminal proceedings and applies to witness evidence, which the defence must be able to question in open court (see *Lüdi*, cited above, § 27; *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 51, *Reports of Judgments and Decisions* 1997-III; *Solakov v. "the former Yugoslav Republic of Macedonia"*, no. 47023/99, § 57, ECHR 2001-X; and *S.N. v. Sweden*, no. 34209/96, § 44, ECHR 2002-V).

69. On the issue of the confrontation interviews between the applicant and his two alleged accomplices, Mr Sh. and Mr B., the Court reiterates its finding in a similar case against Russia. In particular, in the case of *Melnikov v. Russia* (no. 23610/03, §§ 79-81, 14 January 2010) the Court held that a confrontation interview conducted, in the absence of defence counsel, by an investigator who did not meet the requirements of independence and impartiality, and had a large discretionary power to block questions during the confrontation could not in the circumstances be considered an appropriate substitute for the examination of the witness in open court. The Court has also held that the appearance of a key witness before the trial court was of crucial importance to enable it to make an effective assessment of his demeanour and of the reliability of his deposition (ibid, §§ 79-81, with further references). The Court abides by this finding in the present case. It observes that the Government did not allege that the applicant benefited from legal assistance during the confrontation interviews. The Court does not doubt that the domestic courts undertook a careful examination of Mr B.'s and Mr Sh.'s written statements and gave the applicant an opportunity to contest them at the trial, but this can scarcely be regarded as a proper substitute for a personal observation of the leading witnesses giving oral evidence (see *Bocos-Cuesta v. the Netherlands*, no. 54789/00, § 71, 10 November 2005). The present conclusion is even more salient in a situation when one of the leading witnesses had already been held liable for lying under oath (see paragraph 29 above) and there was a possibility that the witnesses had been intimidated into maintaining the statements they made on earlier occasions (see paragraph 26 above). The Court, therefore, is unconvinced that the applicant's participation in the pre-trial confrontation interview with Mr Sh. and Mr B. could have been, on its own, taken by the Town Court as a

circumstance relieving it of the responsibility to hear those two witnesses in person.

70. Having said that, the Court reiterates that it occasionally accepted that the reading out of witness statements obtained at the pre-trial stage was not inconsistent with Article 6 §§ 1 and 3 (d) of the Convention. At the same time, it has seen that situation as an exception which required convincing justification, such as an impossibility to examine an absent or otherwise missing witness when the authorities' reasonable efforts to secure his or her presence were futile (see, for instance, *Artner*, cited above, §§ 20-24); an interest in keeping the identity of the witness secret – such as, for example, where undercover agents were involved (see, for example, *Lüdi,* cited above, §§ 45-50); the need to protect the life, liberty or security of the witness intimidated by the accused or his associates (see *Doorson v. the Netherlands*, 26 March 1996, *Reports* 1996-II); and the necessity to protect victims-witnesses of sexual offences who risk being further traumatised by confrontations with the alleged perpetrator (see *P.S. v. Germany*, no. 33900/96, 20 December 2001).

71. However, the Court has never limited its analysis to the mere finding that a case falls under one of those exceptions. If the respondent Government relied in its arguments on one of these exceptional situations and the Court established that the conviction was based solely or to a decisive extent upon the untested witness statement, it proceeded in three steps. It commenced the review with an examination of the reasons invoked as an exception and determined whether they had actually existed and whether they had been subject to thorough examination by the national authorities. The Court then considered whether the restrictions on the defence rights had been kept to a very minimum, and whether they had been strictly necessary in order to satisfy a legitimate aim. The final step in the Court's review was an examination of whether the shortcomings in safeguarding the rights of the defence were adequately compensated for (see *Al-Khawaja and Tahery*, cited above, § 152).

72. Having found that the applicant's conviction was based, to a decisive extent, on Mr B.'s and Mr Sh.'s pre-trial depositions (see paragraph 66 above), the Court will assess the circumstances of the present case in line with the test described in the previous paragraph.

