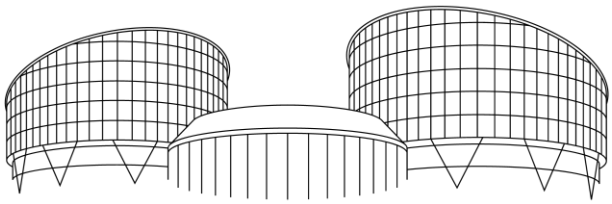

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SEVASTYANOV v. RUSSIA

(Application no. 37024/02)

JUDGMENT

STRASBOURG

22 April 2010

FINAL

04/10/2010

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

In the case of Sevastyanov v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 37024/02) 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 Pavel Igorevich Sevastyanov ("the applicant"), on 10 September 2002.

2. The applicant, who had been granted legal aid, was represented by Mr M. Rachkovskiy, a lawyer practising in Moscow, Russia. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 2 April 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and is serving a sentence of imprisonment in the Ivanovo Region.

A. Criminal proceedings against the applicant

1. The investigation

6. On 28 October 2000 victims B. and M. were killed in the latter's house. On 31 October 2000 the applicant was questioned in the Oktyabrskiy district prosecutor's office of Ivanovo in relation to the murders. Having been apprised of the privilege against self-incrimination, the applicant stated that he had spent most of the relevant day with his girlfriend Y. and his friend Ov., as well as several other persons (I., K. and V.), except for some time in the afternoon when Ov. and the applicant went to M.'s place but the latter was absent. The applicant added a note to the interview record alleging that he had been threatened with death or violence if he refused to make certain admissions. The record was also signed by a lawyer, Mr O. Immediately thereafter, the applicant signed a suspect arrest record, in which he indicated that he would like to be represented by O.

7. On the same evening, the investigator twice heard Y., who stated at the second interview around midnight that the applicant had told her that he had killed victim M. The investigator also interviewed Ov., who confirmed in substance the applicant's account of the events but added that the applicant had told him that he had killed victims M. and B. with an axe; Ov. had also heard the applicant discuss an alibi with Y.

8. On 1 November 2000 the applicant was brought for further interrogation. He was assisted by counsel and refused to testify. According to the applicant, a police officer or several officers exerted pressure on him and hit him on the head with a folder in order to force him to make self-incriminating statements. On the same day Y. gave a more detailed statement in addition to her second statement made on 31 October 2000.

9. On 2 November 2000 the applicant refused the services of O., allegedly under pressure from unnamed officers. As follows from his written statement, he declined the services of counsel O. due to "contradicting positions on the case" and sought the appointment of a Ms Z. instead. The investigator appointed Z. as counsel and she assisted the applicant during the interview on the same day. The Government referred to the interview record from which it would follow that the applicant had made admissions on that date; that he had felt well and had been willing to give an oral testimony in the presence of counsel Z.; that he had been provided with an opportunity to have a consultation with counsel before the interview; and that he had had no complaints against any police officers. Ov. was also interviewed and provided a more detailed account of the events.

10. On 3 November 2000 the applicant was examined by a medical expert. The applicant had scratches on his left elbow, bruises and scratches on his right arm and legs, several cuts and scratches on his hands, scratches below the ribs, and a scratch on his head. According to the expert, the above

injuries had been sustained four to nine days before the date of the examination.

11. On 10 November 2000 the applicant expressed a wish to be represented by O. again. However, on 7 December 2000 the applicant retained the services of another counsel, Mr S., who assisted him in the subsequent pre-trial and trial proceedings.

12. On 20 December 2000 O. (instead of counsel S.) requested the investigator to order an expert report to verify if the applicant had been emotionally disturbed when, according to his version, he had seen victim B. kill victim M. in the latter's house. However, the investigator rephrased the question to the expert as whether the applicant had been emotionally disturbed when the victims had been murdered.

