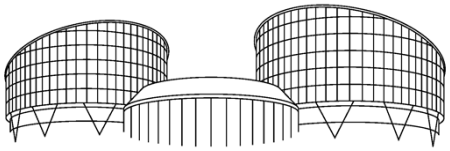

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SHEKHOV v. RUSSIA

(Application no. 12440/04)

JUDGMENT

STRASBOURG

19 June 2014

FINAL

17/11/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Shekhov 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,
Paulo Pinto de Albuquerque,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 27 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 12440/04) 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 Nikolay Durmanovich Shekhov ("the applicant"), on 2 March 2004.

2. The applicant, who had been granted legal aid, was represented by Ms S. Davydova, a lawyer practising in Moscow. The Russian Government ("the Government") were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that he had been denied legal assistance during the appeal proceedings and that his correspondence with the Court had been opened by the staff at the detention facility.

4. On 28 September 2007 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and is now serving his sentence in a correctional colony in the Chelyabinsk region.

A. The criminal proceedings

6. On 14 March 2002 the applicant was arrested and charged with double murder and attempted murder.

7. During the trial the applicant was represented by State-appointed counsel, Mr A.

8. On 8 October 2003 the Chelyabinsk Regional Court, in a trial by jury, convicted the applicant as charged and sentenced him to twenty-five years and eleven months' imprisonment.

9. The applicant appealed, unassisted by counsel. He submitted, in particular, that he had acted in self-defence and asked for reduction of the sentence from murder to manslaughter.

10. On 8 December 2003 the applicant was notified that the appeal hearing would be held on 23 January 2004. According to the Government, his counsel, Mr A., was also informed by telegram of the date of the appeal hearing.

11. On 23 January 2004 the Supreme Court of the Russian Federation held an appeal hearing. The applicant and the prosecutor were present. Counsel Mr A. did not attend. According to the applicant, he had asked for replacement counsel to be appointed for him. According to the Government, no such request had been made. On the same day the court upheld the conviction and reduced the sentence to twenty-five years and five months' imprisonment.

B. The applicant's correspondence

12. In April 2004 the applicant was transferred to correctional colony no. 16/9 in Omsk, where he remained until January 2005.

13. On 8 April 2004 the Court sent the applicant at his request the text of the Convention, an application form together with the explanatory note, an authority form, and the notice to applicants. On 6 May 2004 the letter was received by the Chelyabinsk remand centre where the applicant had been previously held. It was opened, stamped, and then transferred to colony no. 16/9 in Omsk.

14. According to the applicant, on 6 July 2004 a deputy head of the Omsk Department of Execution of Sentences had summoned him and strongly advised him not to submit an application to the Court. Immediately after this conversation he had been put in a disciplinary cell for eight days. According to the Government's account, it was the applicant who had asked for a meeting with the official. At the applicant's request, the official had explained to him the procedure for applying to the Court. He had not made any threats. The applicant had then been put into a disciplinary cell for having sent a letter through informal channels instead of sending it via the detention facility's administration.

15. On 10 July 2004 the Court's letter of 8 April 2004 was received by the staff of colony no. 16/9 and was opened and stamped. According to the applicant, he had received the covering letter of 8 April 2004 and the text of the Convention on 15 July 2004. The other enclosures and the envelope had not been given to him. According to the Government, all the enclosures had been handed over to the applicant on 10 July 2004.

16. On 23 June 2004 the applicant sent an improvised application form to the Court.

17. The applicant stated that on 9 August 2004 he had been summoned by the head of correctional colony no. 10 in Omsk, who had issued the threat that if he did not stop complaining, he would regret it. According to the Government, it was the applicant who had asked for a meeting with the head of the correctional colony. No threats had been made to the applicant during the meeting.

18. On 18 August 2004 the applicant was temporarily transferred to medical correctional facility no. 10 in Omsk for anti-tuberculosis treatment.

19. The applicant stated that on 15 October 2004 he had handed a sealed envelope containing a letter to the Court to the medical correctional facility's administration. The letter had been opened, stamped and dispatched to the addressee. The Government stated that the applicant had handed the letter to the detention facility staff unsealed.

20. According to the applicant, the detention facility's administration had refused to dispatch many of his letters to the Court, and he had therefore had to send them through informal channels. The Government stated that all his letters had been dispatched.

21. The applicant complained to various State authorities about the opening of and the failure to dispatch his letters to the Court. In a letter dated 15 May 2006, the prosecutor's office informed the applicant that there had been no evidence of any failure to dispatch his letters.

