

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

FIFTH SECTION

CASE OF BANDALETOV v. UKRAINE

(Application no. 23180/06)

JUDGMENT

STRASBOURG

31 October 2013

FINAL

31/01/2014

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



In the case of Bandaletov v. Ukraine

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
André Potocki,
Paul Lemmens, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 8 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 23180/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Gennadiy Vitalyevich Bandaletov ("the applicant"), on 18 May 2006.

2. The applicant, who had been granted legal aid, was represented by Mr Mykhailo Tarakhkalo and Mr Arkadiy Bushchenko, lawyers practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr Nazar Kulchytskyy.

3. The applicant complained, in particular, that he had not been legally represented during the initial stage of the pre-trial investigation.

4. On 9 September 2010 the Court decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and is currently serving a life sentence in Ladyzhynska Prison no. 39.

A. Criminal proceedings against the applicant

6. Late in the evening of 20 April 2005 Mr and Ms L., the applicant's upstairs neighbours, were killed in their apartment. Ms L. was 65 years old and Mr L. was a similar age.

7. On 21 April 2005 a criminal investigation was launched into the murder as having been committed by unknown persons.

8. On the same date the police inspected the crime scene and questioned several neighbours and members of L.'s family. The persons in question made written statements as to what they knew about the victims and the events of the night before. The questioning appears to have taken place at the police station (see paragraph 21 below).

9. In particular, the police questioned the applicant's adult stepson, Mr Lo., who described in detail his own actions on the evening before. He stated that he had gone out for a while and that, upon his return home after midnight, he had seen his mother asleep in one room and the applicant drinking some alcohol and watching a film in another room. He noticed that the applicant had a black eye, but did not attach any importance to that. The applicant's stepson also submitted that there had often been conflicts in the victim's family and that Mr L.'s son, who lived separately, had earlier served a prison sentence.

10. The applicant's wife stated that she had not seen or heard anything suspicious. When she had woken up some time after midnight, she had seen her son and the applicant drinking and talking.

11. The police also questioned the son of the deceased Mr L., who stated that he had been with a friend at the time of the events. That friend, who was also heard as a witness, confirmed the aforementioned.

12. The applicant was also questioned, and confessed to the double murder. He submitted that there had been a longstanding conflict between him and Ms L., who had often complained about the noise caused by the refurbishment of his flat and about the construction of a roof over his balcony below her own flat. The applicant noted that, when smoking on the balcony during the evening on 20 April 2005, he had heard extensive swearing and cursing by Ms L., and had heard his name mentioned. He had picked up a knife ("just in case"), and gone upstairs. Having opened the door to him, Ms L. had allegedly insulted him, and a fight had ensued. He had stabbed Ms L. to death. Mr L. had attacked the applicant with a stool, but with no success. The applicant had hit him with the same stool and stabbed him with the knife. Subsequently, the applicant had thrown away the knife, the broken legs of the stool and his blood-stained T-shirt.

13. All the aforementioned statements began with a note that the requirements of Article 63 of the Constitution had been explained to their authors. All these persons, save the applicant, signed next to the reference to that constitutional provision, in addition to signing at the end of the document. As to the applicant, he signed each page of his statement and added a note at the end: "This has been accurately written from my words,

and I am willing to repeat my statements in court". The applicant also made an additional written statement that he confirmed his submissions and that, relying on Article 63 of the Constitution, he did not wish to make any further statements.

14. It is not known where the applicant was between his questioning on 21 April 2005 and his arrest on 22 April 2005 (see below). The applicant did not state that he was detained during that period.

15. On 22 April 2005, at 11.30 a.m., the applicant was arrested as a suspect. He wrote in the arrest report that he had no statements or complaints to make.

16. About half an hour later the applicant and the lawyer, Mr T., who had been appointed for him at some point earlier that day, signed a report on "the familiarisation of the suspect with his defence rights". This document contained extensive pertinent quotations from the Constitution and the Code of Criminal Procedure. The applicant wrote in that report: "My rights are clear and I understand them".

17. From noon to 1 p.m. on 22 April 2005 the applicant was questioned in the lawyer's presence and signed a typed summary of his account of the events of 20 April 2005, similar to that given on 21 April 2005, as being accurate and complete. He supplemented it with a handwritten note as to how and where he had thrown the knife and the stool legs.

18. On the same date, from 2.40 to 4 p.m., a videotaped reconstruction of the crime was conducted in the presence of the applicant's lawyer. The applicant again repeated his confession and stated that he was testifying of his own free will. All the participants, including two experts and two attesting witnesses who were also present, watched the video recording and signed a report to that effect, making no additional remarks or statements.

