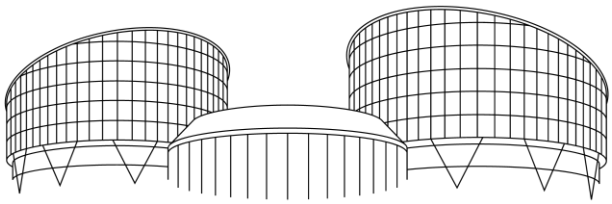

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF YEFIMENKO v. RUSSIA

(Application no. 152/04)

JUDGMENT

STRASBOURG

12 February 2013

FINAL

08/07/2013

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

In the case of Yefimenko v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 152/04) 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 Aleksandrovich Yefimenko ("the applicant"), on 30 October 2003.

2. The applicant, who had been granted legal aid, was represented by Ms Anna Borisovna Polozova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 16 June 2008 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).

4. On 28 September 2009 and 14 September 2011 the parties were requested to submit further observations under Rule 54 § 2 (c) of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and is serving a prison sentence in the Chelyabinsk Region.

A. Criminal proceedings against the applicant

1. The applicant's arrest and trial in 2001-03

6. The applicant was arrested on 13 March 2001 on suspicion of having murdered his aunt. He refused to testify until legal-aid counsel had been appointed. On 16 March 2001 he was also accused of having unlawfully deprived Mr P. of his liberty. He subsequently retained Mr M. as counsel in the proceedings. Thereafter, the applicant refused Mr M.'s services for unspecified reasons. On an unknown date legal-aid counsel D. was appointed to defend the applicant. The applicant and his co-accused were charged with fraud, abduction and several counts of murder. The applicant studied the case file between October and December 2001.

7. In December 2001 the case was sent to the Chelyabinsk Regional Court for trial. The applicant's request for trial by jury was rejected. A professional judge and two lay judges (Ms G. and Ms Y.) were assigned to try the case.

8. Throughout the proceedings the applicant was kept in detention. The trial court extended his detention on several occasions. The applicant appealed, alleging that the lay judges had been sitting in his case unlawfully because, contrary to the statutory requirement of the Lay Judges Act, they had served as lay judges more than once a year between 1998 and 2002. The Supreme Court of Russia dismissed appeals lodged by the applicant against the detention orders. In particular, on 22 November 2002 the Supreme Court upheld an order of 1 October 2002 by the presiding judge and the lay judges extending the detention. The appeal court stated as follows:

> "It appears from a note submitted by the Regional Court that new lists of lay judges in the region had not yet been compiled when the [applicant's] trial date was set ..."

9. On an unspecified date the applicant retained Mr Zh. as his counsel in the criminal proceedings.

10. The examination of the case started in February 2003. At the court hearing on 13 February 2003 the applicant unsuccessfully objected to the participation of the lay judges in his case and asked for trial by jury. Later on, for unspecified reasons, Ms Y. was replaced by Ms Ch. on the bench of the trial court.

11. On 18 February 2003 the presiding judge ordered counsel Zh. to be replaced on account of illness. From 20 February 2003 the applicant was assisted by legal-aid counsel Z. It appears that at certain stages in the proceedings the applicant was assisted by legal-aid counsel P. The trial court refused to admit a Ms K. as a lay representative.

12. By a judgment of 24 April 2003 the trial court (the presiding judge and lay judges Ms G. and Ms Ch.) convicted the applicant of several

offences (fraud, abduction, extortion, theft and several counts of murder) and sentenced him to twenty-two years' imprisonment.

13. The last day of the trial was apparently broadcast and commented upon by local television in April, August and September 2003.

14. The applicant appealed against the trial court's judgment to the Supreme Court of Russia. He argued, *inter alia*, that Z. had failed to lodge a statement of appeal "despite an earlier promise to do so" and that the composition of the trial court had been unlawful. The prosecutor also appealed against the trial court's judgment.

15. On 19 September 2003 the applicant made submissions before the appeal court by video link. According to the applicant, the appeal hearing lasted seven minutes, while the deliberations took only two minutes. The appeal court amended the judgment on appeal and reduced the applicant's sentence to twenty-one years' imprisonment. The appeal court made no specific findings regarding the composition of the trial court and observance of the applicant's defence rights in the appeal proceedings.

2. Subsequent events in 2004-07

16. By letters of 19 March and 12 April 2004 the President of the Regional Bar Association rejected the applicant's complaints against counsel Z.

17. In October 2005 and then on 21 December 2006 the Russian Supreme Court reduced the applicant's prison term to twenty years and six months.

18. In reply to the applicant's request for information, the Regional Court and the Regional Parliament stated that they had no information concerning lists of lay judges or whether any lists had been destroyed (see also paragraph 24 below).

19. On 8 February 2007 the Constitutional Court of the Russian Federation examined a complaint lodged by the applicant and ruled that legal-aid counsel should have been appointed for the appeal proceedings. Although it declared the applicant's constitutional complaint inadmissible, it found as follows:

> "...2. The decisions taken in [the applicant's] case, which were based on an unconstitutional interpretation of Article 50 § 1 (1) and (5) and § 3, should be re-examined in accordance with the applicable procedure, if there are no obstacles to doing so".

20. On 13 June 2007 the Vice-President of the Supreme Court rejected the applicant's renewed complaint about his conviction, stating that "the mere fact that the lay judges had served more than once in a year could not raise doubts as to the legitimacy of their mandate and, by implication, the lawfulness of the trial bench".

3. Subsequent events in 2009-11

21. On 10 June 2009 the Presidium of the Supreme Court re-examined the criminal case against the applicant by way of supervisory review, set aside the appeal decision of 19 September 2003 and ordered a fresh appeal hearing. Referring to Articles 97, 108 and 255 of the Code of Criminal Procedure, the Presidium ordered the applicant's detention pending the appeal proceedings.

22. On 3 September 2009 an appeal hearing was held before the Supreme Court, which set aside the trial court's judgment of 24 April 2003. The appeal court stated, *inter alia*, that there had been no lists of lay judges in the Regional Court at the material time; that the lay judges had sat in other cases in 2002-03; and that there had been a "violation of [the applicant's] defence rights and his right to a jury trial". The appeal court ordered a retrial before the Chelyabinsk Regional Court and ordered the applicant to remain in custody until 10 November 2009 pending the retrial.

23. The retrial started in September 2009. However, on 6 April 2010 it was stopped because the Presidium of the Supreme Court was asked to carry out a supervisory review in respect of the appeal decision of 3 September 2009.

24. On 1 September 2010 the Presidium of the Supreme Court set aside the appeal decision of 3 September 2009 and ordered a retrial. However, unlike the court decision of 3 September 2009, the Presidium removed any reference to (i) the absence of a list of lay judges in the Regional Court; (ii) whether the lay judges had sat in other cases in 2002-03; (iii) "the violation of [the applicant's] defence rights and his right to a jury trial". As a result, the Presidium quashed the trial court's judgment of 24 April 2003 in the following terms:

> "... As explained by the deputy President of the Regional Court, the lists of lay judges for district and town courts in the region had been approved between 29 June 2000 and 29 November 2001 ... The lists for eight district courts in the region were not submitted for approval. The lay judges in [the applicant's] case were registered as residing in Chelyabinsk. There is no indication that their names were added to the list of lay judges ... In those circumstances the trial court was not established by law. Under Article 381 § 2 (2) of the Code of Criminal Procedure (CCrP), the unlawful composition of the court is a ground for quashing the judgment in all circumstances..."

The Presidium also quashed several detention orders issued by the trial court during the trial in 2002. Lastly, with reference to Articles 108 and 255 of the CCrP, the Presidium ordered the applicant to remain in custody pending the retrial.

25. The retrial took place between October 2010 and February 2011. At the preliminary stage of the retrial, the applicant was assisted by legal-aid counsel B. and subsequently, at his own request, by legal-aid counsel D. In the meantime, in December 2010, having consulted his lawyer, the applicant

waived the opportunity for trial by jury and agreed that the case should be examined by a professional judge.

26. New counsel K. was appointed in January 2011 to replace counsel D., who had to participate in another trial. At a hearing on 11 January 2011, in reply to a question from the presiding judge, the applicant replied that he "had not yet fully discussed the defence position" with his counsel. At a hearing on 12 January 2011 the applicant stated that he had talked to his counsel and that they had discussed the defence position, which had prompted the applicant to amend his earlier strategy and plead guilty to the murder of his aunt. It also appears that (at this or a subsequent hearing) counsel K. supported the applicant's and his co-defendant's request for the prosecution to be discontinued on account of the expiry of the time-limits on one of the charges. The applicant also stated that, having talked to his counsel, he accepted that there was no longer any need to call the remaining witnesses or victims. Thus, the applicant accepted that it was appropriate to rely on the relevant material from the case file.