22. On 11 October 2007 the medical correctional facility's administration received another letter from the Court addressed to the applicant acknowledging receipt of his correspondence. That letter was opened, stamped and then given to the applicant. The employee who had opened the letter was subsequently disciplined.

II. RELEVANT DOMESTIC LAW

A. Legal assistance

23. Article 51 of the Code of Criminal Procedure of the Russian Federation (as in force at the material time) read, in so far as relevant:

> "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."

24. 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 waiver may be accepted only if initiated by the suspect or the accused. The waiver must be declared in writing and must be recorded in the official record of the corresponding procedural step. Refusing 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 have to be repeated.

25. Article 373 of the Code provides for examination of appeals by the appellate court with a view to verifying the lawfulness, validity and fairness of the judgments.

26. Article 379 reads:

"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.

27. Article 376 of the Code provides that the judge is to fix the date, time and place of the hearing after receiving the criminal case file and the statements of appeal. 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 attend in person or to state his case via video link. It is the court which decides how he is to participate in the hearing.

28. Examining the compatibility of Article 51 of the Code with the Russian Constitution, the Constitutional Court ruled (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."

29. 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 representation in the earlier stages of the proceedings, and that it was mandatory in the situations listed in Article 51. It further highlighted the courts' obligation to ensure the participation of defence counsel in appeal proceedings.

B. Prisoners' correspondence

30. Article 91 § 2 of the Code of Execution of Sentences, as amended on 8 December 2003, provides that detainees' correspondence may be monitored by the prison authorities. Correspondence with courts, prosecutors, prison officials, the Ombudsman, the public monitoring board and the European Court of Human Rights may not be subjected to monitoring.

31. 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 either placed in mailboxes or handed to staff unsealed. Monitoring of correspondence with the European Court of Human Rights was prohibited (paragraph 12).

32. On 3 November 2005 new regulations were adopted. They provide that detainees must put their unsealed letters into mailboxes or give them to prison staff, except for correspondence which is not subject to monitoring (paragraph 50). They also prohibit the monitoring of correspondence with the European Court of Human Rights (paragraph 53).

C. Reopening of criminal cases on account of new or newly discovered circumstances

33. Article 413 of the Code of Criminal Procedure provides for the possibility of reopening criminal proceedings as a result of the finding by the European Court of Human Rights of a violation of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant complained that the criminal proceedings against him had been unfair due to a number of procedural defects. He relied on Article 6 of the Convention, which reads:

> "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."

35. The Government contested that argument and maintained that the applicant had had a fair trial.

A. Admissibility

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

37. The applicant submitted that during the appeal hearing he had not been represented by counsel. Despite the fact that legal representation in his case was mandatory under domestic law, his request for legal aid counsel had been rejected and he had been left unassisted. Given that the case had been complex and had involved a lengthy custodial sentence, and since he had no legal training or background himself, he had been unable to defend himself effectively.

38. The applicant also alleged that other procedural defects had rendered the criminal proceedings unfair. In particular, the domestic courts' assessment of the evidence had been inaccurate and they had rejected his requests to call witnesses. A newspaper article describing him as a criminal had been published in the local media and the trial court had been influenced by that publication.

39. The Government submitted that the applicant's counsel, Mr A., had been informed of the date of the appeal hearing but had failed to attend and that the applicant – who had been present at the appeal hearing – had not asked the appellate court to appoint replacement counsel for him. His defence rights had therefore not been violated.

2. The Court's assessment

40. The applicant raised a number of complaints relating to several 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.

41. The Court notes that the applicant's lack of sufficient means to pay for legal representation is not in dispute in the present case. During the trial he was represented by legal aid counsel Mr A., who did not, however, appeal against the applicant's conviction or attend the appeal hearing. The Court reiterates in this connection that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes. The competent national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal aid counsel to provide effective representation is manifest or is sufficiently brought to their attention in some other way (see, among many other authorities, *Daud v. Portugal*, *Reports of Judgments and Decisions* 1998-II, § 38, and *Sejdovic v. Italy* [GC], no. 56581/00, § 95, ECHR 2006-II).

42. It is disputed between the parties whether or not the applicant asked for the appeal hearing to be adjourned or for replacement counsel to be appointed by the appellate court. However, there is no need for the Court to establish whether the applicant made such requests. The Court considers

that the applicant's conduct could not of itself relieve the authorities of their obligation to take steps to guarantee him an effective defence. The above-mentioned shortcomings on the part of the court-appointed lawyer were manifest, which put the onus on the domestic authorities to intervene (see, for similar reasoning, *Sannino v. Italy*, no. 30961/03, § 51, ECHR 2006-VI; *Sabirov v. Russia*, no. 13465/04, §§ 45 and 46, 11 February 2010; and *Siyrak v. Russia*, no. 38094/05, §§ 29-33, 19 December 2013).

