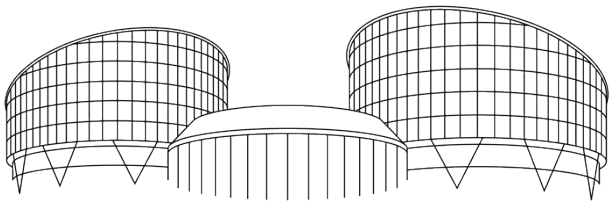

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF NEFEDOV v. RUSSIA**

*(Application no. 40962/04)*

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** Nefedov 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. 40962/04) 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 Sergey Valeryevich Nefedov ("the applicant"), on 10 October 2004.

2. The applicant, who had been granted legal aid, was represented by Ms G. Zaksheyeva, a lawyer practising in Irkutsk. 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 neither he nor his lawyer had been afforded the opportunity to attend an appeal hearing in the criminal case concerning him.

4. On 11 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 1966 and lives in Irkutsk.

6. On 24 May 2002 the applicant, the head of the Anti-Drug Trafficking Department of the North-Eastern Customs Office at the time, was arrested

on suspicion of abuse of position and drug trafficking. An investigator drew up an arrest record and, in detail, informed the applicant of his rights as an accused, including the right to have legal assistance and the right to remain silent. The applicant signed the record, noting that he clearly understood his rights, but he refused legal assistance and decided to make a statement.

7. According to the applicant, police officers beat him up and threatened him and his family. They also promised to release him in exchange for a confession. The applicant wrote a statement confessing to drug trafficking.

8. On the same date the investigator interrogated the applicant in the absence of counsel, whose assistance the applicant had refused. The refusal was recorded in a report duly dated and signed by the applicant.

9. The police searched the house of the applicant's co-accused and found a parcel of heroin. The applicant claimed that a neighbour, Mr M., had seen a police officer putting the parcel into the closet.

10. On 27 December 2002 the applicant was released on a written undertaking not to leave the town.

11. On 10 March 2004 the Irkutsk Regional Court found the applicant guilty as charged and sentenced him to four years and six months' imprisonment. In view of the applicant's position, the trial hearings were closed to the press and public. The conviction was based on self-incriminating statements made during the pre-trial investigation, search records, expert examination reports and witness testimonies. According to the applicant, the trial court refused to hear Mr M. However, as noted in a statement of appeal lodged by the applicant's co-accused, the trial court had heard Mr M. at least on two occasions: during the investigation phase of the trial, when he had testified and the parties had been allowed to ask questions, and when the trial court, having accepted the parties' request, had again questioned Mr M. to clarify certain points.

12. The applicant alleged that the judgment of 10 March 2004 had not been pronounced publicly.

13. According to the Government, following the public pronouncement of the judgment, the Regional Court had notified the applicant of his right to appeal against conviction and had explained "procedural issues pertaining to lodging an appeal" to him. The Government provided the Court with typed notes signed by the applicant and his lawyer and certifying that they had been served with a copy of the judgment of 10 March 2004 and that the applicant had been informed of the ten-day time-limit for lodging an appeal. Another note submitted by the Government was handwritten by the applicant and showed that he had received a copy of the trial court's records.

14. The applicant and his lawyer appealed against the conviction, having lodged lengthy appeal statements. They disputed the applicant's involvement in the criminal offences he had been found guilty of and disagreed with the way the trial court had established the relevant facts, the

distribution of roles between him and his co-defendant and the classification of his own acts. They submitted, in particular, that the trial court had disregarded the applicant's testimony and statements by witnesses which supported it, in particular, regarding his submissions that he had committed the alleged act of drug trafficking whilst he had been undercover and acting within his official functions. In the appeal statement the applicant did not ask the Supreme Court to ensure his presence at the appeal hearing.

15. On 18 June 2004 the head of Detention Facility no. 1 in Irkutsk, where the applicant was detained at the time, received a telegram from the Supreme Court for the applicant informing him of an appeal hearing scheduled for 6 July. The Government also provided the Court with typed summonses not bearing any stamps or signatures. An official of the Supreme Court allegedly sent those summonses on 16 June 2004 to the Bar Association where the applicant's counsel worked in order to confirm his ability to attend the appeal hearing on 6 July 2004.

