

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

THIRD SECTION

# CASE OF GORYACHKIN v. RUSSIA

*(Application no. 34636/09)*

JUDGMENT

STRASBOURG

15 November 2016

**FINAL**

15/02/2017

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



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

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

Luis López Guerra, *President,*
Helena Jäderblom,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 18 October 2016,

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

# PROCEDURE

1. The case originated in an application (no. 34636/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sergey Olegovich Goryachkin ("the applicant"), on 28 May 2009.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not been afforded adequate medical care in detention and that he had been denied an opportunity to appear in person before a court.

4. On 4 July 2012 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1982 in Achinsk, Krasnoyarsk Region. He lives in Krasnoyarsk.

## A. Conviction

6. On 21 January 2005 the Achinsk Town Court of the Krasnoyarsk Region convicted the applicant of aggravated robbery and sentenced him to nine years' imprisonment. He was sent to Krasnoyarsk Region correctional colony no. IK- 235/26-22 to serve his sentence.

## B. Alleged ill-treatment by prison guards

7. On 22 August 2007, owing to repeated violations of prison rules, the applicant was placed in the single-cell wing (*единое помещения камерного типа*, hereinafter "the EPKT"), a stricter regime of the correctional colony, for eleven months. He was allegedly beaten up by EPKT guards on two occasions.

### *1. First incident*

8. The applicant submitted that on 5 March 2008 a new detainee "of a lower social status" was placed in his cell, which was shared with other detainees. Soon a heated quarrel broke out between the applicant and the newcomer. Prison guards entered the cell, took the applicant out, kicked his legs, twisted his hands, threw him to the floor and then dragged him to a search room. There they delivered blows to his head and body, handcuffed him to the ceiling of a metal cage and left him alone for an hour. Upon their return the guards put him in a spread-eagled position and started beating him, until he fell to the floor. They continued beating him for another two to three hours.

9. Two days later the applicant was sentenced to fifteen days' detention in a disciplinary cell.

### *2. Second incident*

10. According to the applicant, on 9 April 2008 he was again beaten up by prison guards under the pretext of a minor disciplinary offence. The beating continued for two or three hours. The applicant insisted that the beating had been so severe that he had lost ability to walk unassisted. Thereafter he was dragged back to his cell where he was locked up alone.

11. The applicant further submitted that on the morning of 10 April 2009 he was taken to the office of the head of the unit where he slumped into a chair, half lying on it as he was unable to sit up straight due to a pain in his back and leg. A prison guard hit the applicant on the head and ordered him not to fake injuries.

12. The applicant was allegedly forced to write a statement to the head of the prison service of the Krasnoyarsk Region, stating that no force had

ever been used against him or any other detainees in the correctional colony and that his health problems had resulted from an accident in childhood.

### C. Medical treatment in detention

13. During his detention the applicant suffered from chronic gastritis, urethritis and ischialgia. His health-related complaints were addressed by a prison doctor, who provided him with treatment when necessary.

14. In the EPKT the applicant was subjected to routine daily check-ups for bodily injuries. No injuries were recorded during the entire period of his detention.

15. On 10 March 2008, five days after the first incident of alleged ill-treatment, the applicant complained to a prison doctor about pain in the small of his back. The doctor diagnosed lumbalgia, prescribed drugs and ointment, and noted in his file that the applicant's skin was "peculiarity-free".

16. On three occasions in the same month the applicant complained of constricting chest pain, frequent urination, a headache and pain in the small of the back. The doctor diagnosed lumbalgia, "neurocirculatory dystonia of the hypertensive type" and cystitis. Medication was prescribed.

17. In the end of March 2008 the applicant again visited the prison doctor to complain about a sprained ankle. The doctor discovered an oedema on his ankle with a scar measuring 1cm. The applicant explained that it was the result of a childhood trauma. In addition, he also made a written statement that his back pain and leg problems were chronic and that he had not been ill-treated in the correctional colony. Having recorded the absence of any injuries on the applicant's body, the doctor prescribed analgesics.