27. At a hearing on 13 January 2011 the presiding judge noted that the applicant had lodged an appeal against an earlier procedural order, also requesting the appointment of Mr D. as counsel. In that connection, the presiding judge asked whether the applicant was dissatisfied with counsel K. The applicant replied that he was satisfied, that counsel was sufficiently qualified to defend him and that he did not want him replaced.

28. On 1 February 2011 the Regional Court discontinued the case on one of the charges. On 16 February 2011 the Regional Court convicted the applicant of murder, kidnapping and extortion. The court sentenced him to a term of imprisonment of nineteen years and six months. As required under Article 72 of the Russian Criminal Code, that term was to be counted from 13 March 2001, to take into account the preceding periods of the applicant's detention pending trial and pursuant to the trial court's judgment of 24 April 2003.

29. The applicant and counsel K. appealed to the Supreme Court of Russia.

30. The applicant complained about counsel K. to the President of the local bar association. The latter replied that the applicant had not raised during the trial the issue of counsel's attendance at the remand centre, and that he had discussed the defence position with counsel on several occasions before the court hearings and in the holding room in the courthouse.

31. In March 2011 the Supreme Court appointed Ms Polozova as defence counsel. Both Ms Polozova and Mr D. were notified of the date and time of the appeal hearing. Mr D. informed the court that he had no authority to assist the applicant in the appeal proceedings and nor had he been retained as counsel by the applicant or his family. Ms Polozova also informed the court that she had no contract with the applicant, besides which she was busy and thus unable to accept the case as legal-aid counsel.

The Supreme Court therefore appointed Ms Chi. as defence counsel. The relevant register indicates that she studied the case file between 26 April and 5 May 2011. Counsel Chi. also attended the appeal hearing on 12 May 2011. The applicant participated in the appeal hearing by video link from a detention facility. The applicant refused to be assisted by counsel Chi. The appeal court dismissed his objection and counsel Chi. continued to assist him.

32. On 12 May 2011 the Supreme Court upheld the judgment of 16 February 2011 on appeal. The appeal court held as follows:

> "[The applicant] was assisted by counsel K. at the trial; no challenge was lodged against her. The information in the verbatim record of trial conflicts with the allegation that the defence counsel was ineffective. There is also an indication that counsel did not meet [the applicant] in the remand centre. However, the question of the need for such a meeting was not raised before the court. While stating at the beginning of the trial that the defence position had not been fully discussed, [the applicant] did not ask for additional time. Subsequently, [the applicant] confirmed on numerous occasions that counsel had provided advice and discussed the defence position with him ... During the preliminary hearing the court had granted [the applicant's] request to be assisted by advocate D. He was replaced during the trial owing to his participation in another criminal trial ... "

B. Conditions of detention

1. Kurchatovskiy temporary detention centre

33. According to the applicant, from 13 to 30 March 2001 he was detained in Kurchatovskiy temporary detention centre in the town of Chelyabinsk (*ИВС Курчатовского района*). He was not provided with a mattress, bedding or any personal hygiene products and had no access to a shower. The cell was dirty, damp and cold, and had no ventilation. The applicant had no out-of-cell activities and was confined to his cell twenty-four hours a day.

2. Remand centre

34. From 30 March 2001 to 28 October 2003 the applicant was detained in Chelyabinsk remand centre no. 74/1 (*ФБУ ИЗ-74/1 ГУФСИН РФ по Челябинской области*). Apparently, he was also kept in this remand centre for a period in 2005.

(a) The applicant's account

35. The applicant provided the following description of his conditions of detention in the remand centre in 2001-03.

36. From 17 April 2001 to 29 April 2003 he was kept in cell no. 77, which measured 7-8 square metres and was designed for six inmates (for

four inmates "later on"). It actually accommodated three to seven detainees. Hence, at times they had to take turns to sleep. Artificial light was on day and night. Between 30 March and 20 April 2001 the applicant was not provided with bedding in the remand centre; a blanket was provided only in late 2002. No towels or tableware were provided.

37. From 29 April to 28 October 2003 the applicant was kept in cell no. 80, which measured 7-8 sq. m and was designed for four inmates. It actually accommodated up to five inmates. Hence, at times they had to take turns to sleep.

38. In respect of all the cells the applicant alleged that the lavatory pan situated in the corner was separated from the living area only by a partition. A table was placed one metre from the pan. The cells were not ventilated, and the lack of ventilation was exacerbated by the fact that other detainees smoked. Until January 2003 the cell windows were covered with metal shutters in addition to slanted bars. There was no access to hot water in the cells.

39. Throughout his detention in the remand centre the applicant had no out-of–cell activities other than a daily one-hour walk in the courtyard of the remand centre. He spent the remainder of the day confined to his cell. Catering and medical services were unsatisfactory. During the summer period the applicant had no access to a hot shower.

(b) The Government's account

40. The Government submitted the following data concerning the cell measurements and population. Cell no. 77 measured 9.3 sq. m and accommodated, at the relevant time, four detainees; cell no. 80 measured 9.3 sq. m for four detainees; cell no. 83 measured 9.3 sq. m for four detainees; cell no. 91 measured 30.2 sq. m for twelve detainees; cell no. 96 measured 9.3 sq. m for four detainees; cell no. 154 measured 23.1 sq. m for eight detainees; and cell no. 1 measured 20.8 sq. m for six detainees.

41. The Government concluded from the above data that the statutory requirement regarding floor space per detainee (four sq. m) had not been complied with in cells nos. 77, 80, 83 and 96. The remaining material conditions of detention (lights, ventilation, individual bed and bedding, food) were decent. There were no metal shutters on the cell windows. There were some metal bars on the windows, which did not impede natural light. The toilets were separated from the main area by a partition, approximately one to one and a half metres in height.

42. The above submissions were based on the information provided by the head of the detention facility in 2008, as well as on various supporting statements allegedly made by the prison staff (but signed by the chief prison officer). The Government also submitted copies of schedules relating to "sanitary measures" for detainees between 2001 and 2003.

3. The applicant's complaints

43. The applicant complained about his detention to various public authorities. Allegedly, on 26, 28 March and 2 April 2001 the applicant and his counsel complained to the Prosecutor's Office of the Chelyabinsk Region that the conditions of detention in the temporary detention centre were unacceptable. On 10 September 2001 a prosecutor refused to institute criminal proceedings in relation to the allegation of unlawful detention in the temporary detention centre.

C. Correspondence with the Regional Bar Association, the International Protection Centre and the European Court

44. The applicant stated that several letters from the European Court to the applicant in 2004-05 had been inspected by staff of prison no. 1 in the Chelyabinsk Region. The majority of these letters were standard correspondence relating to the first introduction letter or acknowledging receipt of the applicant's correspondence. A letter dated 19 March 2004 requested the applicant to further substantiate his complaint about the conditions of detention in the Chelyabinsk remand centre.

45. Each letter bore a stamp indicating its registration number and the date of receipt by the detention facility. Subsequently, the applicant argued that the practice of monitoring correspondence continued to apply, and submitted copies of the Court's letters to the applicant between 2006 and 2008 which also bore similar stamps of various detention facilities.

46. Correspondence sent by the applicant to the European Court in 2003-08 was accompanied by cover letters compiled by the staff of various detention facilities. Some cover letters indicated the nature of the correspondence (for instance, submission of additional materials, notification of changes in the applicant's case) and/or the number of pages submitted by the applicant for dispatch. Some of the applicant's own letters also had a prison stamp indicating the date when each letter had been submitted to the "special unit". For instance, in his letter of 7 June 2011 the applicant informed the Court of new developments in the proceedings at the national level and of his intention to complain of further violations of the Convention. This letter bore the stamp of Chelyabinsk remand centre no. 74/3 and the date of receipt in the "special unit". In July 2011 the Court forwarded this letter to the applicant's representative before the Court. In August 2011 the representative lodged a complaint before the Court in relation to the inspection of this letter by prison authorities. Subsequently, the applicant argued that he had handed the letter of 7 June 2011 to a prison officer, intending to ask him to provide him with an envelope. The officer reported to him superior that, despite having explained to the applicant that letters to the Court had to be submitted in a sealed envelope, the applicant

had insisted on dispatching the letter and had not asked for an envelope. The officer was reprimanded for summarising the contents of the letter in the cover letter.

