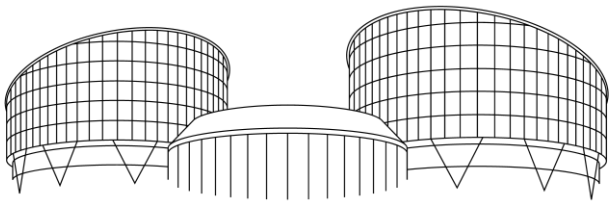

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KRYLOV v. RUSSIA

(Application no. 36697/03)

JUDGMENT

STRASBOURG

14 March 2013

FINAL

14/06/2013

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

In the case of Krylov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 19 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 36697/03) 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 Dmitriy Yevgenyevich Krylov ("the applicant"), on 15 October 2003.

2. The applicant, who had been granted legal aid, was represented by Mr N. Tsoy and Ms E. Krutikova, lawyers from the International Protection Centre based in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the criminal proceedings against him had been unfair.

4. On 9 February 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and is currently held in a detention facility in the Ivanovo region.

6. On 6 January 2002 he was arrested on charges of several counts of aggravated murder, robbery, theft, use of forged documents and failure to

report a crime. Another individual, Mr I., was also charged with the same offences.

7. On 5 September 2002 the pre-trial investigation was completed and the applicant began to study the case file with his counsel, Ms K. The case file comprised four volumes of material totalling 1,214 pages. It follows from the schedule submitted to the Court that the applicant studied the case file as follows:

(a) from 11.30 a.m. to 2 p.m. on 10, 11, 12 and 24 September 2002;
(b) from 11.30 a.m. to 1.30 p.m. on 25 and 27 September;
(c) from 11.30 a.m. to 2 p.m. on 2 October;
(d) from 11.30 a.m. to 3 p.m. on 3 October; and
(e) from 11.30 a.m. to 2 p.m. on 8 October.

8. According to the applicant, the investigator had pressured him into studying the case file more quickly, promising him additional visits from his mother as a reward. He had also promised to give him copies of the case materials but never fulfilled his promise.

9. On 8 October 2002 the applicant and Ms K. signed a statement declaring that they had studied the entire case file and had no particular requests to make.

10. The trial started on 15 November 2002 in the Ivanovo Regional Court. The court ordered that the applicant and his co-defendant Mr I. be tried by jury.

11. During the trial the applicant was represented by counsel Mr S., who had been retained by his mother. According to the applicant, Mr S. never asked for permission to study the case file.

12. On 25 December 2002 the jury pronounced the applicant and his co-defendant guilty of aggravated murder, robbery, theft and failure to report a crime.

13. On 9 January 2003 the Ivanovo Regional Court sentenced the applicant to twenty-three years' imprisonment.

14. On 14 January 2003 the applicant lodged an appeal ("*кассационная жалоба*"). On 20 January 2003 counsel Mr S. filed appeal submissions on his behalf. On 7 April 2003 the applicant lodged additional appeal submissions together with a request to attend the hearing.

15. On 18 February 2003 a local newspaper published an article describing the offences committed by the applicant.

16. The appeal hearing was scheduled for 25 June 2003. On 17 June 2003 Mr S. was informed of the hearing date by telegram. In anticipation of the hearing, the applicant was transported to Moscow and placed in remand centre IZ-77/3.

17. On 25 June 2003 the appeal hearing took place in the Supreme Court of Russia. The applicant participated in the hearing by video link. Mr S. did not attend.

18. According to the applicant, he had asked the court to adjourn the appeal hearing and to appoint counsel on his behalf. The judges had allegedly replied that there had been no legal basis for his request. Furthermore, he had filed additional appeal submissions which, according to him, had been faxed to the Supreme Court by a warder of the remand centre. In those appeal submissions he had complained, in particular, that he had not been afforded sufficient time to study the case file. He read the submissions out to the court. The quality of the video link was poor and the connection was interrupted several times.

19. The Government disputed the applicant's account of the appeal hearing. They stated that there was no evidence in the case file of a request to appoint counsel or of the additional submissions allegedly faxed to the Supreme Court on the day of the appeal hearing.

20. On the same day the Supreme Court upheld the judgment of 9 January 2003 on appeal. It held, in particular, that, by virtue of Article 379 of the Code of Criminal Procedure (see paragraph 24 below), it had no competence to examine the factual circumstances of the offences, which had been established by the jury. It then examined the legal issues raised by the applicant and found that the investigation and trial had been carried out in accordance with the procedure prescribed by law.