18. On 18 April 2008, nine days after the alleged second episode of ill-treatment, the applicant complained of pain while urinating. The doctor recorded acute cystitis and amended the drug regimen. In the last days of that month he complained, for the first time, of pain on his left shin. The doctor noted that the left leg was swollen and the applicant was unable to stand on it. He diagnosed a blood circulation disorder and prescribed medication.

19. The applicant's medical condition did not improve and on 13 May 2008 he was placed in the old wing of the prison hospital. He informed the hospital doctors that he had started experiencing the pain in his leg after a fall in the cell in the first days of March 2008. His diagnosis of acute deep-vein thrombosis of the left leg, lymphedema, and degenerative disc disease were addressed by conservative treatment, leading to the amelioration of his condition.

20. The applicant was discharged from the hospital on 22 May 2008 with instructions to continue treatment and use a walking stick.

21. In the summer of 2008 the applicant started using crutches. In July 2008 a doctor recorded significant swelling of his left leg accompanied by bluish coloration of the area. The diagnosis of relapsed lymphedema led to the amendment of his drug regimen. At the same time, the applicant made a statement stating that he had not been subject to any ill-treatment.

22. By mid-October 2008 the leg oedema abated.

23. In November 2008 the applicant was again placed in the old wing of the prison hospital. He was diagnosed with post-thrombotic disease and nephroptosis. The treatment was effective and on 21 November 2008 he was discharged. The doctor prescribed a drug regimen and recommended that the applicant not use crutches.

24. In the beginning of 2009 the applicant's leg swelled again. On 28 March 2009 he was admitted to the new wing of the prison hospital where the conditions were, according to the applicant, satisfactory. His treatment in the hospital continued until 27 April 2009 and resulted in the decrease of the oedema and associated inflammation. Compression stockings, drugs and limiting of physical activity were prescribed.

25. In the beginning of 2010 the applicant underwent symptomatic treatment for degenerative disc disease. In September 2010 his medical condition was declared stable with his chronic illness having been taken under control.

26. In 2011-12 the applicant had allergic dermatitis, rhinopharyngitis, lumbodynia and vegetative-vascular dystonia, without any condition being considered serious or problematic. The illnesses were addressed with drug therapy.

### D. Investigation into the alleged beatings

27. In August 2008, during a meeting with his mother, the applicant complained of having been beaten by the guards. On 10 September 2008 his mother asked for a thorough inquiry into the alleged ill-treatment.

28. On 24 October 2008 the Boguchanskiy district prosecutor visited the applicant, who submitted his account of the events and asked for a criminal case to be opened.

29. The investigating authorities collected extracts from the applicant's medical records and written explanations from a guard who had been allegedly involved in the beatings. The colony officers denied using force against the applicant, supporting their arguments with the applicant's written statements of 17 July 2008 and written statements by his fellow inmates. The inmates insisted that the applicant had suffered for a long time from chronic back pain and swollen leg syndrome, which had become particularly acute every spring and autumn. Tired of the difficulties of prison life, the applicant had allegedly told the inmates that he had intended

to use his chronic ailments to obtain a transfer to a hospital, where he "could rest".

30. On 15 November 2008 a senior investigator of the prosecutor's office dismissed the complaint, having found no evidence of criminal conduct.

31. The above decision, as well as another three similar decisions of 27 June, 8 August and 5 September 2011, was overturned by a higher-ranking prosecutor, who criticised the lack of thoroughness of the investigation.

32. On 12 September 2011 an expert from the Krasnoyarsk Bureau of Forensic Medical Examination was asked to look into the possible cause of the applicant's leg condition, including the possibility of it having a trauma-related cause related to the alleged beatings in March and April 2008. The expert found that the condition could not have resulted from the beatings.

33. On 16 January 2012 the investigating authorities again refused to open a criminal case. The refusal was overturned by a high-ranking prosecutor who ordered further investigation steps.