47. The applicant also wrote to the International Protection Centre (IPC), which is a non-governmental organisation in Moscow which, *inter alia*, provides information about Convention proceedings and assists applicants before the Court. In reply to the applicant's letter, on 28 April 2004 the IPC informed him of the procedure following the lodging of an application form and provided advice as to how to obtain copies of documents in support of the application pending before the Court. The IPC's letter bore the stamp of prison no. 1, indicating the internal registration number of the correspondence and its receipt date.

48. Lastly, the applicant wrote several letters to the regional bar association. By letters of 19 March and 12 April 2004 the vice-president of the bar association dealt with his complaint against counsel Z., in particular as regards his failure to lodge a statement of appeal in 2003. In a letter of 22 December 2004, the vice-president informed the applicant that he was unable to assist him as counsel or to provide any further consultation regarding the provisions of the criminal law and procedure. All the letters from the bar association bore the stamp of prison no. 1, indicating the internal registration number or the receipt date.

49. The applicant unsuccessfully complained to the regional prosecutor's office that his correspondence with the regional bar association and the IPC had been inspected by the prison administration, despite the allegedly privileged status of such correspondence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Lay Judges

50. Pursuant to the Lay Judges Act in force at the material time, lay judges sat as non-professional judges in civil and criminal cases (section 1(2) of the Lay Judges Act). Lists of lay judges for district courts were compiled by local authorities and were validated by the regional legislature (section 2). The president of a district court drew at random from the list the names of lay judges to be called to sit on a bench (section 5). Lay judges were called to serve for a period of fourteen days, or as long as the proceedings in a given case lasted. Lay judges could not be called more than once a year (section 9).

51. A new Code of Criminal Procedure entered into force on 1 July 2002. Pursuant to Article 30 § 2 (3), criminal cases concerning serious and particularly serious offences are examined by a bench of three professional judges. However, under the transitional rules, until 1 January 2003 such

criminal cases were to be examined by a single judge. That provision was amended in May 2002, and read as follows:

> "...until 1 January 2004 criminal cases which concern serious and particularly serious offences shall be examined by a single judge or, at the request of the accused prior to a court hearing, by a [professional] judge sitting with two lay judges."

B. Legal representation in criminal proceedings

52. Article 48 of the Russian Constitution provides that everyone has a right to adequate legal assistance. Under the Code of Criminal Procedure in force at the material time, a suspect or accused has the right to defend himself or be defended by counsel and/or his legal representative (Article 16). A court, prosecutor or investigator advises the suspect or accused of his rights. In certain cases the authority in charge of the case ensures mandatory representation of the suspect or accused by counsel or his legal representative. In certain circumstances such representation is free of charge.

53. A suspect or accused or his legal representative, or any other person instructed by the suspect or accused, may retain counsel (Article 50). The suspect or accused may retain several lawyers. At the request of the suspect or the accused, the investigator or court will ensure the participation of counsel. If counsel fails to appear within five days of the request, the investigator or court may invite the suspect or accused to retain another counsel or, in the event of refusal to do so by the suspect or accused, appoint counsel for them. If within twenty-four hours of arrest or detention privately retained counsel does not appear, the investigator or court will appoint new counsel. If the person concerned has waived his right to counsel, a pending investigative measure may be carried out without counsel, except in certain circumstances. If counsel is appointed by the investigator or court his fees are paid by the State.

54. Representation by counsel is mandatory if the suspect or accused has not waived his right to legal representation (Article 51). Representation by counsel is mandatory if the suspect or accused has not reached the age of majority; is unable to represent himself because of a physical or mental disability; has no proficiency in the language used at the trial; has been charged with a criminal offence punishable by more than fifteen years' imprisonment, life imprisonment or death; or is being tried by jury. If the suspect or accused has not retained counsel, the investigator or court appoints counsel for him.

55. In a decision dated 18 December 2003 (no. 497-O), the Constitutional Court held that nothing in the wording of Article 51 suggested that it was not applicable to appeal proceedings. That position was subsequently confirmed and developed in seven decisions (nos. 251,

252, 253, 254, 255-О-П, 257-О-П, 276-О-П) delivered by the Constitutional Court on 8 February 2007. It found that free legal assistance for the purpose of appeal proceedings should be provided on the same conditions as during the earlier stages of the proceedings. No limitation of the right of an accused to legal assistance was allowed unless he or she had waived his or her right to such representation.

56. Under the Advocates Act 2002, an advocate must comply with the legal provisions concerning compulsory representation by counsel in criminal proceedings when appointed by an investigating authority or a court (section 7). An advocate is not allowed to revoke his consent or assignment to represent a person (section 6(4)(6)).

57. Pursuant to the 2003 Code of Advocates' Professional Ethics, an advocate must rescind his agreement to represent the client if, after having agreed to represent him or her (except during a preliminary investigation and trial proceedings) it becomes clear that he cannot represent that client. The advocate must notify his client accordingly in advance, if at all possible (section 10). An appointed or privately retained advocate in criminal proceedings cannot revoke his consent to represent a client and must represent him or her until the stage of drafting and lodging a statement of appeal against the trial judgment (section 13 § 2). An advocate must appeal against a trial judgment at the client's request, or if (i) there are legal grounds for a reduction in the sentence or (ii) the client is a juvenile or has a mental disability and the trial court has disagreed with counsel and imposed a heavier sentence or convicted his client of a more serious offence (section 13(4)). An advocate will, as a rule, appeal against the trial court's judgment if (i) the client is a juvenile or has a mental disability; (ii) the trial court disagreed with counsel and imposed a heavier sentence; or (iii) the advocate considers that there are legal grounds for a reduction in the sentence (section 13(4) *in fine*). These provisions were amended in 2005 and 2007 and now read as follows:

> "2. An appointed or privately retained advocate in criminal proceedings cannot revoke his consent to represent a client, except in the cases set forth in the law, and shall defend the client, including, if necessary, by drafting and lodging an appeal on points of law against the trial court's judgment ...
>
> 4. An advocate shall appeal against a trial court's judgment (i) if so requested by his client; (ii) if there are grounds for setting that judgment aside or for amending it in favour of his client, or (iii) as a rule, if the court has disagreed with the advocate and imposed a heavier sentence on or convicted a juvenile of a more serious offence ..."

58. Legal-aid counsel in a criminal case are paid between 275 and 1,100 Russian roubles (RUB) per day for their services, including for meeting clients in a detention facility (order no. 199/87н of 15 October 2007 by the Federal Ministries of Justice and Finances; decisions of 16 March and 20 July 2011 by the Presidium of the Supreme Court of Russia).

C. Conditions of detention

59. Under the 1996 internal regulations for temporary detention centres (Chapter 3) in force at the material time, each detainee must be provided free of charge with an individual bed (if possible), individual bedding and tableware. Each cell must have a table and seat, a lavatory pan, and access to tap water. Detainees must be allowed to have a shower at least once a week. Each detainee must be afforded four square metres of cell space (Rule 3.3 of the Regulations).

60. Under the 2000 internal regulations for remand centres in force at the material time, each detainee must be provided free of charge with a bed, bedding, towel, and tableware (Rule 42). Each cell must have a table and seat, a lavatory pan, and access to tap water (Rule 44). Detainees are provided free of charge with three hot meals a day (Rule 46). Detainees must be allowed to have a shower at least once a week, and bedding is to be changed weekly (Rule 47). Detainees are to have one hour's daily exercise in the courtyard of the remand centre (Rule 138).

D. Convicts' correspondence

61. Article 91 § 2 of the Code of Execution of Sentences, as amended on 8 December 2003, provides that detainees' correspondence is subject to monitoring by the prison authorities. Correspondence with courts, prosecutors, prison officials, the Ombudsman, the public monitoring board and the European Court is not subject to monitoring. Correspondence between a convict and counsel (or another authorised representative) is not subject to monitoring, except when the administration has good reasons to believe that it is aimed at criminal ends. In that event the correspondence is monitored on the basis of a reasoned decision by the prison governor or his deputy.

62. Under the 2001 Internal Prison Regulations, as amended in 2004, all detainees' correspondence was to be processed by the prison authorities. Correspondence was to be placed in mailboxes or handed to staff unsealed (Chapter 12). On 3 November 2005 new Regulations were adopted. Rule 50 provides that detainees must put their unsealed letters into mailboxes or give them to prison staff, except for correspondence which is not subject to monitoring.