43. The Court observes that under domestic law 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 or not he had made a request to that effect. The applicant was standing trial on charges of double murder and attempted murder 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, laid down a mandatory requirement for the legal representation of defendants who faced criminal charges of that gravity (see paragraphs 23, 28 and 29 above). The Court notes that the applicant never unequivocally waived his defence rights and yet 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, and *Krylov v. Russia*, no. 36697/03, § 44, 14 March 2013).

44. Furthermore, as regards the question of whether the "interests of justice" required that the applicant be provided with counsel for his appeal, the Court has already examined several similar cases against Russia in which applicants were not 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 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 (see *Shulepov*, cited above, §§ 34-39; *Potapov v. Russia*, no. 14934/03, §§ 21-26, 16 July 2009; *Shilbergs v. Russia*, no. 20075/03, §§ 120-124, 17 December 2009; *Samoshenkov and Strokov v. Russia*, nos. 21731/03 and 1886/04, §§ 66-71, 22 July 2010; and *Krylov*, cited above, § 45).

45. In the present case, the applicant was tried by jury and the jurisdiction of the appellate court was therefore limited to legal issues (see paragraph 26 above). The legal issues in the applicant's case were particularly complex. It is significant that in his appeal submissions the applicant sought recharacterisation of the criminal offence and relied on the defence of self-defence. The Court 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, meaning that he 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 by the first-instance court to twenty-five years and eleven months' imprisonment. For the applicant therefore, the issue at stake was an extremely important one (see, for similar reasoning, *Maxwell v. the United Kingdom*, 28 October 1994, §§ 38-41, Series A no. 300-C; *Shilbergs*, cited above, § 122; and *Krylov*, cited above, § 46).

46. 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 and the statutory requirement for mandatory legal representation in such cases, the Court considers that the interests of justice required that the applicant should have been represented by counsel at his appeal hearing. Accordingly, by failing to appoint a lawyer for the applicant or to adjourn the appeal hearing in order to ensure that a lawyer was present, the domestic judicial authorities failed to secure effective legal assistance to the applicant during the appeal proceedings.

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

48. In view of the above, the Court does not find it necessary to examine separately the remaining allegations made by the applicant in relation to the fairness of the trial.

II. ALLEGED VIOLATION OF ARTICLES 8 AND 34 OF THE CONVENTION

49. The applicant complained that his correspondence with the Court had been opened by the detention facility's administration, that the latter had refused to dispatch some of his letters to the Court, and that he had received threats from the detention facility staff in connection with his application to the Court. He relied on Articles 8 and 34 of the Convention, which read:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and 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."

Article 34

"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."

A. Submissions by the parties

50. The Government denied hindering the effective exercise of the applicant's right of petition. They conceded that two of the Court's letters had been opened by the detention facility employees but affirmed that the letters had not been censored. They had been opened for registration purposes only and had been handed over to the applicant in their entirety and without any delay. However, as the letters had been opened in breach of domestic law, one of the employees involved had been reprimanded. The applicant could not therefore claim to be a victim of the alleged violations of Articles 8 and 34. Moreover, given that he had not applied to a court for compensation, he had not exhausted domestic remedies.

51. The Government further asserted that all of the applicants' letters to the Court had been dispatched without delay. The letter of 15 October 2004 had been given to the detention facility staff unsealed; it had therefore been stamped prior to dispatch. Finally, the Government submitted that no threats had been made to the applicant, nor had any disciplinary sanctions been imposed on him in connection with his application. All disciplinary sanctions had been imposed for breaches of the detention facility regime and had not been in any way related to his application.

52. The applicant maintained his claims.

B. The Court's assessment

53. The Court has examined complaints concerning the monitoring of correspondence between applicants and the Court under Article 8 of the Convention (see *Alekseyenko v. Russia*, no. 74266/01, § 68, 8 January 2009; *Boris Popov v. Russia*, no. 23284/04, §§ 93-94, 28 October 2010; and *Idalov v. Russia* [GC], no. 5826/03, § 199, 22 May 2012), under Article 34 (see *Ponushkov v. Russia*, no. 30209/04, §§ 79-85, 6 November 2008; *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 144, 17 January 2012; and *Trosin v. Ukraine,* no. 39758/05, § 49, 23 February 2012), or under both provisions (see *Belyaev and Digtyar v. Ukraine,* nos. 16984/04 and 9947/05, §§ 50-63, 16 February 2012).