II. RELEVANT DOMESTIC LAW

21. Article 51 of the Code of Criminal Procedure of the Russian Federation ("the Code", as in force at the material time) reads, in so far as relevant, as follows:

> "1. Participation of legal counsel in the criminal proceedings is mandatory if:
>
> ...
>
> (5) the suspect or the accused faces serious charges carrying a term of imprisonment exceeding fifteen years, life imprisonment or the death penalty;
>
> (6) the criminal case falls to be examined in a jury trial;
>
> ...
>
> 3. In the circumstances provided for by paragraph 1 above, unless counsel is appointed by the suspect or the accused or his lawful representative, or other persons at the request or with the consent of the suspect or the accused, it is incumbent on the investigator, the prosecutor or the court to ensure the participation of legal counsel in the proceedings."

22. Article 52 of the Code provides that a suspect or an accused may waive his right to legal representation at any stage of the criminal proceedings. Such a waiver may only be accepted if initiated by the suspect

or the accused. The waiver must be made in writing and must be recorded in the official record of the relevant procedural step. The refusal of legal representation does not deprive the suspect or accused of the right to ask to be assisted by counsel at further stages of the criminal proceedings. The appointment of counsel does not mean that any of the procedural steps which have already been taken by that time must be repeated.

23. Article 373 of the Code provides that the appellate court examines appeals with a view to verifying the lawfulness, validity and fairness of judgments.

24. Article 379 reads as follows:

> "1. A judgment may be quashed on appeal on the following grounds:
>
> (1) a discrepancy between the findings made in the judgment and the factual circumstances of the case established by the first-instance ... court;
>
> (2) a breach of criminal procedural law;
>
> (3) incorrect application of the criminal law;
>
> (4) injustice of the judgment."
>
> 2. If the judgment has been adopted following a jury trial, it may be quashed on the grounds described in subparagraphs 2 to 4 of the first paragraph of this Article."

25. Article 376 of the Code provides that on receipt of the criminal case file and the statements of appeal, the judge fixes the date, time and place of the hearing. The parties must be given this information no later than fourteen days before the hearing is scheduled to take place. The court determines whether the prisoner should be summoned to attend the hearing. If the prisoner has expressed the wish to be present at his appeal, he has the right to participate in person or to state his case via video link. How he participates in the hearing is to be determined by the court.

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

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

27. That position was subsequently confirmed and developed in seven decisions delivered by the Constitutional Court on 8 February 2007. The court found that free legal representation for the purpose of appellate proceedings should be provided on the same basis as in the earlier stages of the proceedings, and was mandatory in the situations listed in Article 51. It further highlighted the obligation of the courts to ensure the participation of defence counsel in appeal proceedings.

28. Article 413 of the Code of Criminal Procedure provides for the possibility of reopening criminal proceedings on the basis of a finding of a violation of the Convention by the European Court of Human Rights.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

29. The applicant complained that the criminal proceedings against him had been unfair. He relied on Article 6 of the Convention, which reads as follows:

> "1. In the determination of his civil rights and obligations or 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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (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;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. The parties' submissions

30. The applicant submitted that he had been given insufficient time to study the case file. He had been afforded twenty-two hours and thirty

minutes to study 1,214 pages of documents, or approximately one minute per page. He had been pressured by the investigator to sign a statement declaring that he had finished studying the file. Moreover counsel Ms K., who had studied the case file with him, had later refused to represent him at the trial and her replacement, Mr S., had had no knowledge of the case file. The applicant had raised those issues in the appeal submissions he had filed on the day of the hearing, and had also read them out to the appellate court.

31. The applicant further submitted that during the appeal hearing he had not been represented by counsel. His legal services contract with Mr S. had covered legal representation at the trial stage only, and had not covered the appeal proceedings. He had had no financial means to pay for legal representation in connection with his appeal. His request for legal aid counsel had, however, been rejected and he had been left unassisted. Given that the case had been complex and involved a severe custodial sentence, and since he had had no legal training or background, he had been unable to defend himself effectively.

32. Lastly, the applicant alleged that that there had been many other procedural defects. In particular, the domestic courts had inaccurately assessed the evidence and had relied on a forged document, namely a confession that he had never made. His requests to call several defence witnesses had been rejected. A newspaper article describing him as a criminal had been published in the local media before his conviction had been upheld on appeal, and the appeal judges had been influenced by that publication.