THE LAW

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

63. The applicant complained under Article 3 of the Convention that he had been detained in appalling conditions in Kurchatovskiy temporary detention centre and Chelyabinsk remand centre no. 74/1 from March 2001 to October 2003.

64. Article 3 of the Convention reads as follows:

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

65. The applicant also argued that he did not have effective remedies for those complaints, in breach of Article 13 of the Convention:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

66. The Government submitted that the applicant had been detained in the temporary detention centre in March 2001, whereas the complaint before the Court had been raised in 2003. Thus, he had failed to comply with the six-month rule. The temporary detention centre and the remand centre were supervised by different authorities and there was thus no reason to consider the applicant's detention in both facilities as a continuing situation.

67. The Government argued that the applicant had not lodged any complaint relating to the conditions of detention in the temporary detention centre. The applicant had not challenged the authorities' replies relating to his lengthy and allegedly unlawful detention in that centre. Nor had he appealed to the supervising prosecutor's office against the decision of 10 September 2001 refusing to institute criminal proceedings in respect of the allegation of unlawful detention in the centre. Subsequently, the Government conceded that the applicant had also complained about the conditions of detention to the supervising prosecutor's office. The applicant had lodged no complaints relating to the conditions of his detention in the remand centre.

68. Concerning the complaint under Article 13 of the Convention, the Government argued that the applicant would have some prospect of success if he lodged a civil claim for compensation on account of unsatisfactory conditions of detention. Under Russian law, a prosecutor's office was also empowered to take measures in relation to this issue.

69. The Government acknowledged that during some periods of detention in the remand centre the statutory requirement of floor space of four square metres per detainee had not been complied with. However, this had not necessarily entailed a violation of Article 3 of the Convention. The other material conditions of detention (such as an individual bed, ventilation, access to natural light, and food) complied with the requirements of Russian law (see, for details, paragraphs 40-42 above).

2. The applicant

70. The applicant argued that the conditions of detention in both facilities had been equally bad and should therefore be treated as a continuing situation. The Government had adduced no evidence in relation to the temporary detention centre and should not be absolved from responsibility merely on account of the expiry of the period for keeping relevant records and logbooks.

71. The applicant submitted that the regional prosecutor's office had not dealt with his complaints relating to the temporary detention centre. His other complaints had not been dispatched by the staff of the detention facility.

B. The Court's assessment

1. Admissibility

72. The Court reiterates that a period of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012). Short periods of absence during which the applicant is taken out of the facility for interviews or other procedural acts would not affect the continuing nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". Complaints about the conditions of detention must be lodged within six months of the end of the situation complained about or, if there is an available domestic remedy, of the final decision in the process of exhaustion (ibid.).

73. The Court observes that the applicant was kept in the temporary detention centre for several days in March 2001 (see paragraph 33 above). Complaints about the conditions of detention there and in the remand centre, and about the absence of effective remedies, were first raised in substance before the Court in the application form dated 2 February 2004.

74. It has not been suggested that during his detention in the temporary detention centre and later on the applicant had recourse to any remedies which could have offered a reasonable prospect of success or otherwise affected the application of the six-month rule in favour of the applicant (see, for comparison, *Pavlenko v. Russia*, no. 42371/02, § 75, 1 April 2010; *Roman Karasev v. Russia*, no. 30251/03, §§ 40-43, 25 November 2010; and *Orlov v. Russia*, no. 29652/04, §§ 64-65, 21 June 2011). It is also noted that after his detention in the temporary detention centre the applicant was transferred to a different type of detention facility – a remand centre – where he was detained until October 2003. Thus, there was no continuing situation in the present case. It follows that the complaint in respect of the temporary detention centre has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see also *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, §§ 73-79, 17 January 2012).

75. As regards the conditions of detention in the remand centre in 2001-03, the Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy for complaining about inhuman conditions of detention. Thus, the Court finds it necessary to join the Government's objection to the merits (see *Ananyev and Others*, cited above, § 70). The Court further considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus, it should be declared admissible.

2. Merits

(a) Article 13 of the Convention

76. In *Ananyev and Others* (cited above, §§ 93-119) the Court carried out a thorough analysis of domestic remedies in the Russian legal system in respect of a complaint relating to the material conditions of detention in a remand centre. The Court concluded in that case that it had not been shown that the Russian legal system offered an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint of inadequate conditions of detention. Accordingly, the Court dismissed the Government's objection as to the non-exhaustion of domestic remedies and

found that the applicants did not have at their disposal an effective domestic remedy for their grievances, in breach of Article 13 of the Convention.

77. Having examined the Government's arguments, the Court finds no reason to depart from this conclusion in the present case. Noting that the applicant raises an "arguable" complaint under Article 3 of the Convention, the Court finds that there has been a violation of Article 13 of the Convention.

(b) Article 3 of the Convention

78. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on the material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ananyev and Others*, cited above, § 123).

79. The Court notes that the Government's observations contain enclosures, mostly consisting of certificates issued in 2008. However, these documents contain no clear references to original sources for determining the design capacity and the actual cell population in the relevant periods in 2001-03.

80. However, even taking into account the data provided by the Government, it appears that at times there were only two square metres of floor space per detainee in the cell, which included both the living space and the amenities (such as the furniture and lavatory pan). Nor have the Government convincingly refuted the applicant's allegation of a shortage of individual beds.

81. In the light of the parties' submissions and the available material, the Court also considers the following additional elements to have been established. Both the dining tables and the lavatory pans were located inside the cells, sometimes as close to each other as one or one and a half metres. A partition, approximately one to one a half metres in height, separated the toilet from the living area on one side.

82. Thus, it has been established that the applicant was kept in cramped conditions for a considerable period of time between 2001 and 2003. The applicant had to have his meals and relieve himself in these conditions. He remained inside the cell all the time, except for a one-hour period of daily outdoor exercise. It has not been argued that the difficulty of the applicant's situation was in any significant way attenuated for some reason, for instance on account of the time spent out of the remand centre during the trial.

83. The Court therefore considers that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention. In view of the findings under Article 13 of the Convention, the Government's argument concerning exhaustion of domestic remedies should be dismissed.

84. In the circumstances, the Court concludes that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

85. The applicant argued that there had been a violation of Article 5 § 1 of the Convention on account of his detention after conviction pursuant to the judgment of 24 April 2003 by the trial court, which had not been "established by law". The relevant parts of Article 5 of the Convention read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court ..."

A. The parties' submissions

86. The applicant stated that the Presidium of the Supreme Court had acknowledged the unlawful composition of the trial court. The resumption of the criminal proceedings, the quashing of the judgment of 24 April 2003 and the retrial resulting in his conviction by a judgment of 16 February 2011 had not remedied the defects of the first trial and did not suffice to deprive him of victim status. No compensation had been paid to the applicant for the period of his detention imposed by the trial court's judgment of 24 April 2003 until 3 September 2009, when it was quashed. Thereafter, the applicant had remained in detention pending the retrial. The calculation of the prison term under the judgment of 16 February 2011 had been based on the general requirements of the criminal law and procedure, and not on any findings of unlawfulness. Thus, it could not constitute redress in relation to a complaint under Article 5 § 1 (a) of the Convention. Having regard to the above-mentioned factors and to the length of the retrial proceedings, the applicant insisted that he had not lost his victim status in respect of the present complaint.

87. The Government argued first that the lay judges had lawfully sat on the bench of the trial court in the applicant's criminal case in 2002-03. Following the resumption of the proceedings at the national level, the Government argued that the violation of his rights had been acknowledged

and the impugned judgment of 24 April 2003 had been quashed. The applicant's detention since 10 June 2009 had been lawfully ordered and extended by the national courts. A new and lawful judgment had been delivered in February 2011. The prison term imposed under the new judgment had taken account of the period of detention already served pursuant to the judgment of 24 April 2003. Accordingly, the authorities had removed all the negative effects that the judgment could have had on the applicant. He had therefore lost his victim status in respect of the present complaint.

B. The Court's assessment

1. Admissibility

88. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. Merits

89. By a judgment of 24 April 2003 the applicant was sentenced to twenty-two years' imprisonment. On 19 September 2003 the appeal court upheld his conviction and reduced the sentence to twenty-one years' imprisonment. In 2009 the criminal proceedings were reopened by way of supervisory review. On 3 September 2009 the Russian Supreme Court quashed the judgment of 24 April 2003 and ordered a retrial. In September 2010 the Presidium of the Supreme Court amended the grounds of the decision of 3 September 2009 while confirming the quashing of the trial court's judgment of 24 April 2003. The applicant was kept in detention pending the retrial. The retrial ended in 2011 with the applicant being sentenced to a term of imprisonment of nineteen years and six months.