34. In the new round of the investigation the investigator questioned Mr V., the only inmate who had not previously been interviewed. Unlike all the other witnesses, who had denied the beatings, he said that on 5 March 2008 the prison officers had taken the applicant out of his cell, after a conflict with a "low caste" cellmate, to a search room. He had then heard guards shouting and the applicant moaning. However, he had not seen any injuries on the applicant, but had seen the latter limping several days after the incident. The applicant had insisted that he had been beaten by the guards.

35. On 28 September 2012 a new medical expert report was prepared, with the expert asked to see whether any of the applicant's illnesses could have resulted from having been beaten. After having examined the applicant and his medical file, the expert found no evidence of ill-treatment and insisted that the applicant's medical condition could not have been caused by or linked to the beatings. The main finding was that the applicant's illnesses were no more than "independent pathological processes without any traumatic influence".

36. On 12 October 2012 the investigating authorities dismissed the applicant's complaints of ill-treatment.

### E. Conditions of detention

37. From 22 August 2007 to 13 May 2008, and from 22 May to 17 July 2008 the applicant was detained in the EPKT. On several occasions he was also detained in various disciplinary cells, with the most recent periods of this detention being between 7 and 22 March 2008 and between 19 and

24 August 2009. During the latter period he was detained in cell no. 12, which measured 15.2 square metres. The cell was equipped with two double plank beds.

38. The applicant provided a very general and summary-like description of his detention in all the disciplinary cells, complaining of poor ventilation and lighting and inadequate sanitary conditions.

39. According to the Government, the number of cellmates in disciplinary cell no. 12 did not exceed four. The applicant was afforded a daily hour-long walk in the prison yard. The cell was ventilated by means of a window casement. The window itself, measuring 90 by 60 centimetres, allowed sufficient daylight. The cell was also lit by a 150-watt lamp from 5 a.m. to 9 p.m. and a 40-watt security light at night. The toilet in the cell was separated from the main area by a one-metre high partition, ensuring privacy. The cell was clean and disinfected. The applicant was given uniform, underwear and slippers. Once a week he could take a shower.

## F. Tort proceedings

### *1. Proceedings concerning the conditions of detention in the prison hospital and the quality of the medical treatment there*

40. In June 2008 the applicant lodged a claim seeking compensation for non-pecuniary damage allegedly caused by the poor conditions of his detention in the prison hospital and ineffective medical care. He also sought leave to appear. The presiding judge informed the applicant that there was no procedural obligation to transport a convicted inmate to a civil case in which he or she was a party.

41. On 30 December 2008 the court ordered an expert report to assess the quality of the medical treatment afforded to the applicant in detention. In a report on 29 June 2009 experts stated that the applicant had received inpatient treatment in full compliance with the generally recognised medical standards. The deterioration of his health in November 2008 could have been caused either by the natural course of his illness or by his failure to adhere to doctors' recommendations. The experts noted that the applicant had suffered from chronic conditions, including vascular illness, degenerative disc disease of the thoracic and lumbar spine with Schmorl's nodes and first-stage nephroptosis of the right kidney. He had received adequate medical treatment.

42. On 23 November 2009 the Zheleznodorozhniy District Court dismissed the claim, having considered that the medical treatment received in the prison hospital had been adequate and successful, given the significant improvement of his health. The applicant was not brought to the hearing, while the representatives of the prison hospital appeared. The

District Court again cited the lacuna in the Russian law pertaining to the participation of convicts in their civil cases.

43. That judgment was upheld on appeal by the Krasnoyarsk Regional Court on 17 March 2010. The parties to the proceedings did not appear. No comments were made by the Regional Court on account of their absence.

*2. Proceedings concerning conditions of detention in the EPKT and the quality of the medical treatment in the colony*

44. In 2010 the applicant lodged a claim for non-pecuniary damages against the correctional colony, arguing that the conditions of his detention in the EPKT had been appalling and that he had not had adequate medical care in the colony.

45. On 1 April 2010 the Achinsk Town Court ordered an expert examination, asking for an assessment of the quality of the treatment afforded to the applicant between 5 March and 17 July 2008.