13. Ov. and Y. were interviewed again in 2001. The investigator also interviewed K., who stated that on 28 October 2000 he had been together with the applicant until his departure in the evening; that Ov. told him that the applicant had killed M. and B.

14. On an unspecified date, the applicant was charged with murder, robbery and destruction of property. The case was referred to the Ivanovo Regional Court for trial by a jury.

2. The trial

15. The trial judge considered that it was appropriate to accept in evidence the applicant's interview record of 2 November 2000 since the applicant's allegation of duress was unfounded. The applicant argued that he had seen victim B. kill victim M.; he admitted the arson of the house but pleaded legitimate self-defence in respect of causing injuries to victim B. during a violent fight.

16. It also appears that a number of expert reports were presented to the jury. It transpires from the available material that one of the reports concluded that certain traces of blood at the crime scene and on the clothes of the applicant "could belong" to the applicant and victim B. who had the same blood group.

17. The jury heard a number of witnesses, including witnesses K., V., I., who had seen the applicant in Ov.'s flat on the day of the murders or on the next day. The trial judge allowed the reading out of their pre-trial depositions.

18. The jury also heard Ov. and the applicant was given an opportunity to put questions to him. At the court hearing Ov. alleged that he had previously made statements against the applicant under pressure from the police. The judge examined the allegation of ill-treatment and rejected it as unfounded. The judge thus allowed the reading out of his pre-trial depositions to the jury (see also paragraph 20 below).

19. The trial judge twice summoned Y. However, the subpoenas could not be served on her and were returned to the court because she did not live

at the address which she had provided to the domestic authorities during the investigation. There was no information about her whereabouts; her next of kin were not aware of her new place of residence. Having excluded Y.'s statement made on 31 October 2000, the trial judge, however, allowed the reading out of her subsequent statements (see also paragraph 21 below).

20. In her summing-up to the jury on 16 October 2001, the trial judge reiterated the charges against the applicant and the evidence referred to by the parties and declared admissible. The judge explained to the jury that she had not been presented with any evidence indicating that Ov.'s testimony had been obtained under duress or otherwise in breach of law. Considering that the defence counsel had presented a distorted summary of the victims' injuries in his final speech, the judge reiterated the conclusions of the admissible expert reports. She also indicated to the jury that it was not their remit to decide on the putative self-defence issue.

21. After several hours of deliberations, the jury returned a guilty verdict on the charges of murder, robbery and destruction of property. On 17 October 2001 the trial judge held the final hearing concerning civil claims, the sentence and other matters to be determined by the trial judge. Y. appeared before the trial judge on that day and explained that she had not received any court summons, which had been sent to her mother's home address. Her mother was unaware of her new place of residence. Having learnt about the trial the day before, she decided to come to the courthouse (see also paragraph 19 above). The trial judge allowed Y. to give her opinion concerning the applicant's personality in so far as this matter could be relevant to the sentence. On the same day, the applicant was sentenced to eighteen years' imprisonment and the confiscation of his property was ordered.

22. The applicant submitted objections to the trial verbatim record, considering *inter alia* that Y. had in fact explained to the trial judge that the investigator had wrongly noted her new home address as her work address. The trial judge, however, rejected those objections as untrue.

3. Appeal proceedings

23. The applicant and his counsel submitted appeals to the Supreme Court of Russia. They argued that there had been various defects in the pre-trial investigation, in particular as regards the right to legal assistance; they contested the quality of the evidence, including the expert opinions, and the trial judge's summing-up to the jury. The applicant's counsel S. asked to be notified of the date for the appeal hearing and the applicant asked to be brought to that hearing.

24. On 8 January 2002 the applicant requested the Regional Court to give him access to the case file in order to prepare his defence on appeal. On 1 February 2002 the Regional Court dismissed his request because Russian law did not vest in the accused a right to have access to the file in appeal

proceedings. The applicant unsuccessfully renewed his request in February 2002.