90. Referring to the trial court's judgment of 24 April 2003, the applicant raised two related but separate complaints. He alleged that the trial court in his criminal case had not been "established by law", in breach of Article 6 § 1 of the Convention (see paragraphs 112-129 below). He also argued that the period of imprisonment he had served pursuant to the trial court's judgment had not complied with the requirements of Article 5 § 1 of the Convention.

91. The Court will first examine whether the applicant's detention following his conviction in 2003 complied with Article 5 (see, for

comparison, *Menesheva v. Russia*, no. 59261/00, §§ 91-93, ECHR 2006-III).

(a) The applicant's victim status following the reopening of the criminal case at the national level

92. The Court must first deal with the Government's argument that, in the same way as for the Article 6 complaints, the applicant had lost his victim status on account of the quashing of the impugned judgment of 24 April 2003 and the retrial.

93. It is the settled case-law of the Court that the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 41. Consequently, a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among other authorities, *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 67, 2 November 2010). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (*see Arat v. Turkey*, no. 10309/03, § 46, 10 November 2009). The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision (see *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006).

94. It is clear that in the present case the authorities acknowledged the original violation of the applicant's right to a court "established by law" under Article 6 § 1 of the Convention. However, having examined the available material including the decision of 1 September 2010 (see paragraph 24 above), the Court is not convinced that the national authorities in the present case acknowledged, either expressly or in substance, that the applicant's detention (the sentence) pursuant to the judgment of the trial court had not been "lawful".

95. In any event, the Court notes that the applicant was not provided with adequate redress. The Court reiterates that the European system for the protection of human rights is founded on the principle of subsidiarity. The States should be given a chance to put right past violations before the complaint is examined by the Court; however, "the principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies" (see *Giuseppe Mostacciuolo v. Italy* (no. 2) [GC], no. 65102/01, § 81, 29 March 2006). Moreover, the principle of subsidiarity

should not be construed as allowing States to evade the Court's jurisdiction (see *Sakhnovskiy*, cited above, § 76).

96. It is clear that the applicant in the present case had become a victim before he lodged the application with the Court. It was for the State to provide the applicant with adequate and sufficient redress in respect of this complaint in a timely manner, that is to say, before the Court examined the case. In the Court's opinion, the mere reopening of the case was not sufficient to deprive the applicant of his victim status.

97. For comparison, in respect of the complaints under Article 6 of the Convention, the Court considered in *Sakhnovskiy* (cited above, § 83) that the reopening of proceedings by itself could not automatically be regarded as sufficient redress capable of depriving the applicant of his victim status.

98. Turning back to Article 5 of the Convention, the Court considers that the reopening of the criminal case and the retrial failed to provide appropriate and sufficient redress for the applicant in respect of his complaint under Article 5 § 1 (a) of the Convention. Having spent over six years in detention following the judgment of 24 April 2003, the applicant sustained a significant interference with his right to liberty and received no compensation or other appropriate and sufficient redress. Indeed, it has not been suggested by the Government that the applicant was entitled to any compensation under Russian law in the circumstances of the case.

99. The Court notes that the calculation of the prison term imposed under the judgment of 16 February 2011 from the date of the applicant's arrest on 13 March 2001 was prescribed by a general provision of the Criminal Code. That calculation was not intended to, and did not, constitute an acknowledgement and redress in respect of the present complaint (see *Lebedev v. Russia*, no. 4493/04, § 47, 25 October 2007).

100. Having regard to the nature of the right in issue and the persistence of adverse consequences for the applicant after the quashing of the trial judgment, the Court concludes that he can still claim to be a victim within the meaning of Article 34 of the Convention. The Court therefore rejects the Government's objections under this head.

(b) Assessment of the period of detention imposed by the trial court's judgment of 24 April 2003

101. The Court has to determine whether the impugned detention was "lawful", including whether it complied with "a procedure prescribed by law". The Convention essentially refers back to national law, and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows

that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, §§ 40-41, *Reports of Judgments and Decisions* 1996-III).

102. A period of detention will in principle be lawful if it is carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention. For this reason, the Court has consistently refused to uphold applications from individuals convicted of criminal offences who complain that their convictions or sentences were found by the appellate courts to have been based on errors of fact or law (ibid, § 42).

103. In *Menesheva* (cited above, § 92) the period of detention had been served pursuant to the order of a judge who was in principle competent to take the decision in issue. However, the Court found that the judge had exercised his authority in manifest opposition to the procedural guarantees provided for by the Convention. Therefore, the ensuing detention order was inconsistent with the general protection from arbitrariness guaranteed by Article 5 of the Convention.

104. More recently, the Court held in *Mooren v. Germany* [GC] (no. 11364/03, § 75, 9 July 2009) that unless defects in a detention order constituted a gross *and* obvious irregularity, such defects could be remedied by the domestic appeal courts.

105. For instance, in *Kolevi v. Bulgaria* (no. 1108/02, §§ 175-79, 5 November 2009) the Supreme Court of Cassation acknowledged that the applicant's deprivation of liberty had been unlawful under domestic law because the criminal proceedings against him had been inadmissible at the outset, as he had enjoyed immunity from prosecution at all the relevant times. This Court considered that the situation disclosed a gross and obvious irregularity, given that domestic law prohibited in absolute and sufficiently clear terms the institution of criminal proceedings and the deprivation of liberty in respect of individuals who have immunity from prosecution.

106. In another case, the Court considered that a detention order contained a gross and obvious irregularity when it had been set aside (with a remittal of the matter for re-examination by a lower court) because of the absence of defence counsel and of the prosecutor from the detention hearing, and because of the detention court's failure to assess the relevant material in the case file and to give reasons. The Court took into consideration that a fresh detention order had been issued more than a month later to validate the preceding period of detention and that neither the appeal decision nor the fresh detention order concerning this period of detention contained reasons (see *Romanova v. Russia*, no. 23215/02, §§ 108-12, 11 October 2011).

107. The Court found no violation of Article 5 § 1 of the Convention in a situation where a pre-trial detention order was quashed (and remitted for

re-examination) on the ground that the order had been made by a two-judge bench whereas the applicable procedural rules required that the decision be taken by a single judge (see *Riccardi v. Romania*, no. 3048/04, § 54, 3 April 2012). The Court considered that that defect was of a procedural nature and could not be regarded as amounting to a gross and obvious irregularity that would invalidate the applicant's detention. The Court noted in that connection that when quashing the detention order the appeal court had not declared it void and had not retrospectively declared the applicant's detention under the detention order unlawful. It was also noted that a fresh detention order had been issued promptly and in compliance with the applicable procedural rules concerning the composition of the bench of judges (ibid.).

108. Turning to the present case, the Court observes that the present complaint concerns the prison term of twenty-two years which was imposed at first instance by the Chelyabinsk Regional Court. It is common ground between the parties that the Regional Court had, in principle, jurisdiction to take the decision in issue. It notes, however, that both during and after the trial the applicant sought to substantiate and obtain confirmation of his allegations of failure to comply with the Lay Judges Act in relation to the actual composition of the trial court (see paragraphs 8, 18, 20 and 50 above). Under Russian law in force at the material time, lay judges sat as non-professional judges in criminal cases, and lists of lay judges were compiled by local authorities and validated by the regional legislature (see paragraph 50 above).

109. Having obtained no prompt and adequate redress in ordinary appeal proceedings in relation to the complaint relating to the lay judges, the applicant was required to serve the sentence of imprisonment imposed by the trial court on 24 April 2003. As acknowledged by the Supreme Court in the supervisory review proceedings years after the trial judgment, the composition of the trial court had not been "established by law" in so far as lay judges Ms G. and Ms Ch. were concerned. There was no indication that they had received any authority to sit as lay judges in the applicant's criminal case, which ended with a heavy prison sentence of imprisonment.

110. The Court considers that in the circumstances of the present case there was a gross and obvious irregularity in respect of the period of the applicant's detention imposed by the trial court's judgment of 24 April 2003 (see, for comparison, *Riccardi*, cited above, § 54).

111. Thus, the court which convicted the applicant was not "competent" and the applicant's detention was not "lawful" within the meaning of Article 5 § 1 (a) of the Convention. In view of the gravity of the violation and noting the absence of adequate acknowledgment and redress, the Court concludes that the applicant's detention on the basis of the trial court's judgment was in breach of Article 5 § 1 of the Convention. It follows that there has been a violation of this provision.