16. On 6 July 2004 the Supreme Court of the Russian Federation upheld the judgment of 10 March 2004, having endorsed the Regional Court's reasoning. The applicant was not brought to the appeal hearing. His counsel was also absent. The Supreme Court proceeded in their absence, heard a prosecutor who supported the conviction, and examined the applicant's and his lawyer's statements of appeal.

## II. RELEVANT DOMESTIC LAW

### A. Code of Criminal Procedure of the Russian Federation of 18 December 2001, in force since 1 July 2002 ("CCrP")

17. Article 51 of the CCrP provides as follows:

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

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

(2) the suspect or the accused is a minor;

(3) the suspect or the accused cannot exercise his right of defence by himself owing to a physical or mental handicap;

(3.1) the court proceedings are to be conducted [in the absence of the accused] in accordance with Article 247 § 5 of this Code;

(4) the suspect or the accused does not speak the language in which the proceedings are [to be] conducted;

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

(6) the criminal case falls to be examined by a jury trial;

(7) the accused has filed a request for the proceedings to be conducted [without a hearing] under Chapter 40 of this Code;

2. ...

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

18. Article 52 of the Code provides that an accused can waive his right to legal assistance, but such waiver must be established in the written form. The waiver can be revoked at any moment.

19. Article 360 establishes the scope of the examination of the case by an appeal court. It provides that the appeal court shall examine the legality, validity and fairness of the judgment of the trial court only to the extent to which it has been complained against and only in respect of those convicted who are concerned by the appeal. The appeal court is empowered to reduce the sentence imposed on the convicted person or apply the law of a lesser offence, but shall have no power to impose a more severe penalty or apply a law of a more serious offence.

20. Article 375 § 2 provides that if a convicted person wishes to take part in the appeal hearing, he must indicate that in his statement of appeal.

21. Under Article 376 § 2 parties shall be notified of the date, time and place of an appeal hearing no later than fourteen days in advance. A court is to decide whether to summon a convicted person held in custody. Article 376 § 3 provides that a convicted person held in custody who expressed a wish to be present at the examination of his appeal shall be entitled to participate either directly in the court session or to state his case by video link. The court shall take a decision with respect to the form of participation of the convicted person in the court session. A defendant who has appeared before the court shall be always entitled to take part in the hearing. Article 376 § 4 states that if persons who have been given timely notice of the venue and time of the appeal hearing fail to appear, this shall not preclude the examination of the case.

22. Article 377 describes the procedure for the examination of cases by the appeal court. It provides, among other things, that at the hearing the court shall hear the statement of the party who had lodged the appeal and the objections of the opposing party. The appeal court shall be empowered, at the party's request, to directly examine evidence and additional materials

provided by the parties to support or disprove the arguments cited in the statement of appeal or in the statements of the opposing party.

23. Article 378 establishes which decisions the appeal court may take. It provides that the appeal court may decide to dismiss the appeal and uphold the judgment, to quash the judgment and terminate the criminal proceedings, to quash the judgment and remit the case for a fresh trial, or to amend the judgment.

24. Article 379 sets out the grounds for quashing or setting aside judgments on appeal. In particular, a judgment shall be quashed or amended on appeal if there is an inconsistency between the conclusions reached by the trial court in the judgment and the facts established by that court. Violation of procedural law and wrongful application of criminal law, as well as unfairness of the judgment, also constitute grounds for reversing or changing the judgment.

25. Article 383 provides that the judgment shall be deemed unfair if the sentence imposed is inconsistent with the seriousness of the offence, the personality of the convicted person, or if that sentence, although within the limits of the relevant Article of the Criminal Code, is unfair in its chosen type or extent, being either disproportionately lenient or disproportionately severe. A judgment may be reversed in connection with the necessity to impose a more severe penalty due to the fact that the penalty imposed by the trial court is deemed unfair as being disproportionately lenient, but only in instances when there is either a prosecution request or an application (as a private prosecution) by the victim or his representative to that effect.

26. Article 387 provides that where there has been a violation of the provisions of the Criminal Code, the appeal court may apply the law of a less serious offence and reduce the sentence, in accordance with legal reclassification of the acts committed. In doing so, the appeal court may not apply the law of a more serious offence or aggravate a sentence imposed. In cases where the trial court imposed a sentence more severe than that set forth by the relevant Article of the Criminal Code, the appeal court may reduce the sentence without changing the legal classification of the offence.