25. On 22 February 2002 the judge rejected a request by the applicant to have the trial verbatim record amended. Having examined the trial transcript, on 18 March 2002 the applicant's counsel submitted a statement of appeal. A handwritten inscription by the trial judge contained the instruction that "all participants in the proceedings be made aware of that document".

26. On 19 April 2002 the Supreme Court granted leave to the applicant to participate in the appeal hearing and ordered that he be brought to Moscow from the Ivanovo Region. As can be seen from a telegram dated 28 May 2002, the applicant's counsel had been informed that the appeal hearing was listed for 4 June 2002 at 10 am. According to the Government, the applicant was also informed accordingly on the same date.

27. The applicant asserted that in April 2002 he had requested the Supreme Court to grant him access to the documents relating to the appeal proceedings, including the statement of appeal lodged by his lawyer and the written observations prepared by the prosecutor. He received no reply to this request.

28. On an unspecified date, the prosecutor lodged his observations in reply to the applicant's appeal. A copy of those observations was not made available to the applicant or his counsel.

29. On 31 May 2002 Moscow remand centre received a letter from the Supreme Court requiring them to make arrangements for the applicant's participation in the appeal hearing on 4 June 2002 at 10 am and for the applicant to be notified of the date of the hearing.

30. On 4 June 2002 the Supreme Court heard the applicant by way of a video link and upheld the trial judgment. During the appeal hearing the applicant was not represented by a lawyer. The prosecutor was present at the hearing.

31. The court refused to examine the applicant's arguments directed against the findings of fact made at first instance by the jury since this aspect of the case could not be challenged on appeal. It noted that the applicant had been informed of the special procedure for appeal against the verdict of a jury (see also paragraph 48 below). The appeal court examined the remaining arguments and dismissed them. Lastly, the court noted that the applicant had been given access to the case file before the trial in July-August 2001 and after the trial in December 2001-February 2002. The applicable legislation did not require photocopying of the file.

4. Subsequent proceedings

32. In 2005 the Regional Court reconsidered the trial and appeal judgments in the light of the amended (more favourable) legislation and lifted the order for the confiscation of the applicant's property.

B. Proceedings concerning the alleged ill-treatment

33. The applicant complained to the district prosecutor that on 1 November 2000 an officer had hit him on the head with a folder; that he had been subjected to threats on 2 November 2000 and that he had been compelled to decline O.'s services. The prosecutor heard the investigator in charge of the case against the applicant and the officer who had allegedly beat him. On 6 December 2000 the district prosecutor refused to initiate criminal proceedings, noting the applicant's contradictory statements concerning the alleged threats or beating. The inquiry file was then lost. In the resumed proceedings, the district investigator heard the applicant and the investigator in charge of the case against the applicant. On 27 August 2001 the district investigator issued a new decision not to institute criminal proceedings. He referred to the medical report of 3 November 2000, which had revealed injuries sustained, according to the expert, four to nine days before the date of the examination (see paragraph 10 above). The investigator concluded that those injuries had been sustained before the applicant's arrest. He also noted that the applicant had made no health complaints during his detention in the temporary detention centre from 31 October to 3 November 2000.

34. The applicant was informed of his right to appeal against the above refusals to a prosecutor or to seek judicial review. Instead, the applicant brought court proceedings accusing the town prosecutor of inaction in relation to the alleged threats on 31 October 2000. On 29 March 2002 the Leninskiy District Court of Ivanovo discontinued the proceedings because the town prosecutor had never been asked to deal with the applicant's complaint. The court also held that the prosecutor's office had carried out inquiries but found no evidence of the alleged ill-treatment. Moreover, the District Court referred to the fact that the Regional Court had dealt with this issue at the applicant's trial and also found no evidence of the alleged ill-treatment. On 30 April 2002 the Regional Court upheld the decision of 29 March 2002, considering that only formal decisions were amenable to judicial review. In separate proceedings, the applicant complained about unlawful actions against him on 31 October 2000. On 15 May 2002 the Regional Court took the final decision to discontinue the case because there was no formal decision amenable to review. On 18 April 2003 the applicant again complained to a court about the alleged ill-treatment by the police and the inaction of the regional prosecutor's office. On 19 June 2003 the Regional Court took the final decision to discontinue the case.