54. As the Court is master of the characterisation to be given to the facts of the case, and having regard to the nature of the interference and the

contents of the applicant's submissions (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009), it 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.

1. Article 8

55. The Court notes that at the relevant time, Article 91 of the Code of Execution of Sentences expressly prohibited the monitoring of correspondence between a detainee and the Court. Any grievance alleging that such monitoring had taken place could be raised before the courts in order to obtain an examination of its substance (see *Alekseyenko*, cited above, § 90, and *Yefimenko v. Russia*, no. 152/04, § 154, 12 February 2013).

56. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Article 34

57. The Court observes at the outset that a complaint under Article 34 of the Convention is of a procedural nature and does not therefore give rise to any issue of admissibility under the Convention (see *Ergi v. Turkey*, 28 July 1998, § 105, *Reports* 1998-IV; *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000; and *Juhas Đurić v. Serbia*, no. 48155/06, § 72, 7 June 2011). The Government's objections of loss of victim status and non-exhaustion of domestic remedies are therefore misconceived.

58. The Court further reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants should be able to communicate freely with the Convention institutions without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 158, ECHR 2012 (extracts)).

59. It is important to respect the confidentiality of the Court's correspondence with applicants since it may concern allegations against prison authorities or prison officials. The opening of letters from the Court or addressed to it undoubtedly 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. The opening of letters by prison authorities can therefore hinder applicants in bringing their cases to the Court (see *Klyakhin v. Russia*, no. 46082/99, §§ 118 and 119, 30 November

2004; *Ponushkov,* cited above, § 80; and *Belyaev and Digtyar,* cited above, § 61).

60. In the instant case it is not in dispute that at least two of the Court's letters were opened by the detention facility's administration. The applicant stated that the letters had been read and enclosures withheld. The Government denied that, stating that the letters had been opened for registration purposes only. The Court is not convinced by that argument. Given that the sender's and the addressee's names were indicated on the envelope, it was possible to register the letters without opening them. In such circumstances the Court considers that the applicant's fear that the letters were opened by the detention facility's administration with the intention of reading them was objectively justified.

61. As regards the items enclosed with the letters, the Court is not persuaded by the Government's assertion that they were handed over to the applicant. In situations where an envelope has been torn open by a State official, it is incumbent on the Government to prove that the letter it contained was delivered to the applicant in its entirety. In the absence of any such proof, the Court gives credence to the applicant's statement that the enclosures were withheld by the detention facility's administration (see, for similar reasoning, *Ponushkov,* cited above, § 82)

62. The Court observes that pursuant to Article 91 of the Code of Execution of Sentences, correspondence with the Court is privileged and is not subject to censorship (see paragraph 30 above). The Court's letters were therefore opened in breach of domestic law.

63. The Court considers that the opening of correspondence could have had an intimidating effect on the applicant, and the withholding of enclosures – including an application form plus explanatory note, an authority form, and the notice to applicants – impaired the applicant's capacity to effectively prepare his application to the Court. The applicant's situation was particularly vulnerable as at that time he had no representative in the proceedings before the Court and was therefore dependent on the detention facility's administration to facilitate his correspondence with the Court and the rest of the world (see, for similar reasoning, *Klyakhin*, cited above, § 122; *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003; and *Ponushkov,* cited above, § 84). The opening of the letters from the Court and the withholding of the enclosures therefore constituted an interference with the exercise of the applicant's right of individual petition which is incompatible with the respondent State's obligation under Article 34 of the Convention.

64. The Court therefore considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

65. In view of the above findings, the Court does not find in necessary to examine the remaining allegations made by the applicant in relation to the exercise of his right of individual petition.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. Lastly, the Court has examined the other complaints submitted by the applicant and, having regard to all the material in its possession and in so far as the complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government submitted that the claims were excessive and unsubstantiated. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

70. The Court reiterates that when an applicant has been convicted despite a potential infringement of his rights 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 that 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 33 above).

71. As to the applicant's claims in respect of non-pecuniary damage, the Court considers that the applicant's sufferings and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, it awards him EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

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

2. *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;

3. *Holds* that there is no need to examine the remaining complaints under Article 6 §§ 1 and 3 of the Convention;

4. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

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 19 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President