19. At 4.30 p.m. on 22 April 2005 the applicant was placed in a cell at the Kerch Temporary Detention Centre ("the ITT").

20. The aforementioned investigative activities of 22 April 2005 were documented on pages 56-63 of the case file.

21. Also on 22 April 2005, the applicant's stepson, Mr Lo., gave some additional written explanations. He submitted that he had found out about the murder on the morning of 21 April 2005 from the police, who had invited him and the applicant, among others, to the police station for questioning. Upon his return home, Mr Lo. had noticed that a knife had gone missing from the kitchen. He gave the description of that knife.

22. On 29 April 2005 the applicant was formally charged with double murder.

23. During his questioning on 30 April 2005, in the presence of his lawyer, he again repeated his confession.

24. On the same date the pre-trial investigation was declared complete. The applicant and his lawyer signed in confirmation of having studied the investigation file. According to handwritten notes by both of them, they had no statements or remarks to add.

25. On 8 August 2005 the Court of Appeal of the Autonomous Republic of Crimea ("the Crimea Court"), acting as a court of first instance, commenced the trial.

26. According to the minutes of the court hearing of 25 August 2005, at that stage the applicant was represented by a new lawyer, Mr N. The applicant stated that he did not object to being represented by that lawyer. He also maintained his confession, stating that he understood the accusations and that he sincerely regretted what he had done.

27. According to the minutes of another court hearing, held on 5 September 2005, the applicant's lawyer submitted the following arguments in defence of his client: he emphasised that the applicant had voluntarily confessed to the crime and had shown sincere remorse; he noted that the applicant had never sought to abscond and had consistently cooperated with the investigation; and, lastly, he drew the court's attention to the fact that the applicant had no previous criminal record and that he had two minor children to support. Accordingly, the lawyer asked the court not to sentence his client to life imprisonment.

28. On 7 September 2005 the Crimea Court found the applicant guilty as charged and sentenced him to life imprisonment (which was to run as from 22 April 2005). The court relied on the applicant's confession statements given during the pre-trial investigation, with reference to pages 56-63 of the case file (see paragraph 20 above). The court noted that the applicant had maintained those statements throughout the judicial proceedings. It also heard, *inter alia*, the applicant's wife and her son, who had seen him late on the night of the incident with a fresh bruise on his face. They identified the knife found in the garbage bin, where the applicant said he had thrown it, as the one which had gone missing from their kitchen after the murder. The court further took into account the results of a number of forensic examinations. Lastly, the court noted that the applicant had committed the crime while drunk.

29. The applicant appealed in cassation. He submitted that the first-instance court had distorted his motives and the facts of the case, ignoring the allegedly aggressive and provocative behaviour of the victims and wrongly concluding that he had murdered them while drunk. He stated that he had drunk alcohol only after the murder. Furthermore, the applicant complained that his voluntary surrender to and cooperation with the police had not had any mitigating effect on his sentence. He also noted in this connection that he had no previous criminal record and that he had shown sincere remorse. Lastly, he complained that he had not been legally represented at the initial stage of the investigation, and that the lawyers later appointed for him had behaved passively and failed to properly defend his interests.

30. On 8 December 2005 the Supreme Court dismissed the applicant's cassation appeal as unfounded. It noted that he had merely been seeking the mitigation of his sentence and had not contested the legal classification of the crime, denied his guilt, or challenged the admissibility of the evidence.

B. Other facts

31. Until 26 May 2005, when he was transferred to the Simferopol Pre-Trial Detention Centre (SIZO), the applicant had been detained at the Kerch Temporary Detention Facility (ITT).

32. Between 2 and 30 June 2005 he underwent a medical examination in Simferopol Psychiatric Hospital with a view to establishing the state of his mental health.

33. Between 30 June 2005 and 28 April 2007 the applicant was held in the SIZO, except from 4 to 27 July 2005, when he was held in the ITT.

34. On 28 April 2007 he was transferred to Ladyzhynska Prison no. 39 in the Vinnytsia Region to serve his sentence.

35. On 10 September 2008 he sent a letter to the Court acknowledging receipt of the Registry's letter of 24 August 2006 and apologising for the delayed reply, without giving further details.

36. On an unspecified date in October 2008 the applicant additionally submitted that "the SIZO administration had shown a lack of respect for [his] correspondence and [him] personally", having allegedly opened the Registry's letter of 24 August 2006, which he had received on 9 September 2006. To substantiate his submission, he provided the aforementioned letter with the SIZO date stamp of "4 September 2006" in its upper right-hand corner.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. Articles 59 and 63 of the Constitution concerning the right to legal assistance and the right not to incriminate oneself can be found in the judgment of 19 February 2009 in the case of *Shabelnik v. Ukraine* (no. 16404/03, § 25).