33. The Government submitted that the applicant and his counsel had studied the case file from 10 September to 8 October 2002. No time limitations had been imposed on them and they had been afforded as much time as they had wished. The applicant's allegations that he had been pressured into studying the case file quickly were unsubstantiated. On 8 October 2002 the applicant and his counsel had signed a statement confirming that they had studied the file in its entirety. They had not complained of having had insufficient time to study the case file during the trial, nor had they asked for additional access to it. Moreover, the applicant had not raised the issue in his appeal submissions of 14 January and 7 April 2003. No other appeal submissions had been filed by the applicant. His allegation that additional appeal submissions had been faxed to the Supreme Court on the day of the appeal hearing was unsubstantiated. The applicant had not therefore exhausted the domestic remedies available to him.

34. The Government further submitted that the applicant's counsel Mr S. had been informed of the date of the appeal hearing but had failed to attend. They alleged that the applicant had not asked the appellate court to appoint him replacement counsel. His allegations to the contrary were unsubstantiated, as there were no traces of such a request in the case file. His defence rights had not therefore been violated.

B. The Court's assessment

1. Admissibility

(a) Impartiality of the court and the presumption of innocence

35. The Court will first examine the applicant's complaint that a newspaper article, describing him as a criminal and published while the appeal proceedings were pending, violated his presumption of innocence and influenced the appeal judges.

36. The Court reiterates that, in certain cases, a virulent press campaign can adversely affect the fairness of a trial by influencing public opinion and, consequently, jurors called upon to decide the guilt of an accused (see *Craxi v. Italy (no. 1)*, no. 34896/97, § 98, 5 December 2002, with further references). This is so with regard to the impartiality of the court under Article 6 § 1, as well as with regard to the presumption of innocence embodied in Article 6 § 2 (see *Ninn-Hansen v. Denmark* (dec.), no. 28972/95, ECHR 1999-V, and *Anguelov v. Bulgaria* (dec.), no. 45963/99, 14 December 2004). At the same time, the Court notes that press coverage of current events is an exercise of freedom of expression, guaranteed by Article 10 of the Convention. If there is a virulent press campaign surrounding a trial, what is decisive is not the subjective apprehensions of the suspect concerning the impartiality required of the trial courts, however understandable, but whether, in the particular circumstances of the case, his fears can be held to be objectively justified (see *Beggs v. the United Kingdom* (dec.), no. 15499/10, § 123, 16 October 2012).

37. Turning to the circumstances of the present case, the Court observes, firstly, that it does not seem that the media coverage of the present case amounted to a virulent press campaign aimed at hampering the fairness of the trial, nor is there any indication that the media's interest in the matter was sparked by the authorities. The applicant referred to a single publication in the local press describing the criminal case against him, without submitting a copy of that publication.

38. In addition, it is also significant that the article was published after the applicant's conviction at first instance, while his appeal case was pending. His appeal was to be determined by professional judges, who would have been less likely than a jury to be influenced by the press campaign against the applicant on account of their professional training and experience, which allows them to disregard any external influence. There is no evidence in the file to suggest that the appeal judges were influenced by the publication in question (see, for similar reasoning, *Mircea v. Romania*, no. 41250/02, § 75, 29 March 2007).

39. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(b) Fair trial

40. The Government raised the objection of non-exhaustion of domestic remedies by the applicant with respect to his complaint about the time he had been given to study the case file. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint. Thus, the Court finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 6 §§ 1 and 3 (b).

41. The Court further notes that the applicant's complaints under Article 6 §§ 1 and 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a). It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

42. The applicant raised a number of complaints relating to various procedural defects in the criminal proceedings against him. The Court will first examine his complaints relating to the absence of legal representation in connection with his appeal.

43. The Court notes that during the trial the applicant was represented by counsel Mr S., who then assisted him in drafting his appeal submissions. Mr S. did not, however, attend the appeal hearing because the applicant no longer had the financial means to pay for his services. The applicant's lack of sufficient means to pay for legal representation is not in dispute in the present case. It is, however, disputed between the parties whether the applicant asked for legal aid counsel to be appointed by the appellate court, and whether the "interests of justice" required that he be granted legal assistance free of charge.

44. There is no need for the Court to establish whether the applicant asked the appellate court to provide him with legal aid counsel. The applicant stood trial on charges of several counts of aggravated murder, robbery, theft, using forged documents and failure to report a crime, and therefore risked a term of imprisonment exceeding fifteen years. Article 51 of the Code of Criminal Procedure, as interpreted by the Russian Constitutional Court, imposed the mandatory legal representation of defendants who faced criminal charges of that gravity. It was incumbent on the judicial authorities to appoint a lawyer for the applicant to ensure the effective enjoyment of his rights, irrespective of whether he had made a request to that effect (see paragraphs 21, 26 and 27 above). The Court notes that the applicant never unequivocally waived his defence rights. However,

no attempt was made to appoint a lawyer or to adjourn the appeal hearing in order to ensure that a lawyer was present (see, for similar reasoning, *Shulepov v. Russia*, no. 15435/03, §§ 37 and 38, 26 June 2008).