73. The Court takes note of the Government's argument that the absence from the trial of the two witnesses was due to the Town Court's inability to establish their whereabouts despite every possible effort. In particular, they stated that Mr Sh. had moved to another town without informing his relatives of his new address and Mr B. had been on a business trip outside the Sverdlovsk Region. The Court, however, observes that at least on two occasions in January and February 2003 Mr Sh. informed the Town Court of his whereabouts, noting that a difficult financial situation and business matters precluded his attending the trial (see paragraph 20 above). There is

no indication that the Town Court responded to the information from Mr Sh. in any other way than by sending new summonses to him. As to Mr B.'s attendance, the Court does not lose sight of the fact that the Town Court issued orders urging the bailiff's office to ensure his presence at the trial, including by escorting him to the hearings. The Court, however, is unable to find any evidence confirming the Government's argument that Mr B. had left the Sverdlovsk Region on matters of business. The case-file materials presented by the Government do not provide any information as to the reasons for Mr B.'s failure to attend, or to what actions, if any, the bailiffs' office took to obtain his attendance. At the same time, the Court is particularly mindful of the Town Court's reliance, in its orders of 11 April and 19 May 2003, on the assumption that the summonses had reached Mr B. (see paragraph 25 above).

74. Regard being had to the circumstances of the case, the Court has serious doubts as to whether the Town Court's conclusion that it was impossible to secure the witnesses' attendance can indeed be accepted as warranted. The Town Court's review of the reasons for the witnesses' absence was superficial and uncritical. Given the Government's explanations and the materials in the file, the Court is not satisfied that the Town Court was, in fact, unaware of the witnesses' whereabouts. The Court notes that the Town Court decided to proceed with the reading out of the written depositions by the defaulting witnesses, given that the attempts to obtain their presence had already caused a lengthy stay in the proceedings. While keeping in mind the domestic courts' obligation to secure the proper conduct of the trial and avoid undue delays in the criminal proceedings, the Court does not consider that a stay in the proceedings for the purpose of obtaining the witnesses' testimony, or at least clarifying the issue of their appearance at the trial, in which the applicant stood accused of a very serious offence and risked a long term of imprisonment, would have constituted an insuperable hindrance to the expediency of the proceedings at hand (see *Vladimir Romanov*, cited above, § 104, with further references, and, most recently, *Krivoshapkin v. Russia*, no. 42224/02, § 60, 27 January 2011). The authorities chose to eschew that stay. As a result, the witnesses never appeared to testify in court in the presence of the applicant.

75. In this respect, the Court reiterates that paragraph 1 of Article 6, taken together with paragraph 3, requires the State to take positive steps, in particular, to enable the accused to examine or have examined witnesses against him. Such measures form part of the diligence which the Contracting States must exercise in order to ensure that the rights guaranteed by Article 6 are enjoyed in an effective manner (see *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 67, ECHR 2001-VIII). Having regard to the above considerations, the Court finds that the decision to excuse the absence of the witnesses was not

sufficiently convincing and that the authorities failed to take reasonable measures to secure their attendance at the trial.

76. Having found that the Town Court's decision to dispense with the witnesses' appearance had no justification and bearing in mind the earlier mentioned test (see paragraph 71 above), the Court, in principle, does not need to consider further what effect that decision had on the overall fairness of the criminal proceedings against the applicant and whether the handicap arising from the witnesses' absence from the trial was counterbalanced by the confrontation interviews between the applicant and the witnesses at the pre-trial stage, as the very concept of fairness enshrined in Article 6 requires that judges form their own impression of the witness's reliability and credibility by observing his or her demeanour under questioning in open court, unless the restriction on the right to cross-examine the witness is exceptionally imposed for good cause and with weighty reasoning (see *Vladimir Romanov*, cited above, § 71).

77. In these circumstances, the Court finds that the applicant cannot be regarded as having had a proper and adequate opportunity to challenge Mr B.'s and Mr Sh.'s statements, which were of decisive importance for his conviction, and consequently he did not have a fair trial. There has thus been a violation of Article 6 § 1 taken together with Article 6 § 3 (d) on that account.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN THE PROCEEDINGS ON MURDER, ARMS POSSESION AND DOCUMENTS FORGERY CHARGES

78. Relying on Article 6 of the Convention, the applicant alleged that the criminal proceedings in which he had stood accused of murder, arms possession and documents forgery charges had been unfair as the courts had erred in their assessment of the facts and evidence and had incorrectly applied the domestic law. In his subsequent application forms logged with the Court on 24 July 2006 and 6 July 2007 the applicant amended his complaints, having claimed various procedural violations on the part of the Russian investigating and judicial authorities in those proceedings. The relevant part of Article 6 is cited above.