C. Conditions of detention in the Moscow remand centre

35. From 31 October to 3 November 2000 the applicant was kept in a temporary detention centre in Ivanovo. It appears that from 3 November

2000 to 14 May 2002 he was detained in Ivanovo remand centre no. 1. The applicant was kept in Moscow remand centre no. 77/3 from 14 May to 2 August 2002 in relation to the appeal proceedings in his criminal case.

1. The applicant's account

36. The applicant submitted that on 4 June 2002 he had spent six hours in a small cell in the remand centre with fifteen other persons. The cell had been overheated and had no ventilation. While the temperature outside on 4 June 2002 had exceeded 30ºC, the temperature in the cell had reached over 50ºC. He had not been given water for six hours and had not been allowed to use the toilet.

37. The applicant subsequently submitted that the cell measured 18.6 square metres and that he had been detained with up to twenty other persons.

2. The Government's account

38. According to the Government, on 4 June 2002 the applicant had been placed in an "assembly cell" measuring 18.6 square metres. This cell had no windows, ventilation, sanitary installations or water supply. However, the prison staff allowed the detainees to go to the toilet outside the cell and provided them with drinking water. Air access was ensured by an opening in the cell door.

39. Later on the same day, the applicant had been transferred to cell no. 521 measuring 32.7 square metres for the purpose of participating in the appeal hearing before the Supreme Court by way of a video link. The cell was equipped with a ventilation system, water supply and a sink. Toilet facilities were separated from the main area. Drinking water had been made available to the applicant and the lights had been left on. During the summer period the window panes were removed and detainees were provided with fans. The outside temperature had not exceeded 21.4ºC on that day. The applicant had been provided with bedding and tableware in the remand centre. Detainees were provided with three hot meals a day.

3. The applicant's complaints to national authorities

40. The applicant and certain other detainees complained about the conditions of detention in the Moscow remand centre.

41. According to a letter from the Moscow Prosecutor's Office of 9 March 2004, the conditions of detention in cell no. 521 were acceptable; the outside temperature in Moscow on 4 June 2002 did not exceed +18º C, as indicated by the Moscow Weather Centre.

42. According to letters from the Moscow Prosecutor's Office of 5 and 7 July 2004, the conditions in a cell measuring 18.6 square metres "did not meet the sanitary requirements" at the material time. After an inquiry the

supervising prosecutor concluded on 5 July 2004 that up to late 2002 detainees awaiting an appeal hearing had been placed in the above cell with no window, ventilation, sanitary installations or water supply. Since late 2002 detainees awaiting appeal hearings had been placed in "assembly cell" no. 521. Although the applicant had not provided sufficient details, on the basis of information from the prison staff the prosecutor determined that the applicant had also been kept in cell no. 521 on 4 June 2002. The prosecutor also indicated that the document confirming that the applicant had received the letter from the Supreme Court concerning the appeal hearing did not bear his signature. He concluded that the remand centre staff had nonetheless ensured the applicant's right to participate in the appeal hearing.

D. Correspondence with the European Court

43. According to the applicant, on 23 January 2003 he handed over a letter to be dispatched by the prison administration to the Registry of the Court. In November 2003 the latter acknowledged receipt of his letter dated 14 September 2003 and informed him that no letter dated 23 January 2003 had been received.

44. On 13 July 2004 the Registry of the Court, by registered mail, requested the applicant to provide by 24 August 2004 certain documents and information concerning his application pending before the Court. According to the acknowledgement-of-receipt card, on 5 August 2004 the letter was received by an unspecified person in the detention facility. According to the Government, on 5 and 15 August 2004 the applicant was called to the office in charge of correspondence in the facility in order to receive the letter, but refused to accept it.