45. As regards the question whether the "interests of justice" required that the applicant be provided with counsel in connection with his appeal, the Court has already examined several similar cases against Russia in which applicants had not been represented during appeal proceedings in a criminal case. Taking into account three factors – (a) the wide powers of the appellate courts in Russia, (b) the seriousness of the charges against the applicants and (c) the severity of the sentence which they had faced – the Court considered that the interests of justice demanded that, in order to receive a fair hearing, the applicants should have had legal representation at the appeal hearing. The Court therefore found a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention in these cases (ibid., §§ 34-39; and see also *Potapov v. Russia*, no. 14934/03, §§ 21-26, 16 July 2009; *Shilbergs v. Russia*, no. 20075/03, §§ 120-124, 17 December 2009; and *Samoshenkov and Strokov v. Russia*, nos. 21731/03 and 1886/04, §§ 66-71, 22 July 2010).

46. In the present case, the applicant was tried by jury and the jurisdiction of the appellate court was therefore limited to legal issues (see paragraphs 20 and 24 above). The legal issues in the applicant's case were particularly complex, involving the determination of the constituent elements of a number of aggravated criminal offences, an assessment of the degree of liability of two co-defendants, including their level of personal culpability and the establishment of various mitigating and aggravating factors. The Court also attaches weight to the fact that the applicant was assisted by a lawyer when formulating the grounds for his appeal (see paragraph 14 above). It is therefore of the view that, without the services of a legal practitioner, he was not in a position to articulate the arguments raised in the appeal statement and could not competently address the court on the legal issues involved, and thus was unable to defend himself effectively. Moreover, the appellate court had wide powers in determining his appeal and its decision was final. Of even greater relevance is the fact that the applicant had been sentenced to twenty-three years' imprisonment. For the applicant therefore, the issue at stake was an extremely important one (see, for similar reasoning, *Shilbergs*, cited above, § 122, and *Maxwell v. the United Kingdom*, 28 October 1994, §§ 38-41, Series A no. 300-C).

47. Moreover, the Court reiterates that the exercise of the right to legal assistance takes on particular significance where the applicant communicates with the courtroom by video link (see *Samoshenkov and Strokov*, cited above, § 70; *Grigoryevskikh v. Russia*, no. 22/03, § 92, 9 April 2009; *Shulepov v. Russia*, no. 15435/03, § 35, 26 June 2008; and, *mutatis mutandis*, *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 98, 2 November 2010). In the present case, the appeal hearing was conducted

by video link, which was yet another factor that should have prompted the appellate court to question the absence of defence counsel for the applicant.

48. In summary, given the nature of the proceedings, the wide powers of the appellate court, the complexity of the legal issues involved, the limited ability of the unrepresented applicant to present a legal argument and, above all, the importance of the issues at stake in view of the severity of the sentence, the Court considers that the interests of justice required that the applicant should have been granted legal aid for the purpose of being represented by counsel at his appeal hearing.

49. The Court therefore finds that there has been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

50. In view of the above, there is no need to examine separately the remaining allegations made by the applicant in relation to the fairness of the trial or the Government's objection as to non-exhaustion of domestic remedies in this respect.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant also complained of a violation of his rights under Articles 3 and 5 of the Convention. Having regard to all the material in its possession, the Court finds that, in so far as these complaints fall within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government submitted that the claim was excessive. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

55. The Court reiterates that when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of

the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings, if requested (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV, and *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 112, 2 November 2010). The Court notes, in this connection, that Article 413 of the Russian Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court finds a violation of the Convention (see paragraph 28 above).

56. The Court further finds that the applicant suffered non-pecuniary damage as a result of the violation of his right to legal assistance in the appeal proceedings in his criminal case, which would not be adequately compensated by the finding of a violation alone. However, the amount of compensation claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, it awards the applicant EUR 4,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

57. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

58. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies with respect to the complaint of the lack of time to study the case file;

2. *Declares* the complaints concerning the fairness of the criminal proceedings against the applicant admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention on account of the absence of legal assistance in the appeal proceedings;

4. *Holds* that there is no need to examine the remaining complaints under Article 6 §§ 1 and 3 of the Convention or the Government's objection as to non-exhaustion of domestic remedies in this respect;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four 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 from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 march 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President