38. Under Article 115 § 2 of the Criminal Code, the premeditated murder of two or more persons is punishable by imprisonment for a term of ten to fifteen years, or life imprisonment.

39. Article 45 provides that legal representation during the inquiry, the pre-trial investigation and the trial before the first-instance court is obligatory if, *inter alia*, the possible penalty is a life sentence. It further specifies that in that case legal representation must be provided from the moment of the arrest or the bringing of charges against the person.

40. Article 96 of the Code of Criminal Procedure (CCP) defines a statement of surrender to the authorities *(явка з повинною)* as a personal voluntary written or verbal statement made by a person, before the institution of criminal proceedings against him or her, to an enquiry authority, a police officer, an investigator, a prosecutor, a judge or a court, concerning a crime committed or planned by him or her. Where a criminal investigation has already been initiated, such a statement must be made before formal charges are brought against the person.

41. According to Article 103 of the CCP, an inquiry comprises operational and investigative activities aimed at establishing the facts of a crime and the suspected offenders.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

42. Relying on 6 § 3 (c) of the Convention, the applicant complained about the absence of legal representation at the initial stage of the investigation. The Court considers it appropriate to examine this complaint under Article 6 §§ 1 and 3 (c) of the Convention, which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ... (c) to defend himself in person or through legal assistance of his own choosing 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

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

B. Merits

1. The parties' submissions

(a) The applicant

44. The applicant submitted that, although he had pleaded guilty to the murder of two persons from the very beginning, his initial statement had been recorded as a mere "explanation" and had no mitigating effect on his sentence. Had he been legally represented at that early stage, his lawyer would have made sure that his confession was documented as a voluntary admission of guilt, and would thus be regarded as a mitigating factor under the Code of Criminal Procedure.

45. Moreover, the applicant maintained that his right to legal defence had not been explained to him on 21 April 2005. He referred in this connection to the absence of any document proving the contrary. According to him, the other witnesses who were questioned on that date had signed next to the reference to Article 63 of the Constitution as confirmation that they had been made aware of their rights enshrined therein. The applicant stated that he had not signed any such confirmation.

46. He next pointed to the complexity of the legislation pertaining to his case as another factor warranting his early legal representation.

47. The applicant also drew an analogy between his situation and that examined in the case of *Leonid Lazarenko v. Ukraine* (no. 22313/04, § 55, 28 October 2010), where the failure of the authorities to ensure the applicant's legal representation before his first questioning by the police was found to be contrary to the national legislation given that life imprisonment was a possible penalty.

(b) The Government

48. The Government contended that the applicant's right to legal defence had never been restricted. As to his questioning by the police on 21 April 2005 without legal counsel, it had taken place as part of the initial gathering of information on the murder under investigation. The applicant had been questioned as a neighbour of the victims who might have had some information of relevance for the investigation. He was not at that time being treated as a suspect, and the police had also questioned some other persons. Even at that early stage the applicant had been made aware of his rights not to incriminate himself and to legal defence as provided by Article 63 of the Constitution. Moreover, his confession had been voluntary, which the applicant had never disputed. He had continued to plead guilty throughout the criminal proceedings.

49. The Government pointed out the difference between this case and the case of *Yaremenko v. Ukraine* (no. 32092/02, 12 June 2008), in which the Court held that because of the deliberately incorrect classification of the applicant's actions he had not benefited from the requirement of obligatory representation under the domestic legislation. In the present case, the applicant's legal representation had been warranted by the charge against him as formulated from the outset, and it had been duly ensured.

50. The Government also expressed the view that the absence of legal assistance to the applicant during his first questioning by the police had had no bearing on his conviction, which had been based on his later questionings and other investigative measures conducted in the presence of his lawyer.

51. They further emphasised that the applicant had had a public and adversarial trial, at which he had been assisted by a lawyer and had had ample opportunity to challenge any evidence against him.

52. Lastly, the Government maintained that the applicant's argument – viewed as the thrust of his complaint – that his sentence could have been milder had he been legally represented on his first questioning, was of no relevance. They noted that Article 115 § 2 of the Criminal Code provided for life imprisonment as a possible penalty for multiple murder regardless of the victims' behaviour (which the applicant claimed had been provocative in his case) and whether or not the murderer had been drunk (the applicant argued that he had drunk alcohol after the murder and not before).