45. On 22 September 2004 the applicant's sister informed the Court by fax that the applicant had only received the letter on 21 September 2004 in an unsealed envelope.

46. Following the applicant's complaint about the issue, on 3 November 2004 the Penitentiary Department of the Ivanovo Region replied that the delay in the delivery of the letter did not constitute a hindrance of the applicant's correspondence with the European Court; although the prison officer had been negligent, there had been no intention to delay the letter.

II. RELEVANT DOMESTIC LAW

A. Appeal proceedings in criminal cases

47. Under the RSFSR Code of Criminal Procedure, in force at the time, the appeal court was empowered to review a first-instance judgment in full, irrespective of the scope of the statement of appeal lodged by a party to the

proceedings (Article 332). This review was carried out on the basis of the file and new materials adduced before or during the appeal hearing (Articles 332 and 337). A prosecutor was required to participate in an appeal hearing and to state his position on the case (Article 335).

48. However, Article 465 of the Code contained special rules for appeal against a verdict of a jury. The grounds of appeal were limited to the exclusion of otherwise admissible evidence at the trial, which was prejudicial to the outcome of the trial or an unjustified refusal to examine of important piece of evidence; the trial court's reliance on inadmissible evidence; violations of procedural rules or wrong application of the law to the facts as established by the jury; imposition of an unfair sentence.

B. Re-opening of criminal proceedings

49. Article 413 of the 2001 Code of Criminal Procedure provides that criminal proceedings may be reopened if the European Court of Human Rights has found a violation of the Convention.

C. Prisoners' correspondence

50. Article 91 of the 1997 Code of Execution of Sentences has provided since December 2003 that a detainee's correspondence with the European Court of Human Rights cannot be opened and inspected.

51. On 30 July 2001 the Ministry of Justice adopted the Internal Prison Regulations. As amended in March 2004, they provided that the incoming and outgoing correspondence of detainees had to be censured by prison staff, except for a detainee's correspondence with a court, prosecutor, a supervising public authority or the European Court of Human Rights. The Internal Regulations were revoked in 2005.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

52. The applicant complained that the conditions of his detention on 4 June 2002 in the Moscow remand centre had been in breach of Article 3 of the Convention, which reads as follows:

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

53. The Government submitted that the applicant had been detained in cell no. 521 in acceptable conditions (see paragraph 39 above). They accepted however that the conditions in another unnumbered cell measuring 18.6 square metres had not been as good (see paragraph 38 above). They also argued that the applicant should have lodged a court action for compensation on account of the conditions of his detention.

54. The applicant maintained his complaint concerning the unnumbered cell.

55. The Court observes at the outset that the applicant's complaint is limited to the conditions of his detention on 4 June 2002, the date of the appeal hearing in his criminal case. Having examined the parties' submissions, the Court does not find it necessary to deal with the exhaustion issue because the complaint is in any event inadmissible.

56. Having regard to the findings made at the time by the national authorities (see paragraph 42 above) and the applicant's own contention, the Court finds it established that he was kept in the unnumbered cell measuring 18.6 square metres. The Government submitted no proof to challenge the applicant's allegation that he had been kept there with at least fifteen other persons. Thus, the Court is inclined to accept the applicant's contention. It is uncontested that this cell had no windows, ventilation, sanitary installations or water supply. Air access was ensured by an opening in the cell door.

57. The Court reiterates, however, that it must be satisfied, on the basis of the materials before it, that the conditions of the applicant's detention constituted treatment which exceeded the minimum threshold for Article 3 of the Convention to apply. Even though the above conditions could potentially raise an issue under Article 3 of the Convention, it is to be observed that the applicant was only kept in such conditions for some hours (see, in a similar context, *Seleznev v. Russia*, no. 15591/03, § 61, 26 June 2008; see also *Fedotov v. Russia*, no. 5140/02, §§ 66-70, 25 October 2005; *Salmanov v. Russia*, no. 3522/04, § 63, 31 July 2008; and *Moiseyev v. Russia*, no. 62936/00, §§ 140-143, 9 October 2008).