79. The Court, firstly, observes that the complaints raised by the applicant in the application forms of 24 July 2006 and 6 July 2007 were submitted more than six months after the Supreme Court of the Russian Federation had issued the final judgment in the criminal case on 9 October 2003 (see paragraph 33 above). It follows that this part of the application has been submitted too late and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention

80. As to the remaining complaints raised by the applicant in his original application, the Court notes that it is not its task to act as a court of appeal

or, as is sometimes stated, as a court of fourth instance, in respect of the decisions taken by domestic courts. It is the role of the domestic courts to interpret and apply the relevant rules of procedural or substantive law. It is the domestic courts which are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case. It is also for the domestic courts to exclude evidence which is considered to be irrelevant (see, among many other authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B and *Edwards v. the United Kingdom,* 16 December 1992, § 34, Series A no. 247-B).

81. To that end, the Court observes that the applicant's conviction of murder, arms possession and documents forgery charges was based on extensive documentary, witness and expert evidence and that, in the well-reasoned judgment of 20 May 2003, which was subsequently upheld on appeal, no additional evidence was found to be useful or relevant. The Court also observes that the applicant was duly represented throughout the proceedings and was, therefore, afforded ample opportunity, which he took, to state his case before the domestic court and to challenge the admissibility and use of the evidence.

82. The Court considers that, in so far as the remainder of the "fairness" complaints under Article 6 of the Convention has been substantiated, it raises issues which are of no more than a fourth-instance nature, and which the Court has a limited power to review under that Article (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

83. In sum, the Court considers that, to the extent that the applicant complied with the six-month time-limit, his complaints relating to the "fairness" of his trial are manifestly ill-founded.

84. It follows that the relevant part of the application must be rejected in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF ABSENCE FROM HEARINGS IN CIVIL PROCEEDINGS

85. The applicant complained that both the Kirovskiy District Court and the Sverdlovsk Regional Court had refused to ensure his attendance in the proceedings concerning his parental rights. He relied on Article 6 § 1, which provides, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public ... hearing ... by [a] ... tribunal ..."

A. Submissions by the parties

86. The Government explained that the courts' refusals to secure the applicant's attendance at the hearings had resulted from the absence of a legal norm permitting participation in hearings before civil courts of convicts serving sentences of imprisonment. They also stressed that the applicant's presence had in any case been unnecessary, as he had been represented and the representative had attended the hearings, had made submissions and presented evidence, including by calling witnesses.

87. The applicant maintained his complaint, having argued that the representative had been unable to substitute him in the proceedings as he had had no first-hand knowledge of his relations with his former wife and his child. The opportunity to objectively present his case had been further diminished by the District Court's refusal to hear evidence from witnesses on his behalf. The applicant proceeded by disputing the Government's reading of the Russian law on civil procedure, arguing that there was no legal norm preventing him from appearing in court, despite his being a convict.

B. The Court's assessment

1. Admissibility

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

2. Merits

89. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

90. Article 6 of the Convention does not expressly provide for a right to a hearing in one's presence; rather, it is implicit in the more general notion of a fair trial that a criminal trial should take place in the presence of the accused (see, for example, *Colozza v. Italy*, 12 February 1985, § 27,

Series A no. 89). However, in respect of non-criminal matters there is no absolute right to be present at one's trial, except in respect of a limited category of cases, such as those where the character and lifestyle of the person concerned is directly relevant to the subject matter of the case, or where the decision involves the person's conduct (see, for example, *Kabwe and Chungu v. the United Kingdom* (dec.), nos. 29647/08 and 33269/08, 2 February 2010).

91. The Court has previously found a violation of the right to a fair hearing in several cases against Russia, in which parties to civil proceedings were deprived of the opportunity to attend the hearings because of belated or defective service of the summonses (see *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; and *Mokrushina v. Russia*, no. 23377/02, 5 October 2006). It also found a violation of Article 6 in a number of cases where Russian courts refused leave to appear in court to imprisoned applicants who had wished to make oral submissions on their civil claims. For instance, in the case of *Kovalev v. Russia* (no. 78145/01, § 37, 10 May 2007), despite the fact that the applicant was represented by his wife, the Court considered it relevant that his claim of ill-treatment by the police had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings". In the case of *Khuzhin and Others v. Russia* (no. 13470/02, §§ 53 et seq., 23 October 2008) the Court found that, by refusing to ensure that the imprisoned applicants could attend hearings, and by failing to consider other legal means of ensuring their effective participation in defamation proceedings, the Russian courts had violated the principle of equality of arms. A similar conclusion was reached by the Court in other cases against Russia where the authorities had failed to secure imprisoned applicants' appearance before the civil courts examining their complaints about the conditions of their detention (see, for instance, *Shilbergs v. Russia*, no. 20075/03, §§ 107-113, 17 December 2009; *Artyomov v. Russia*, no. 14146/02, §§ 204-208, 27 May 2010; and *Roman Karasev v. Russia*, no. 30251/03, §§ 65-70, 25 November 2010). In the cases cited above, the Court consistently held that given the nature of the applicants' claims, which were, to a significant extent, based on their personal experience, the effective, proper and satisfactory presentation of the case could have only been secured by the applicants' personal participation in the hearings. The applicants' testimony pertaining to the facts of the case, of which only they themselves had first-hand knowledge, would have constituted an indispensable part of the plaintiffs' presentation of the case.