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

112. The applicant complained under Article 6 of the Convention that the criminal proceedings against him in 2003 had been unfair, that the composition of the trial court had been unlawful, and that no legal assistance had been provided to him in the appeal proceedings.

113. The relevant parts of Article 6 of the Convention read as follows:

> "1. In the determination of ...of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...
>
> 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. The parties' submissions

1. The applicant

114. The applicant alleged that the lay judges had been allowed to sit on the trial bench in breach of the Lay Judges Act. He also argued that the trial court had arbitrarily removed his counsel, Zh., and had refused to admit a lay representative; legal-aid lawyers Z. and P. had been inefficient; Z. had failed to draft a statement of appeal and to take part in the appeal proceedings, despite his promise to do so; thus the applicant had not had legal assistance in the appeal proceedings.

115. Subsequently, the applicant argued that the retrial resulting in his conviction by a judgment of 16 February 2011 had not remedied the defects of the first trial. The resumption of the criminal proceedings and the quashing of the judgment of 24 April 2003 did not suffice. The Presidium of the Supreme Court had modified the scope of the acknowledged violations and limited them to the unlawful composition of the trial court. So, even though the 2003 trial and appeal decisions had been quashed, there had been no acknowledgment of the alleged violations in the decision of 1 September 2010, in particular as regards the ineffective legal assistance during the trial. In any event, the retrial in 2011 had given rise to further violations of Article 6 of the Convention because of the deficient legal assistance by counsel K., who had been imposed on the applicant instead of counsel D. The applicant had had no opportunity to communicate with counsel in confidence, in particular because K. had not come to talk to him in the remand centre. In view of the above alleged violations and the length of the

retrial, he had not lost victim status in respect of the initial complaints relating to the trial in 2001-03.

2. The Government

116. The Government argued that there had been a violation of Article 6 of the Convention on account of the absence of legal assistance in the appeal proceedings in 2003, but no violation of that provision on account of the composition of the trial court and the legal assistance provided to the applicant during the trial.

117. The Government submitted that the trial court's judgment of 24 April 2003 had been set aside because of the unlawful composition of the trial bench. The Russian court had thus acknowledged that there had been violations relating to the trial. That acknowledgment, together with the fair retrial the applicant had received, constituted adequate redress. The applicant had received proper legal advice from counsel K and had unequivocally waived his right to a jury trial and agreed to be tried by a judge. Thus, the applicant was no longer a victim of the initial alleged violations under Article 6 of the Convention in relation to the criminal proceedings against him.

B. The Court's assessment

118. The Court reiterates that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, the Court is not competent to deal with an application alleging that errors of law or fact have been committed by the domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see, among other authorities, *Schenk v. Switzerland*, 12 July 1988, § 45, Series A no. 140).

119. As regards Article 6 of the Convention, the Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law, and as a general rule it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *Doorson v. the Netherlands*, 26 March 1996, § 67, *Reports* 1996-II, and *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports* 1997-III).

120. Bearing in mind the above principles, the Court has first examined the initial grievances submitted by the applicant concerning the preliminary investigation in his criminal case. It has not been shown that the applicant was not afforded an adequate opportunity to present his arguments and

evidence and to contest the prosecution's arguments and evidence in adversarial proceedings. The available material before the Court in the present case does not disclose that any alleged violation was such as to impair the overall fairness of the proceedings under Article 6 of the Convention. Equally, the Court notes that the applicant had legal assistance at the trial and that it has not been convincingly substantiated that that assistance was manifestly ineffective or otherwise in breach of the Convention.

121. As regards the grievances specifically concerning the composition of the trial bench and the issue of legal assistance, as confirmed by the Russian Supreme Court the complaints relating to the composition of the trial bench and the lack of legal assistance in the appeal proceedings in 2003 were justified (see, by contrast, *Posokhov v. Russia*, no. 63486/00, § 36, ECHR 2003-IV). The Court first has to examine the Government's argument that the applicant lost his victim status because of the retrial in 2011.

122. The Court will carry out its analysis in the light of the principles set out in *Sakhnovskiy* (cited above, §§ 66-71 and §§ 76-84) and with reference to the parties' specific submissions concerning the resumed proceedings.

123. Having examined the available material, the Court observes that the applicant's case was re-examined by a tribunal "established by law". It remains to be established whether the applicant's right to legal assistance was respected during the retrial.

124. The Court also reiterates that assigning counsel does not in itself ensure the effectiveness of the assistance counsel may provide to his client (see *Czekalla v. Portugal*, no. 38830/97, § 60, ECHR 2002-VIII). A State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between a defendant and his counsel, whether appointed under a legal-aid scheme or financed privately. The relevant national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal-aid counsel to provide effective legal assistance is manifest, or is brought sufficiently to their attention in another way (ibid).

125. The right of an accused to communicate with his legal representative out of earshot of third parties is part of the basic requirements of a fair trial in a democratic society, and follows from Article 6 § 3 (c) of the Convention. If a lawyer is unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance loses much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective (see *Sakhnovskiy*, cited above, § 97). Restrictions may be imposed on contact between an accused and his lawyer if good cause exists (see *Öcalan v. Turkey* [GC], no. 46221/99, § 133, ECHR 2005-IV). The Court reiterates that there are

inherent time and place constraints on meetings between a detained person and his lawyer. Any limitation on relations between clients and lawyers, whether inherent or express, should not thwart the effective legal assistance to which a defendant is entitled (see *Orlov v. Russia*, no. 29652/04, § 106, 21 June 2011).

126. It is uncontested that legal-aid counsel appointed for the retrial did not meet the applicant in the remand centre. However, it is common ground between the parties that counsel spoke with the applicant on several occasions before or after court hearings, including in the courthouse (see also paragraph 32 above).

127. The Court observes that the trial judge in the present case paid attention to the effective exercise of defence rights (see paragraphs 26, 27 and 32 above). The Court considers that there are insufficient elements in the case file to support the conclusion that the applicant's right to legal assistance was not respected during the retrial. It has not been substantiated that the practical arrangements for meeting(s) with counsel in the holding room did not ensure communication out of earshot of third parties.

128. Therefore, while noting that the proceedings were resumed in June 2009 and the retrial lasted until February 2011, the Court finds it possible to accept in the circumstances of the present case that the retrial remedied the defects of the first trial in 2001-03, which were at the origin of the present application before the Court.

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

IV. ALLEGED VIOLATIONS OF ARTICLES 8 AND 34 OF THE CONVENTION

130. The applicant stated that his correspondence with the Court, as well as several letters to and from a regional bar association and a non-governmental organisation, had been inspected by the staff of the detention facilities.

A. The parties' submissions

1. The applicant

131. The applicant argued that the presence of prison stamps on the letters (rather than on the envelopes) confirmed that the Court's letters to the applicant in 2004-05 and all other similar letters had been inspected by prison staff. The applicant's letters to the Court had been accompanied by cover letters from the prison with a brief indication of the contents of his

letters or the number of pages. Being aware of this practice, the applicant had felt intimidated and also obliged to exclude certain parts of his complaints – those relating to the prison – from his application to the Court. The applicant's letters to the Court had been dispatched with delays ranging from four to five days.

132. The applicant raised similar arguments in relation to monitoring of his correspondence at the national level.

2. The Government

133. The Government argued that there had been no hindrance to the applicant's complaints before the national authorities and the Court. He had lodged over 200 complaints, of which twenty-eight had been to the Court. In 2009 the prison staff had been trained and instructed to inform detainees of the requirement to hand over privileged correspondence for dispatch in sealed envelopes.

134. Subsequently, as regards the applicant's letter of 7 June 2011 to the Court, the Government argued that the applicant should have brought proceedings under Chapter 25 of the Code of Civil Procedure. He had handed over his letter of 7 June 2011 to the prison officer without an envelope. The applicant had been told about the procedure for dispatching correspondence to the Court, namely, that it had to be submitted in a sealed envelope, which could be obtained free of charge if the sender had no money. The applicant, who had money in his account, had refused to purchase an envelope. He had also refused to accept a free envelope. To avoid any delay, the prison staff had put the letter in an envelope and dispatched it to the Court.