## B. Case-law of the Constitutional Court and of the Supreme Court of Russia

27. Examining the compatibility of Article 51 of the Code of Criminal Procedure with the Constitution, the Constitutional Court ruled as follows (decision no. 497-O of 18 December 2003):

> "Article 51 § 1 of the Code of Criminal Procedure, which describes the circumstances in which the participation of defence counsel is mandatory, does not contain any indication that its requirements are not applicable in appeal proceedings or that the convict's right to legal assistance in such proceedings may be restricted."

28. That position was subsequently confirmed and developed in seven decisions delivered by the Constitutional Court on 8 February 2007. It found that free legal assistance for the purpose of appellate proceedings should be provided in the same conditions as for earlier stages in the proceedings and that it was mandatory in the situations listed in Article 51. It further underlined the obligation of courts to secure the participation of defence counsel in appeal proceedings.

29. On 18 December 2003 the Constitutional Court of Russia dismissed a constitutional complaint by Mr R. as inadmissible. In its ruling (*определение*) the Constitutional Court held, *inter alia*, that Article 51 of the Code of Criminal Procedure, which defined the situations where participation of a defence lawyer in criminal proceedings was mandatory, also applied to proceedings before a court of appeal.

30. In a number of cases (decisions of 13 October 2004 and 26 January, 9 February, 6 April, 15 June and 21 December 2005, 24 May and 18 October 2006, 17 January 2007, 3 September and 15 October 2008) the Presidium of the Supreme Court of the Russian Federation quashed judgments of appeal courts and remitted cases for fresh consideration on the grounds that the courts had failed to secure the presence of defence counsel in the appeal proceedings, although it was obligatory for the accused to be legally represented. That approach was also confirmed by the Presidium of the Supreme Court in its report concerning cases adopted in the third quarter of 2005 (Decree of 23 November 2005) and by the Decree of the Plenary of the Supreme Court of 23 December 2008, as amended on 30 June 2009. In the latter document, the Supreme Court emphasised that an accused could only waive his right to a lawyer in writing, and that the court was not bound by that waiver.

# THE LAW

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

31. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that the Supreme Court had failed to ensure his and his counsel's presence at the appeal hearing, while the prosecutor had attended and had made oral submissions. The relevant parts of Article 6 provide 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. Submissions by the parties

32. The Government built their argument along two lines. They firstly submitted that neither the applicant nor his lawyer had petitioned the appeal court for their personal attendance at the appeal hearing. Relying on Article 376 of the Russian Code of Criminal Procedure, the Government stressed that in the absence of such a request the Supreme Court had correctly held the appeal hearing in the applicant's and his counsel's absence. The Government reminded the Court that Article 6 of the Convention did not imperatively require the personal attendance of a defendant at appeal hearings. They further argued that the Russian courts could not be held responsible for counsel's failure to attend. The applicant's counsel had been retained by him and it was in the applicant's best interests to ensure that his lawyer took his responsibilities seriously.

33. The applicant maintained his complaint.

## B. The Court's assessment

### *1. Admissibility*

34. The Court notes 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

35. The requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, and therefore the applicant's complaint under paragraphs 1 and 3 of Article 6 should be examined under the two provisions taken together (see *Vacher v. France*, 17 December 1996, § 22, *Reports of Judgments and Decisions* 1996-VI).

36. The Court reiterates that while Article 6 § 3 (c) confers on everyone charged with a criminal offence the right to "defend himself in person or through legal assistance", it does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of

ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Quaranta v. Switzerland*, 24 May 1991, § 30, Series A no. 205). In that connection it must be borne in mind that the Convention is intended to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that assigning counsel does not in itself ensure the effectiveness of the assistance he or she may afford an accused (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37, and *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275).

37. A person charged with a criminal offence should, as a general principle based on the notion of a fair trial, be entitled to be present at the first-instance trial hearing. However, the attendance of the defendant in person does not necessarily take on the same significance for an appeal hearing. Indeed, even where an appellate court has full jurisdiction to review the case on questions of both fact and law, Article 6 does not always entail a right to be present in person. Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the appellant (see *Helmers v. Sweden*, 29 October 1991, §§ 31-32, Series A no. 212-A; *Belziuk v. Poland*, 25 March 1998, § 37, *Reports* 1998-II; *Pobornikoff v. Austria*, no. 28501/95, § 24, 3 October 2000; and *Kucera v. Austria*, no. 40072/98, § 25, 3 October 2002).

38. Leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given the opportunity of being heard in person by the appeal or cassation court, provided that he had been heard by a first-instance court (see, among other authorities, *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 58, Series A no. 115, as regards the issue of leave to appeal, and *Sutter v. Switzerland*, 22 February 1984, § 30, Series A no. 74, as regards courts of cassation). However, where an appeal court has to make a full assessment of the issue of guilt or innocence, it cannot determine the issue without a direct assessment of the evidence given in person by the accused for the purpose of proving that he did not commit the act allegedly constituting a criminal offence (see *Dondarini v. San Marino*, no. 50545/99, § 27, 6 July 2004).

39. The Court further reiterates that the principle of equality of arms is another feature of the wider concept of a fair trial, which also includes the fundamental right that criminal proceedings should be adversarial. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment

on the observations made and the evidence adduced by the other party (see *Brandstetter v. Austria*, 28 August 1991, §§ 66-67, Series A no. 211).

40. Lastly, the Court reiterates that a waiver of a right guaranteed by the Convention – in so far as it is permissible – must not run counter to any important public interest, must be established in an unequivocal manner and must be attended by minimum safeguards commensurate to the waiver's importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II, and *Hermi v. Italy* [GC], no. 18114/02, § 73, ECHR 2006-XII). Moreover, before an accused can be said to have by implication, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be (see *Talat Tunç v. Turkey*, no. 32432/96, § 59, 27 March 2007, and *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

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

41. The Court would note at the outset that it does not consider it necessary to decide whether the absence of the applicant and his counsel, taken separately, would render the proceedings before the appeal court unfair. Neither of them was present before the Supreme Court of the Russian Federation, and it is against this background that the Court will determine the complaint in issue (see *Sinichkin v. Russia*, no. 20508/03, § 37, 8 April 2010, with further references).

42. Having regard to paragraphs 18. Article 52 of the Code provides that an accused can waive his right to legal assistance, but such waiver must be established in the written form. The waiver can be revoked at any moment.

19-26 above, the Court notes that the jurisdiction of appeal courts in the Russian legal system extends to both issues of facts and law (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 100, 2 November 2010; *Sidorova (Adukevich) v. Russia*, no. 4537/04, § 25, 14 February 2008, and *Shulepov v. Russia*, no. 15435/03, § 34, 26 June 2008) and that the Supreme Court had the power to fully review the case and consider additional arguments which had not been examined at the trial. In his appeal statement the applicant contested his conviction on both factual and legal grounds, his account of events differing from those of his co-accused in important aspects (see paragraph 14 above and compare with *Metelitsa v. Russia*, no. 33132/02, § 31, 22 June 2006 and *Sinichkin*, cited above, § 38). The appeal court was thus called upon to make a full assessment of the applicant's guilt or innocence regarding the charges against him. In the Court's view, the issues raised by the applicant in his appeal statement can reasonably be considered to have presented a certain degree of factual and legal complexity. It also cannot disregard that the prosecutor was present at the appeal hearing and made submissions to the appeal court. Taking further into account what was at stake for the applicant, who had been sentenced to

four-and-a-half years of imprisonment, the Court does not consider that the Supreme Court could have properly determined the issues before it without a direct assessment of the evidence given by the applicant – either in person or through some form of legal representation. Neither could it have ensured the equality of arms between the parties without giving the applicant the opportunity to reply to the observations made by the prosecutor at the appeal hearing.

43. In so far as the Government may be understood to argue that by failing to indicate in his appeal statement his wish to participate in the appeal hearing and to ensure attendance by his lawyer at the hearing (see paragraph 32 above) the applicant had waived those rights, the Court considers it necessary to note the following.