46. On 29 July 2010 the commission presented its report. It concluded that the applicant was provided, timeously and in full compliance with the existing legal requirements, with the necessary treatment which any person was entitled to receive in a general, non-specialised, medical facility. The experts also stressed that there were no scientifically available means to properly diagnose the applicant's deep-vein thrombosis before the illness had manifested itself through acute symptoms, such as pain. The deterioration in his health could have been either the natural development of the illness, or could have resulted from his failure to follow medical recommendations. The experts noted no episodes of belated medical treatment or evidence of a failure to provide him with conservative treatment.

47. In the meantime the applicant asked the Town Court to ensure his presence at the hearing. The application for leave to appear was dismissed with reference to the lack of a legal provision regulating inmates' transport to civil courts.

48. On 28 April 2011 the Town Court, having examined the case in the applicant's absence, dismissed the claim. It found that his vascular condition could not have been diagnosed earlier and that it had been developing in a stealthy fashion throughout the detention. As soon as the symptoms had appeared, the applicant had started receiving timely and adequate medical care.

49. On 7 September 2011 the Regional Court examined the case in the absence of the parties. It noted that the applicant's presence was not required given the specific nature of his claim and the limited usefulness of oral submissions.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

50. Relevant domestic law and practice are set out in detail in *Yevdokimov and Others v. Russia* (nos. 27236/05 and 10 others, §§ 9-15, 16 February 2016).

# THE LAW

## I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

51. The applicant claimed that the conditions of his detention in the EPKT, the disciplinary cells and the old wing of the prison hospital had been appalling; that he had not benefited from proper medical care; that he had been beaten up by the guards and that these incidents of ill-treatment had not been duly investigated. He relied on Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

52. The applicant also claimed under Article 13 of the Convention that he had not had at his disposal an effective remedy to complain about the conditions of his detention. Article 13 of the Convention in its relevant parts reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

### A. Submissions by the parties

53. The Government submitted that the applicant had failed to comply with the six-month rule in respect of his complaint regarding the conditions of his detention, which, in any event, had been satisfactory. The Government further noted that the applicant had had an effective remedy to complain about those conditions. Relying on the expert reports issued on 28 July 2009 and 29 July 2010 and on the findings of the Russian courts, the Government further stated that the applicant had been given prompt, adequate and effective medical care. Finally, they disputed the allegations of ill-treatment. In particular, the Government noted that no injuries had been found on the applicant, who had been regularly examined by a doctor. The authorities had carried out a thorough investigation which had convincingly demonstrated that the applicant's allegations were ill-founded.

54. The applicant maintained all his complaints under Article 3 of the Convention, alleging that his frequent transfers to disciplinary cells amounted to a "continuous situation" falling within the six-month time-limit. He further insisted on the lack of any opportunity to obtain an expert report on the origin of his medical condition and complained of ill-treatment by the prison guards.

## B. The Court's assessment

### *1. Conditions of detention*

55. The Court notes the Government's argument concerning the applicant's failure to comply with the six-month rule.

56. It has already held that in the absence of an effective remedy to complain about conditions of detention, the relevant complaint to the Court should be introduced within six months of the last day of the applicants' detention in the conditions complained of (see *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013). In the recent case of *Butko v. Russia* (no. 32036/10, 12 November 2015) the Court repeated that an applicant's detention can be regarded as a "continuing situation" in cases where it has been repeatedly effected in the same type of detention facility in substantially similar conditions. The applicant's release or transfer to a different type of detention regime, both within and outside the facility, puts an end to the "continuing situation" (see ibid., § 32; *Yartsev v. Russia* (dec.), no. 13776/11, §§ 28-29, 26 March 2013; and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012).

