



Defence rights of an accused were not undermined when, having refused two State-appointed lawyers, he had to represent himself

In today's **Chamber** judgment¹ in the case of [Jemeljanovs v. Latvia](#) (application no. 37364/05) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing) of the European Convention on Human Rights.

The case concerned a complaint by a man accused of murder that he had not had legal assistance in the first-instance criminal proceedings against him.

The Court found in particular that Mr Jemeljanovs' dismissal of two of his State-appointed lawyers, with the result that he had had to represent himself in the first-instance proceedings, had not restricted his defence rights or undermined the overall fairness of the criminal proceedings against him. Indeed, he had been warned that a repeated application to dismiss a legal aid lawyer – deemed unfounded by the courts – could lead to his having to hire a lawyer of his own choosing at his own expense, or to defend himself. Therefore, he could have foreseen that dismissing the second State-appointed lawyer might leave him without legal representation.

Principal facts

The applicant, Vasilis Jemeljanovs, is a Latvian national who was born in 1965 and lives in Daugavpils (Latvia).

On 5 October 2004 Mr Jemeljanovs was involved in a fight outside a grocery store in which he stabbed a man who later died. He was arrested the same day on suspicion of murder and placed in detention. The prosecution transferred his case to the Daugavpils Court for trial. He was represented by two legal aid lawyers before this first-instance court, but they were both released from their responsibilities at Mr Jemeljanovs' request in April and June 2005, respectively, on the ground that they had differing views to him on the conduct of his defence. His complaint about the quality of the second State-appointed lawyer's services was considered but dismissed as unjustified. Before releasing the second State-appointed lawyer from his duties, the authorities warned Mr Jemeljanovs that an accused did not have the right under the relevant legislation to choose a legal aid lawyer, but that he did have the right to hire a lawyer of his own choosing at his own expense or defend himself without a lawyer.

From September 2005 onwards Mr Jemeljanovs was thus not represented by a lawyer in the first-instance proceedings. He was found guilty of murder in February 2006 and sentenced to 12 years' imprisonment. The first-instance court based its finding on Mr Jemeljanovs partly admitting his guilt during the preliminary investigation and the evidence of seven eye-witnesses to the fight. This court dismissed his allegation that he had not been provided with adequate legal assistance as, at the point when he had refused the State-appointed lawyers' services, the court had not yet started to hear evidence.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Jemeljanovs appealed and was represented at this stage by two different court-appointed lawyers. However, in November 2006 the appeal court upheld the first-instance judgment, finding that there had been no discrepancies in the witness testimonies. The appeal court endorsed the findings of the first-instance court as to Mr Jemeljanovs' defence rights, also pointing out that even though witnesses had been called twice at first instance Mr Jemeljanovs had refused to put any questions to them.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), Mr Jemeljanovs complained about having been deprived of his right to legal assistance from September 2005 onwards, arguing that he had refused the services of State-appointed lawyers because of the poor quality of their assistance and that he had not intended to waive his right to all legal assistance when dismissing the second State-appointed lawyer.

The application was lodged with the European Court of Human Rights on 23 September 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Ganna **Yudkivska** (Ukraine),
Erik **Møse** (Norway),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 6 §§ 1 and 3 (c)

As concerned the first-instance proceedings, the Court found that the second State-appointed lawyer had not been passive or manifestly negligent, in view of his conduct during those proceedings, the nature of his applications and the fact that the adjudication of the case had been at an early stage. Furthermore, Mr Jemeljanovs' complaint about the quality of the services of the second State-appointed lawyer had been duly assessed by the first-instance court and dismissed as unfounded.

Indeed, given the warning Mr Jemeljanovs had been given by the domestic authorities, it would not have been unreasonable to expect him to foresee that a repeated application to dismiss a legal aid lawyer – deemed unfounded by the courts – could lead to his having to hire a lawyer of his own choosing at his own expense, or to defend himself.

Moreover, even as of September 2005 onwards when he was not represented by a lawyer, Mr Jemeljanovs had been provided with an effective right to defend himself in person before the trial court. In particular, the legal issues of the case had not been particularly complex and there had been sufficient safeguards in place, namely: he had been given the opportunity to call and examine witnesses against him as well as to call witnesses in his defence; and court hearings had been adjourned during the courts' adjudication, allowing him to make applications, give statements at court and prepare for court arguments.

Nor had the appellate proceedings undermined Mr Jemeljanovs' defence rights. He had benefitted from free legal assistance of two different court-appointed lawyers, and he had not raised any

complaints with a proper basis concerning the quality in general of the defence in the appellate proceedings. Moreover, there were no limitations on the scope of the review by one of the appellate courts, he was given time to prepare for hearings and he had had the opportunity to exercise his procedural rights. Even though he had been refused the opportunity to summon all the witnesses to attend court again, Mr Jemeljanovs had not shown what this would have contributed or indicated what questions he would have asked. That was especially important given that there had been no discrepancies in the witness testimonies.

In conclusion, Mr Jemeljanovs' right to defend himself in person or through legal assistance had not been restricted in a manner which undermined the overall fairness of the criminal proceedings against him.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.