58. Given the above considerations, the Court concludes that the distress and hardship the applicant may have endured on 4 June 2002 did not attain a minimum level of severity under Article 3 of the Convention (compare *Andrei Georgiev v. Bulgaria*, no. 61507/00, § 61, 26 July 2007).

59. Lastly, the Government indicated that the applicant had also been kept in cell no. 521. However, the applicant raised no grievance in relation to that cell (see paragraph 36 above). In any event, it does not appear that the conditions there were such as to raise an issue under Article 3 of the Convention.

60. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

61. The applicant considered that there had been a violation of Article 6 §§ 1 and 3 of the Convention on account of various procedural defects in the criminal proceedings against him. The relevant provisions read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (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; ..."

A. The parties' submissions

1. The applicant

62. As regards the pre-trial and trial proceedings, the applicant complained that the allegedly forced removal and replacement of counsel O. in November 2000 and the admission by the trial court of certain evidence violated Article 6 of the Convention. The applicant had not been afforded an opportunity to suggest an issue for the pre-trial expert examination, and the expert had been biased. The trial judge had been biased, in particular in her summing up to the jury; the applicant had not had sufficient access to the case file; the trial court had failed to make every reasonable effort to summon Y. for questioning by the defence while the authorities had been well aware of her new address; the trial judge had been wrong to admit Y. and Ov.'s pre-trial incriminating statements, which had allegedly been obtained under duress, as evidence. The trial judge had refused to amend the trial transcript, which contained distorted information.

63. As regards the appeal proceedings, the applicant alleged that his ability to participate effectively and to ensure his own defence in them had been undermined due to a number of factors: the lack of access to the case file before the appeal hearing and of an opportunity to familiarise himself with and comment on the materials submitted by his own counsel and the prosecutor to the appeal court; a short notice of the date and time of the

hearing and lack of any prior consultation with counsel; the conditions of his detention on 4 June 2002; the low quality of the audio link so that he could not follow the oral pleadings by the prosecutor and the judge rapporteur; and the swift character of the hearing. On the other hand, the prosecutor had been present in the courtroom and had forcefully presented his position to the appeal court. Lastly, the applicant mentioned that during the hearing he had been kept in a metal cage measuring 1.5 x 2 metres.

2. The Government

64. The Government considered that the criminal proceedings had been fair. In particular, regarding the appeal proceedings, they submitted that the applicant and counsel had been informed when the case had been sent to the Supreme Court. The applicant was aware that leave for his participation in the appeal hearing had been granted. His counsel had been informed of the date and time of that hearing. The Government acknowledged that a copy of the prosecutor's written pleadings in reply to the applicant's statement of appeal had not been made available to the defence. They argued, however, that the applicant had taken cognisance of them, since they had been read out at the hearing. Lastly, the Government indicated that the audio link had been "compliant with the applicable technical standards".

B. The Court's assessment

1. Admissibility

65. The Court considers, in the light of the parties' submissions, that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court considers therefore that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. Merits

66. With regard to judicial decisions, 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).

67. 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*, judgment of 26 March 1996, § 67, *Reports* 1996-II, and *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, § 50, *Reports* 1997-III). All the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence (see *Lüdi v. Switzerland*, judgment of 15 June 1992, § 49, Series A no. 238).

68. Bearing in mind the above principles, the Court has first examined the applicant's grievances concerning the preliminary investigation in his criminal case and the trial by a jury (paragraph 62 above). The applicant, who was represented, was afforded an adequate opportunity to present his argument and evidence, as well as to contest the prosecution's arguments and evidence in adversarial proceedings (paragraphs 15 - 22 above). The available material before the Court does not disclose that any alleged violation was such as to impair the overall fairness of the proceedings under Article 6 of the Convention.