2. The Court's assessment

(a) General principles

53. The right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Poitrimol v. France*, 23 November 1993, § 34, Series A no. 277-A, and *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II).

54. The Court reiterates in this connection that the guarantees in paragraph 3 (c) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see *Imbrioscia v. Switzerland*, 24 November 1993, § 37, Series A no. 275, *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I, *Brennan v. the United Kingdom*, no. 39846/98, § 45, ECHR 2001-X, *Balliu v. Albania*, no. 74727/01, § 25, 16 June 2005, and *Martin v. Estonia*, no. 35985/09, § 94, 30 May 2013).

55. In order for the right to a fair trial to remain sufficiently "practical and effective", Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first questioning of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police questioning without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008).

56. The Court considers a person to acquire the status of a suspect calling for the application of the Article 6 safeguards not when it is formally assigned to him or her, but when the domestic authorities have plausible reasons for suspecting that person's involvement in a criminal offence (see *Brusco v. France*, no. 1466/07, § 47, 14 October 2010).

57. The Court's case-law has also had regard to the particular vulnerability of an accused at the early stages of the proceedings, when he is

confronted with both the stress of the situation and the increasingly complex criminal legislation involved (see, in particular, *Salduz*, cited above, § 54, and *Leonid Lazarenko*, cited above, § 50). The Court has considered that in most cases this particular vulnerability can only be properly compensated for by the assistance of a lawyer, whose tasks are multifaceted: to ensure respect of the right of an accused not to incriminate himself, and to secure without restriction the fundamental aspects of that person's defence by, in particular, discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning, and support of the accused when in distress (see *Salduz*, cited above, § 54, and *Dayanan v. Turkey*, no. 7377/03, § 32, 13 October 2009).

58. The manner in which Article 6 §§ 1 and 3 (c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case. In order to determine whether the aim of Article 6 – a fair trial – has been achieved, regard must be had to the entirety of the domestic proceedings conducted in the case (*Panovits v. Cyprus*, no. 4268/04, § 64, 11 December 2008).

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

59. Turning to the present case, the Court notes that on 21 April 2005 the police questioned a number of the victims' neighbours and relatives who might have known something about the incident (see paragraphs 8-12 above). The applicant was among them.

60. There is no indication that the authorities had any reason for suspecting the applicant's involvement in the murder before his first communication with the police (see, for a comparable example in the case-law, *Smolik v. Ukraine*, no. 11778/05, § 54, 19 January 2012; and, for converse examples, *Stojkovic v. France and Belgium*, no. 25303/08, § 51, 27 October 2011, *Khayrov v. Ukraine,* no. 19157/06, § 74, 15 November 2012, and *Zamferesko v. Ukraine,* no. 30075/06, § 61, 15 November 2012); the investigation had begun that very morning, and the police as yet had no evidence of any kind against the applicant. There also appears to have been nothing in the statements taken by the police from various interviewees that day which could cast suspicion on him (contrast *Sergey Afanasyev v. Ukraine,* no. 48057/06, § 58, 15 November 2012).

61. The Court notes that the applicant himself insisted both in the course of his trial and in the proceedings before the Court that he had voluntarily surrendered to the police and had pleaded guilty in the hope that this would have a mitigating effect on his sentence (see paragraphs 29 and 44 above).

62. Accordingly, the Court concludes that the applicant volunteered the confession of his own free will while being questioned as a witness, and it was only after his confession that the police considered him a suspect (see *Smolik*, cited above, § 54).

63. As regards the applicant's argument that the provisions of Article 63 of the Constitution concerning the right to defence and the privilege against

self-incrimination were not explained to him on 21 April 2005, the Court notes that the applicant himself twice signed a statement to the contrary on that very day (see paragraph 13 above).

64. Furthermore, the Court does not lose sight of the context of the applicant's first questioning by the police. It appears that it took place at the police station where he had been summoned together with all the other witnesses (see paragraphs 8, 12 and 21 above). Accordingly, he was not taken by surprise, but had the opportunity to collect his thoughts and to choose what stance to take.

65. The Court next observes, and this is not in dispute, that the applicant was legally represented from the moment of his arrest and his first questioning as a suspect on 22 April 2005 (see paragraphs 15 and 16 above; and, for the case-law, see *Salduz*, cited above, § 55). No investigative measures were taken after his initial confession on 21 April 2005 until his access to legal advice was ensured on the following day. In the absence of any submissions from the applicant or any other pertinent material, the Court has no reason to assume that the applicant was in fact kept at the police station during the night of 21 to 22 April 2005 (see paragraph 14 above).