92. Turning to the facts of the present case, the Court notes, and the Government did not argue otherwise, that the applicant insisted on his presence at the hearings. However, his leave to appear in court was

dismissed both by the District Court and the Regional Court. The Court does not lose sight of the fact that the applicant was represented in the proceedings. However, as in the previous cases concerning the attendance of civil hearings by imprisoned applicants, the Court attributes particular importance to the nature of the dispute to which the applicant was a party. The Court reiterates that the proceedings at hand concerned the termination of parental rights and required assessment by the domestic courts of the very special legal and factual relationship which exists between a parent and a child. The Court considers that before taking a decision to permanently sever that special relationship, the courts should have heard evidence from the applicant in person. The applicant's defence was, to a major extent, based on his personal experience. In this situation, the Court is not convinced that the representative's appearance before the courts secured an effective, proper and satisfactory presentation of the applicant's case. The Court considers that the applicant's testimony describing his relationship with the child, which only he himself had first-hand knowledge of, would have constituted an indispensable part of his presentation of the case (see *Kovalev*, cited above, § 37). Only the applicant himself could have presented his case and answered the judges' questions, if any.

93. The Court reiterates the Government's argument that the domestic courts refused the applicant leave to appear in court in view of the absence of a legal provision requiring his presence at the trial and permitting the transport of detainees to civil courts. In this connection, the Court is also mindful that the Constitutional Court has pointed out to other possibilities which were open to the domestic courts as a way of securing the applicant's participation in the proceedings (see paragraph 52 above). The domestic courts did not, however, make use of those options.

94. In these circumstances, the Court finds that the domestic courts deprived the applicant of the opportunity to present his case effectively. There has therefore been a violation of Article 6 § 1 of the Convention on account of the authorities' failure to afford the applicant an adequate opportunity to present his case effectively before the civil courts.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

95. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it 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 manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicant claimed 502,500 euros (EUR) in respect of non-pecuniary damage.

98. The Government stated that the claim was manifestly ill-founded and excessive.

99. The Court considers that an award of just satisfaction must be based in the present case on the fact that the applicant did not have a fair trial on account of his inability to examine the witnesses against him and was unable to effectively present his case before the civil courts. He undeniably sustained non-pecuniary damage as a result of the violations of his rights. However, the sum claimed appears to be excessive. Making its assessment on an equitable basis, the Court awards the applicant 5,200 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

100. Lastly, the Court refers to its settled case-law to the effect that when an applicant has suffered an infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see*, mutatis mutandis, Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV, and *Popov v. Russia*, no. 26853/04, § 264, 13 July 2006). The Court notes, in this connection, that Article 413 of the Russian Code of Criminal Procedure and Article 392 of the Russian Code of Civil Procedure provide the basis for the reopening of the proceedings if the Court finds a violation of the Convention (see paragraphs 49 and 54 above).

B. Costs and expenses

101. The applicant did not make any claims for costs and expenses incurred before the domestic courts and the Court.

102. Accordingly, the Court does not award anything under this head.

C. Default interest

103. The Court considers it appropriate that the default interest rate 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 complaints concerning the applicant's inability to cross-examine the prosecution witnesses in open court and inability to attend hearings before the civil courts admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (d) on account of the absence of a proper and adequate opportunity for the applicant to challenge the statements by the prosecution witnesses;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the authorities' failure to afford the applicant an adequate opportunity to present his case effectively before the civil courts;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,200 (five thousand and two hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of the settlement, plus any tax that may be chargeable;
   (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 13 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Nina Vajić President