B. The Court's assessment

1. As regards the applicant's correspondence at the national level

135. As regards monitoring of the applicant's correspondence at the national level (the Regional Bar Association and the International Protection Centre), the Court considers that the matter falls to be examined under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for ... his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

(a) Admissibility

136. The Court notes that the Government submitted no specific arguments relating to the admissibility of the present complaint. The Court would, however, observe at this juncture that the applicant's grievance relates to the statutory monitoring framework applied to the correspondence of detainees in Russia (see paragraph 61 above). It has not been alleged, and the Court does not consider, that the applicant had at his disposal any remedies which offered any reasonable prospects of success, given that the national authorities apparently enjoyed unfettered discretion in the routine monitoring of non-privileged correspondence (see, for comparison, *Belyaev and Digtyar v. Ukraine*, nos. 16984/04 and 9947/05, § 45, 16 February 2012).

137. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It should thus be declared admissible.

b) Merits

138. The Court observes, and it is not in dispute between the parties, that the applicant's correspondence was monitored by the prison staff. In the Court's view, the monitoring amounted to an "interference" under Article 8 of the Convention. Such an interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2, and is "necessary in a democratic society" in order to achieve those aims (see, among other authorities, *Szuluk v. the United Kingdom*, no. 36936/05, § 43, ECHR 2009).

139. The Government argued that the interference was in accordance with Article 91 of the Code of Execution of Sentences (CES), which provides that incoming and outgoing non-privileged correspondence of a convicted prisoner must be monitored (see paragraph 61 above). As the Court has already had occasion to observe (see *Boris Popov v. Russia*, no. 23284/04, § 100, 28 October 2010), Article 91 of the CES made a distinction between ordinary, privileged mail of a convicted prisoner and his correspondence with a person providing legal assistance.

140. In the absence of any specific argument and substantiation, the Court accepts that the general rule, under Article 91 of the Code, for ordinary correspondence applied in the present case and served as the legal basis for monitoring the correspondence between the applicant and his correspondents at the national level. It is also noted that the parties did not submit that any other legislation regulated this matter at domestic level. Thus, the interference in the present case was in accordance with the "law".

141. In cases arising from individual petitions the Court's task is not to review the relevant legislation or a particular practice in the abstract. Instead, it must confine itself as far as possible, without losing sight of the

general context, to examining the issues raised by the case before it. Here, therefore, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the above procedure, but to determine, *in concreto*, the effect of the interference on the applicant's right to respect for his correspondence (see, as a recent authority, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 68-70, 20 October 2011). In the present case the Court will focus on proportionality as regards the monitoring of the applicant's correspondence.

142. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" regard may be had to the State's margin of appreciation (see, amongst other authorities, *Dickson v. the United Kingdom* [GC], no. 44362/04, § 77, ECHR 2007-V). While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court of conformity with the requirements of the Convention.

143. Some measure of control over prisoners' correspondence is called for, and is not of itself incompatible with the Convention, regard being had to the ordinary and reasonable requirements of imprisonment (see, among other authorities, *Silver and Others v. the United Kingdom*, 25 March 1983, § 98, Series A no. 61, and *Boris Popov*, cited above, § 106). In assessing the permissible extent of such control, the fact that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world should, however, not be overlooked (see *Campbell v. the United Kingdom*, 25 March 1992, § 45, Series A no. 233).

144. The assessment of the proportionality of the interference also takes into account the nature of the correspondence concerned. For instance, the Court has considered that the need for confidentiality is essential in respect of a prisoner's correspondence with a lawyer concerning contemplated or pending proceedings, particularly where such correspondence relates to claims and complaints against the prison authorities. For such correspondence to be susceptible to routine scrutiny, particularly by individuals or authorities who may have a direct interest in the subject matter contained therein, is not in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client (see *Campbell*, cited above, § 47). The Court has also considered that, as a rule, correspondence between an actual or prospective applicant and his or her representative before the Court should be privileged (see *Boris Popov*, cited above, § 112).

145. The Court also pays attention to the precise nature of the interference in a given case. For instance, in *Szuluk v. the United Kingdom*, cited above, the prison governor informed the applicant that he had been

advised that it was necessary to examine his medical correspondence for illicit enclosures. All correspondence between the applicant and his external medical specialist would be directed, unopened, to the prison medical officer. The latter would examine the content of the envelope in order to ascertain its medical status and then reseal it (§ 11).

146. As already stated, the present case concerns the application of monitoring rules to all non-privileged correspondence. All non-privileged correspondence was to be processed by the prison administration. Such correspondence was to be placed into mailboxes or handed to staff unsealed (see paragraph 62 above). Monitoring under the rule in Article 91 of the CES was non-selective and routine; it was not limited as to its length or scope. This provision did not specify the manner of its exercise. No reasons were required to warrant its application. The CES made no provision for an independent review of the scope and duration of monitoring measures (see *Enea v. Italy* [GC], no. 74912/01, §§ 141-43, ECHR 2009, and *Onoufriou v. Cyprus*, no. 24407/04, §§ 109-13, 7 January 2010).

147. Accordingly, the national authorities were not required to refer, and did not refer, to any legitimate aim within the meaning of Article 8 § 2 of the Convention. The monitoring of the applicant's correspondence was not linked to the criminal proceedings against him, thus it is questionable that the interference with his correspondence could be regarded as being justified by "the prevention of disorder or crime" (see, for comparison, *Piechowicz v. Poland*, no. 20071/07, § 238, 17 April 2012).

148. For their part, the Government did not put forward any convincing argument to justify the routine monitoring of the correspondence or to show that sufficient safeguards were in place to avoid any excessive effect of the interference on the applicant's right to respect for his correspondence.

149. The Court does not discern any justification for routinely inspecting the applicant's correspondence in the present case. Indeed, there was no question of security risks or collusion between the applicant and his correspondent(s), for instance in relation to any pending proceedings at the national level, or of any criminal activity or conduct (see *Alekseyenko*, § 88, and *Boris Popov*, § 108, both cited above).

150. It follows from the above considerations that the provisions of Russian law failed to afford a measure of legal protection against arbitrary interference by public authorities with the applicant's right to respect for his correspondence (see, for a similar approach, *Moiseyev v. Russia*, no. 62936/00, § 266, 9 October 2008, concerning monitoring of detainees' correspondence under the Custody Act).

151. There has therefore been a violation of Article 8 of the Convention on account of the monitoring of the correspondence between the applicant and his correspondents at the national level.

2. As regards the correspondence between the applicant and the Court

152. The Court has previously examined complaints specifically concerning the monitoring of correspondence between applicants and the Court under Article 8 of the Convention (see *Idalov v. Russia* [GC], no. 5826/03, § 199, 22 May 2012; *Boris Popov*, cited above, §§ 93-94; and *Alekseyenko v. Russia*, no. 74266/01, § 68, 8 January 2009), under its Article 34 (see *Trosin v. Ukraine*, no. 39758/05, § 49, 23 February 2012, and *Fetisov and Others*, cited above, § 144) or under both provisions (see *Belyaev and Digtyar*, cited above, §§ 50-63).

153. Being the master of the characterisation to be given to the facts of the case, and having regard to the nature of the interference and contents of the applicant's submissions (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009), the Court considers that the matters relating to the correspondence between the applicant and the Court raise issues under both Articles 8 and 34 of the Convention.

(a) Article 8 of the Convention

154. As to Article 8 of the Convention (cited above), the Court reiterates that at the relevant time Article 91 of the CES expressly prohibited the monitoring of correspondence between a detainee and the European Court. In such circumstances, the related grievance could be raised before courts in order to obtain an examination of the substance of such complaint, at least as regards the confidentiality of the Court's letters sent to the detained applicant (see *Alekseyenko*, cited above, § 90). It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

155. As to the applicant's letters to the Court, noting that it was unlikely that the applicant could be aware of the possible inspection of his letters by the prison staff before their actual dispatch, the Court raised this matter *proprio motu*. Subsequently, the applicant maintained this complaint, also referring to the alleged inspection of his letter of 7 June 2011 (see paragraph 46 above). The Court declares this matter admissible. However, in view of the findings below under Article 34 of the Convention, the Court does not find it necessary to pursue the examination of this complaint separately.

(b) Article 34 of the Convention

156. Article 34 of the Convention reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

157. The Court reiterates that, unlike Article 8 of the Convention for instance, a complaint under Article 34 of the Convention does not give rise to admissibility issues under the Convention (see *Juhas Đurić v. Serbia*, no. 48155/06, § 72, 7 June 2011, with further references). Article 34 of the Convention imposes an obligation on a Contracting State not to hinder the right of the individual to present and pursue a complaint before the Court effectively. While the obligation imposed is of a procedural nature distinguishable from the substantive rights set out in the Convention and Protocols, it flows from the very essence of this procedural right that it is open to individuals to complain of alleged infringements of it in Convention proceedings (see *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002).