66. It is true that the police could have immediately interrupted the interview of the applicant after his confession and could have refrained from including those statements in the case file as the basis for starting investigation against the applicant. But it should be borne in mind that this would have been exactly the opposite of what the applicant wanted and of what the police could hold to be in his best interest, as a voluntary surrender to the police made before the beginning of the procedure could be considered as a mitigating factor. Indeed, the applicant insisted, together with his lawyer, throughout the proceedings that his initial statement be accepted as a "voluntary surrender" *(явка з повинною)* for the purpose of Article 96 of the Code of Criminal Procedure (see paragraph 40 above).

67. The Court further observes that the applicant did not retract or change his initial statements at any point of the pre-trial investigation or the trial, although he enjoyed legal assistance (see, *a contrario*, the case of *Çimen v. Turkey* (no. 19582/02, § 26, 3 February 2009), in which the applicant repeatedly denied the content of his statements taken during the initial period of detention, and the Court reached the conclusion that he had been undoubtedly affected by the restrictions on his access to a lawyer). As to the performance of the appointed lawyers, there is no information in the case file that the applicant raised any complaints in that regard at the time of the events, or that he sought their replacement. On the contrary, as noted in the records of the trial court's hearings, he expressly stated that he did not object to his representation by lawyer N. (see paragraph 26 above).

68. The Court also notes that when convicting the applicant, the trial court relied only on the investigation activities carried out and evidence collected from 22 April 2005, that is, when the applicant was already legally represented (see paragraphs 20 and 28 above).

69. The Court does not lose sight of the applicant's argument that his legal representation on 21 April 2005 would have ensured the proper documenting of his surrender to the police and its further mitigating effect on his sentence (see paragraph 44 above). The Court notes in this connection that the applicant's voluntary surrender to the police was consistently referred to by himself and his defence counsel during the trial, and that the domestic courts never expressed any doubts or criticism as to how that surrender had been documented (see paragraphs 27-30). The fact that they did not consider it necessary to mitigate the applicant's sentence on that ground has no bearing for his complaint before the Court.

70. Lastly, the Court cannot but observe that the applicant failed to explain, both in the domestic proceedings and in those before this Court, what prejudice to the overall fairness of his trial had been caused by the alleged early restriction on his defence rights, other than the severity of his sentence. In the Court's opinion, any connection between the absence of legal representation at such an early stage of the investigation, when the applicant was not even treated as a suspect, and the severity of his sentence is purely speculative.

71. In sum, having regard to the entirety of the domestic proceedings conducted in the case, the Court attaches weight to the following considerations. The domestic authorities changed the applicant's status from a witness to a suspect and provided him with a lawyer once they had plausible reasons to suspect him emanating from his own confession. During his first questioning as a suspect the applicant was already represented by a lawyer. Not a single investigative measure was undertaken after the mentioned initial confession and before the appointment of a lawyer for the applicant. The applicant maintained his confessing statements throughout the pre-trial investigation and the judicial proceedings, when being represented by several different lawyers. His initial confession of 21 April 2005 can hardly be regarded as having been used for his conviction, as the trial court relied exclusively on the investigative measures conducted on 22 April 2005 and later, when the applicant had already had legal assistance to rely on. Lastly, the applicant's request for mitigation of his sentence on the ground that he had voluntarily surrendered to the police was examined by the courts.

72. Accordingly, the Court considers that the criminal proceedings against the applicant were overall fair.

73. There has been therefore been no violation of Article 6 §§ 1 and 3 (c) of the Convention in the present case.

II. THE REMAINDER OF THE APPLICATION

74. The applicant complained under Article 3 of the Convention about the conditions of his detention in the Kerch ITT. He also complained under the same provision that there had been no adequate forensic examination of

the injuries sustained by him in his fight with Mr and Mrs L. According to him, those injuries had been more serious than the courts claimed. He further complained under Article 6 § 1 that the domestic courts had erred in their assessment of the facts of the case and had misapplied the law. He also complained under Article 6 § 3 (c) that his representation by the lawyers appointed for him had been inadequate. The applicant also invoked Article 3 of the Convention in this connection. He further invoked Article 6 § 3 (d) without providing further details. He also complained that the prison authorities had interfered with his correspondence with the Court, having allegedly opened and read without his permission the Court's letter of 24 August 2006 addressed to him. Lastly, in his reply to the Government's observations the applicant raised for the first time a complaint under Article 6 about the hearing in the Supreme Court held in his absence and without him being legally represented, but in which the prosecutor participated.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 §§ 1 and 3 (c) of the Convention concerning the early restriction of the applicant's right to legal defence admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

Done in English, and notified in writing on 31 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Mark Villiger President