44. As regards the right to take part in the appeal hearing, the Court observes that the applicant's failure to ask to attend did not constitute an explicit and unequivocal waiver of that right. If analysed in terms of an implicit waiver, the Court reiterates its recent finding in another case against Russia raising a similar issue of a defendant appearing before an appeal court in the criminal case against him (see *Kononov v. Russia*, no. 41938/04, 27 January 2011). In that case, having been confronted with a possible waiver by the applicant of his right to participate in the appeal hearing, the Court held that, even assuming that it was a part of the lawyer's duty to inform the applicant about the peculiarities of appeal procedure, the presiding judge, being the ultimate guardian of the fairness of the proceedings, cannot be absolved of his or her responsibility to explain to a defendant his procedural rights and obligations and secure their effective exercise. In the absence of clear and comprehensible instructions from the trial judge as to the manner in which a defendant's appearance before the appeal court could be secured, that defendant cannot have been expected to appreciate that the failure to make a special request to ensure his participation in the appeal hearing would result in his appeal being examined in his absence (see §§ 40-44). Turning to the circumstances of the present case, the Court has serious doubts that the applicant, in fact, received such clear and comprehensible instructions from the trial court (see paragraph 13 above) and that, accordingly, the necessary safeguards were in place to make the proceedings satisfy the Convention requirements (see, among other authorities, *Talat Tunç v. Turkey*, cited above, § 60). Nonetheless, the Court need not resolve that issue, because it considers that the proceedings before the Supreme Court, in any event, fell short of the requirements of fairness for the following reasons.

45. It follows from the parties' submissions and the documents at the Court's disposal that at trial the applicant was represented by counsel of his choice. The same counsel joined the applicant in his appeal against conviction. There is no indication that the applicant waived, explicitly or implicitly and in accordance with the above-mentioned requirements (see

paragraph 40 above), his right to be represented by counsel on appeal. This conclusion is supported by the fact that the Supreme Court had accepted counsel's appeal statement and allegedly sent summonses to his Bar Association to inform him of the appeal hearing.

46. For the reasons stated in paragraph 42 and given the wording of Article 51 of the Russian Code of Criminal Procedure (see paragraph 17 above), as well as the Russian Constitutional Court's interpretation of that legal provision (see paragraphs 27-28 above), the Court observes that the applicant's representation on appeal was mandatory under domestic law. In so far as the Government argued that it had been for the applicant to seek leave for his counsel to appear before the appeal court, the Court notes that, apart from the fact that the Government did not point to any legal provision which supported their reading of the applicant's obligation, it has already held on a number of occasions that the effectiveness of the guarantee of legal representation by default contained in Article 51 of the CCP would be undermined without a corresponding obligation on the part of the courts to verify in each individual case whether it is lawful to proceed with a hearing in the absence of legal counsel for the accused (see *Grigoryevskikh v. Russia*, no. 22/03, § 90, 9 April 2009). This obligation is strengthened in a situation where a prosecutor is present at the appeal hearing and makes oral submissions to the court, while the applicant has allegedly waived his right to participate (see *Metelitsa,* cited above, § 32).

47. The Government claimed that summonses had been sent to the applicant's lawyer's Bar Association in advance and they submitted a typed version of those summonses. The Court notes that none of the summonses produced by the Government was post-marked and the Government adduced no other evidence that they had actually been sent. There is no indication that the appeal court verified that the summonses had indeed been served on the applicant's lawyer and, if they had not, adjourned the examination of the appeal. The Court also entertains doubts that the Supreme Court could rely on the applicant to inform his lawyer about the appeal hearing. While having sent a telegram to the applicant's detention facility on 18 June 2004 with notification of the appeal hearing, the Supreme Court did not receive any confirmation that the notification had, in fact, been delivered. The Government has also failed to produce any evidence showing that that notification was given to the applicant or that the applicant had maintained contact with his lawyer in the course of the appeal proceedings.

48. Having regard to its findings above, the Court therefore concludes that the proceedings in question fell short of the requirements of fairness. There has thus been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 1,080,000 Russian roubles (RUB) in respect of pecuniary damage, representing his outstanding salary and expenses that he and his family had borne during his pre-trial detention and his serving the sentence. He also claimed RUB 10,000,000 in respect of non-pecuniary damage.

52. The Government stressed that the applicant's claim for compensation for pecuniary damage had no causal link to the violations of the Convention alleged by him. They further submitted that the claim in respect of non-pecuniary damage was unsubstantiated and unreasonable.

53. 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, it awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

54. The applicant did not make any claims for costs and expenses.

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

### C. Default interest

56. 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 applicant's and his counsel's absence from the appeal hearing admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) of the Convention;

3. *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 4,000 (four thousand 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;

4. *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 | Nina Vajić |
| Registrar | President |