57. Turning to the circumstances of the present case, the Court observes that the applicant's stays in the EPKT and the old wing of the prison hospital came to an end on 17 July and 21 November 2008, respectively (see paragraphs 23 and 37 above). His most recent periods of confinement to disciplinary cells were from 7 to 22 March 2008 and from 19 to 24 August 2009 (see paragraph 37 above). The aforementioned periods, save for the one in August 2009, ended more than six months before 28 May 2009 when the present application had been lodged with the Court. Taking into account that the applicant's complaints relate to entirely different conditions in different types of detention institutions and detention regimens, the Court cannot recognise them as a "continuous situation". Therefore it considers that the applicant's complaints about the conditions of his detention, save for the complaints about the most recent period between 19 to 24 August 2009, are inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4 of the Convention.

58. As to the period from 19 to 24 August 2009, the Court notes that the applicant did not describe the conditions of his detention in cell no. 12,

having instead, in rather general terms, described the detention conditions in various disciplinary cells. His submissions were not supported by any evidence providing a more tailored description of cell no. 12. Moreover, in his observations he did not challenge the description of the cell made by the Government.

59. In the light of the above, and taking into account that the applicant did not invoke the absence of places to sleep in the disciplinary cells, the Court accepts the Government's submission that the cell was not overpopulated and that inmates had sufficient personal space.

60. The Court is unable to accept the remainder of the applicant's submissions in view of the lack of specific details or any substantiation (see *Anatoliy Kuzmin v. Russia*, no. 28917/05, §§ 39-45, 25 June 2015, and *Vladimir Belyayev v. Russia*, no. 9967/06, § 35, 17 October 2013). 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.

*2. Medical treatment in detention*

61. The Court reiterates that the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). The Court further stresses that allegations of ill-treatment must be supported by appropriate evidence (see *Blokhin v. Russia* [GC], no. 47152/06, §§ 137-39, 23 March 2016).

62. Turning to the circumstances of the present case, the Court observes that in detention the applicant remained under the close medical supervision of a prison doctor and specialists from the prison hospital. Commissions of doctors prepared two expert reports on the quality of the medical care afforded to him. The experts unanimously concluded that the applicant had received qualified and proper medical care. The Court notes that the applicant failed to submit any arguments capable of casting doubt on the credibility of the expert reports, or to submit any evidence, including an expert opinion, challenging the conclusions of court-appointed expert commissions.

63. Taking into account the above and having observed no manifest failures on the part of the detention authorities in respect of the applicant's medical treatment, the Court has to reject his complaint in that regard as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

*3. Alleged beating by the prison guards*

64. The Court has stated that allegations of ill-treatment must be supported by appropriate evidence (see, among many other authorities, *Keller v. Russia*, no. 26824/04, § 114, 17 October 2013). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Bouyid v. Belgium* [GC], no. 23380/09, § 82, 28 September 2015, and *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

65. Turning to the circumstances of the present case, the Court observes that, according to the applicant, he was severely beaten up by the guards on two occasions, receiving blows to his legs, body and head (see paragraphs 8-12 above). The applicant did not mention that the guards had used any techniques to avoid visible marks of the ill-treatment on his body. However, as can be seen from his medical file, the thorough daily check-ups by a prison doctor did not reveal any bodily injuries. In his statements to the hospital doctor the applicant explained that the condition of his leg had deteriorated due to an accidental fall. These contradictions damaged the credibility of the applicant's allegations of ill-treatment. This is particularly so taking into account that the applicant never complained about the inaccuracy of his medical records or the doctors' refusal to record signs of ill-treatment.

66. The Court is not convinced that the applicant's vascular, spinal or kidney problems were the consequences of the alleged beatings, as two medical reports of 12 September 2011 and 28 September 2012 held that these conditions were not of traumatic origin and could not be linked to the beatings.

67. As regards the statements by Mr V. (the only evidence which confirmed the applicant's account of the events on 5 March 2008), the Court cannot attach any significant weight to them owing to their belated character, circumstantial nature, and the fact that they contradict the applicant's statements as regards the duration of the alleged beatings. The Court is also cognisant of the fact that Mr V. had also not seen any injuries on the applicant.