158. It is of the utmost importance for the effective operation of the system of individual application instituted by Article 34 that applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy (see, among others, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 158, ECHR 2012 (extracts)).

159. The Court considers that detainees may find themselves in a vulnerable position when they are dependent, as in the present case, in their communication with the Court, on the staff of the detention facility. However, the Court does not consider that any delays in the processing of correspondence in the present case were such as to amount to a breach of the State's obligation under Article 34 of the Convention (see *Shchebetov v. Russia*, no. 21731/02, § 84, 10 April 2012).

160. At the same time, the Court reiterates the importance of respecting the confidentiality of correspondence between the Court and applicants, since that correspondence may concern allegations against prison authorities or prison officials (see *Peers v. Greece*, no. 28524/95, § 84, ECHR 2001-III). The opening and inspection of letters from the Court or addressed to it gives rise to the possibility that they will be read, and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Belyaev and Digtyar*, cited above, § 62).

161. It is uncontested that the Court's letters were clearly identifiable as to their sender. As to the applicant's letters to the Court, except for the letter of 7 June 2011, it has not been argued that the applicant had to hand over or did hand over any letters without an envelope or in an unsealed envelope. It appears that he indicated clearly that the correspondence was addressed to the Court.

162. The parties disagreed as to whether the prison officers read the texts of the incoming or outgoing letters. However, the Court notes that

these letters were stamped by the detention facility. Moreover, the applicant's submissions to the Court were accompanied by cover letters from the detention facility indicating the nature of the correspondence dispatched or the number of enclosures. These facts suggest that at least some of the applicant's communications with the Court were inspected by State officials.

163. It is noted that, while one of the impugned letters contained a request by the Court for further information concerning the applicant's complaint about the conditions of detention in a remand centre, the other letters mentioned by the applicant were standard or mere acknowledgement-of-receipt letters. However, this could not have been known in advance by the prison authorities and should not in itself deprive the applicant of the procedural protection provided by the Convention.

164. The Court concludes that the correspondence between the applicant and the Court was monitored by the staff of the detention facilities without any valid reason. Furthermore, such monitoring could not pass for a sporadic act or an excusable mistake. In addition, this monitoring constituted a breach of the express confidentiality rule contained in Article 91 of the CES. It was incumbent on the national authorities to put in place a framework for avoiding any unjustified "chilling" effect on the effective exercise of a right of individual application before the Court and for avoiding the risk of various forms of direct or indirect influence on the prisoner impairing his opportunities to communicate with the Court.

165. The above elements, taken cumulatively, have led the Court to conclude that Russia has failed to comply with its obligations under Article 34 of the Convention in the present case.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

166. The applicant complained, in addition, about the conditions of his detention in 2005. He also raised a number of complaints relating to his arrest and detention in 2001-02 and 2009. Lastly, the applicant complained that local television had covered the trial and treated him as a criminal.

167. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

168. 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

169. The applicant claimed 246,200 euros (EUR) in compensation for non-pecuniary damage.

170. The Government contested this claim.

171. The Court considers that the applicant experienced suffering and frustration on account of the conditions of detention in the remand centre and the unlawful detention following his conviction in 2003. The Court considers that this cannot be compensated for by a mere finding of a violation. The Court finds it appropriate to award the applicant EUR 20,000, plus any tax that may be chargeable.

B. Costs and expenses

172. The applicant also claimed EUR 2,460 for legal costs incurred before the Court, to be paid to the applicant's representative, Ms A. Polozova.

173. The Government contested the claim.

174. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court observes that the applicant had already been granted legal aid in the amount of EUR 850. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 in respect of the proceedings before the Court, to be paid into Ms Polozova's bank account.

C. Default interest

175. 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

1. *Joins to the merits*, unanimously, the Government's argument concerning exhaustion of domestic remedies in respect of the complaint about conditions of detention and *dismisses it*;

2. *Declares* admissible, unanimously, the complaints concerning conditions of detention in Chelyabinsk remand centre and the alleged lack of effective remedies in this connection; the lawfulness of the applicant's detention pursuant to the judgment of 24 April 2003; and monitoring of the applicant's correspondence with the Court and at the national level;

3. *Declares*, unanimously, the remainder of the application inadmissible;

4. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;

5. *Holds*, unanimously, that there has been a violation of Article 13 of the Convention;

6. *Holds*, by six votes to one, that there has been a violation of Article 5 § 1 of the Convention;

7. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention on account of the monitoring of the applicant's correspondence at the national level;

8. *Holds*, unanimously, that there is no need to examine separately under Article 8 of the Convention the issue relating to the monitoring of the applicant's letters to the Court;

9. *Holds*, unanimously, that the respondent State has not complied with its obligation under Article 34 of the Convention on account of the monitoring of the correspondence between the applicant and the Court;

10. *Holds*, by six votes to one,
(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 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that the respondent State is to pay the applicant, within the same time-limit, EUR 1,000 (one thousand euros), in respect of costs and

expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement and to be paid into the bank account of Ms Anna Polozova;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

11. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge D. Dedov is annexed to this judgment.

I.B.L.
S.N.

PARTLY DISSENTING OPINION OF JUDGE DEDOV

My opinion concerns the violation of Article 5 § 1 of the Convention (see paragraphs 88–111 of the judgment). I cannot share the Court's conclusion that the applicant was afforded no adequate acknowledgement and redress.

The Court has made reference to its case-law, including *Menesheva v. Russia* (§§ 91-93) and *Sakhnovskiy v. Russia* (§ 67). In the case of *Sakhnovskiy*, the Court held that "it is a well-established principle of the Court's case-law that an applicant may lose his victim status if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it".

It seems that in the present case the Court goes even further, stating in paragraph 93 of the judgment that "a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a victim". As this position requires interpretation in accordance with the Court's established case-law (if it is not merely to be a routine execution of the individual's rights), it means, as I understand it, that such a measure should be based on recognition of a particular violation and that it should eliminate adverse consequences for the applicant.

It follows that the measures taken by the authorities in the applicant's favour must be examined.

In September 2009 the Russian Supreme Court set aside the trial court's judgment of 24 April 2003 and recognised that there had been a violation of the applicant's right to trial by a court properly "established by law". Under the commonly recognised rules of court procedure, such an error of law (a most serious procedural omission) itself constitutes a basis for annulment of the lower court's decision, without any additional conditions. The Court has considered such a measure as appropriate in *Ponushkov v. Russia* (no. 30209/04, 6 November 2008, §§ 70-71) and in *Ryabov v. Russia* (no. 3896/04, 31 January 2008, § 51), and refers to these examples in *Sakhnovskiy*.

As regards the present case, I conclude from the text of the judgment that if there is "no prompt and adequate redress in ordinary appeal proceedings" (see paragraph 109), then a recognition of the violation by the Supreme Court cannot be regarded as adequate redress. Such an interpretation is not convincing, unless one can (again) presume that over six years the applicant raised the issue before the higher domestic courts but the authorities were reluctant to respond to his request.

Only these circumstances may constitute "a gross and obvious irregularity" (see paragraph 110) if the Court wishes to find something more serious than a violation of Article 5 or Article 6 of the Convention. But the

issue concerns a violation of Article 5 § 1 and concerns the unlawful detention of the applicant.

Moreover, evaluating the circumstances of the present case as a whole, I would note that the national court (in the retrial of the case) came to the same conclusions and upheld the initial charges against the applicant, who did not raise any complaints before the Court about the evidence produced against him, and the Court considered the alleged violation of Article 6 as manifestly ill-founded. Thus, I have no reason to conclude that throughout those six years the applicant suffered because of his innocence. I therefore have doubts about the applicant's status as a victim.

I also believe that the applicant has received adequate redress, given that - within the re-examination of his case - the national court reduced the term of his sentence by four years, taking into account that he had served a long prison sentence "as [to do] otherwise would be unfair" to the applicant.

I started my opinion by citing the Court's case-law, according to which the authorities must have acknowledged, either expressly or in substance, the breach of the Convention. Although the decision was poorly reasoned, I believe that the national court did acknowledge, not expressly but in substance, that the above omission was not fair with respect to the applicant. It was an act of humanity by a Russian judge in relation to a criminal convicted of murder, kidnapping and extortion. I am convinced that such an act should not be ignored by the Court.