68. In the light of the above the Court cannot establish that the applicant had an arguable claim of ill-treatment. In the absence of such claim, the responded State did not have a procedural obligation under the Convention to carry out an effective investigation into the ill-treatment complaints. The Court therefore finds that the applicant's complaint about the beatings and the authorities' response to them is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

*4. Existence of an effective domestic remedy to complain about the detention conditions*

69. The Court reiterates that Article 13 requires domestic remedies only with regard to complaints arguable in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

70. Since the Court has found above that the applicant's complaint about the conditions of his detention is manifestly ill-founded (see paragraph 68 above), no issue under Article 13 of the Convention arises in the present case.

71. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

72. The applicant complained that his right to a fair hearing under Article 6 § 1 of the Convention had been breached on account of the courts' dismissals of his requests to appear. Article 6 § 1 of the Convention reads in its relevant part 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

73. The Government submitted that the applicant had been duly notified of the hearing dates and had received copies of all procedural documents. He had had an opportunity to make written submissions or to appoint a representative. The Government also argued that the applicant had not expressed a wish to participate in the appeal hearings which had been held in the absence of both parties, so the principle of equality of arms had not been breached.

74. The applicant argued that his exclusion from the proceedings had undermined their adversarial nature and had placed him at a disadvantage *vis-à-vis* his opponents.

### B. The Court's assessment

*1. Admissibility*

75. The Court considers that this 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**

76. The applicable general principles are set out in *Yevdokimov and Others* (cited above, §§ 22-26).

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

77. Turning to the present case, the Court observes that the decisions of the domestic courts disclose no proper consideration of the issue of whether the nature of each dispute was such as to require the applicant's attendance and whether his attendance was essential in order to ensure the overall fairness of the proceedings. The Court further observes that no appropriate procedural arrangements enabling the applicant to be heard were considered by the courts which dealt with his cases.

78. Having regard to its previous case-law (see *Yevdokimov and Others,* cited above, §§ 33-48 and §§ 50-51) and the circumstances of the present case, the Court concludes that the domestic courts failed to meet their obligation to ensure respect for the principle of a fair trial. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

79. The Court has also examined other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as those 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 also rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. Article 41 of the Convention provides:

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

### A. Damage

81. The applicant claimed 900,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

82. The Government argued that the claim was unsubstantiated and excessive.

83. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. On the other hand, making its assessment on an equitable basis, the Court considers it reasonable to award EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

84. The Court holds that when an applicant has suffered an infringement of his or her right to a fair hearing guaranteed by Article 6 of the Convention, he or she should, as far as possible, be put in the position in which he or she would have been had the requirements of that provision not been disregarded. The most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested, without unduly upsetting the principles of *res judicata* or legal certainty in civil litigation, in particular where such litigation concerns third parties with their own legitimate interests to be protected (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, §§ 57-58, ECHR 2015 with further references). A finding by the Court of a violation of the Convention or its Protocols is a ground for reopening civil proceedings under Article 392 §§ 2(2) and 4(4) of the Code of Civil Procedure and for reviewing the domestic judgments in the light of the Convention principles established by the Court (see *Davydov v. Russia*, no. 18967/07, §§ 10-15, 30 October 2014).

### B. Costs and expenses

85. The applicant claimed compensation for legal costs without specifying the exact amount. According to him, the aforementioned sum of EUR 900,000 would cover pecuniary and non-pecuniary damage, as well as legal costs incurred. No documents in support of the claim were submitted by the applicant.

86. The Government argued that the claim was unsubstantiated.

87. Taking into account that the applicant was aware of the requirements to just satisfaction claims and the content of Rule 60 of the Rules of Court, in particular, from the Court's correspondence of 31 October 2012, but for no apparent reasons failed to satisfy its basic requirements, the Court dismisses the claim for legal costs in full.

### C. Default interest

88. 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 complaint concerning the unfairness of the civil proceedings admissible and the remainder inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Stephen Phillips<br>Registrar | Luis López Guerra<br>President |