69. As regards the appeal proceedings, the manner of application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see *Ekbatani v. Sweden*, 26 May 1988, § 27, Series A no. 134, and *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 56, Series A no.115). Indeed, even where an appeal court has full jurisdiction to review the case on questions both of fact and of law, Article 6 does not always require a right to a public hearing and *a fortiori* a right to be present in person (see *Kamasinski v. Austria*, 19 December 1989, § 106, Series A no. 168, and *Fejde v. Sweden*, 29 October 1991, § 31, Series A no. 212-C). Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests were presented and protected before the appellate court, particularly in the light of the issues to be decided by it (see *Helmers v. Sweden*, 29 October 1991, §§ 31-32, Series A no. 212-A), and their importance for the appellant (see *Kremzow v. Austria*, 21 September 1993, § 59, Series A no. 268-B; *Kamasinski*, § 106 *in fine*; and *Ekbatani*, §§ 27 and 28, both cited above).

70. The Court also reiterates that Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial,

including, *inter alia*, not only his right to be present, but also to hear and follow the proceedings (see *Stanford v. the United Kingdom*, 23 February 1994, § 26, Series A no. 282-A). The principle of equality of arms – one of the elements of the broader concept of a fair trial – requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among other authorities, *Nideröst-Huber v. Switzerland*, judgment of 18 February 1997, § 23, *Reports* 1997-I). The concept of a fair trial also means in principle the opportunity for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision (see *Kress v. France* [GC], no. 39594/98, § 74, ECHR 2001-VI, with further references). The above did not, however, confer a right to have disclosed to an applicant, before the hearing, submissions which have not been disclosed to the other party to the proceedings or to the reporting judge or to the judges of the trial bench (see *Nideröst-Huber*, cited above, ibid.).

71. Where an appellate court has to examine a case as to the facts and the law and make a full assessment of the issue of guilt or innocence, it cannot determine the issue without a direct assessment of the evidence given in person by the accused for the purpose of proving that he did not commit the act allegedly constituting a criminal offence (see *Dondarini v. San Marino*, no. 50545/99, § 27, 6 July 2004).

72. Turning to the circumstances of the present case, the Court observes at the outset that the Supreme Court granted the applicant's request to be brought to the appeal hearing. For this purpose the applicant was escorted from the Ivanovo Region to Moscow. However, instead of being brought to the hearing the applicant participated in it by video link from a Moscow remand centre (see also paragraph 56 above). The applicant, apparently, first learnt that he would participate in the appeal hearing by video link on the day of the hearing and thus could not be expected to have objected to it in the absence of legal advice. The respondent Government did not suggest, and the Court does not consider, that there was any compelling reason to justify the applicant being brought to Moscow but not to the courtroom of the Supreme Court.

73. The Court further reiterates that where an applicant communicates with the court by way of a video link, the exercise of the right to legal assistance takes on particular significance especially where, as in the present case, there are numerous and serious charges against the applicant and the sentence to which he is liable is severe (see *Shulepov v. Russia*, no. 15435/03, § 35, 26 June 2008, and *Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006). The applicant was not represented at the appeal hearing. Furthermore, it is noted that the prosecutor was present in the courtroom and had an opportunity to make oral submissions (see paragraph 48 above). Given the scope of the appeal, it is possible that the

prosecution commented on the defence's arguments concerning various defects in the pre-trial investigation, the trial judge's summing-up to the jury and the quality of evidence, including the expert opinions. In such situation, though it is doubtful that the absence of counsel was imputable to the authorities, they should have ensured, for instance by adjourning the hearing and/or appointing another counsel, that the defence rights were secured in the appeal proceedings to an extent compatible with Article 6 of the Convention (see *Artico v. Italy*, judgment of 13 May 1980, § 36, Series A no. 37, and *Balliu v. Albania*, no. 74727/01, §§ 35-38, 16 June 2005). This was not so in the present case.

74. Moreover, in the absence of any evidence to the contrary, the Court finds that the applicant was not promptly informed of the date and time of the hearing and could not take cognisance of his counsel's submissions filed with the appeal court. Also, as acknowledged by the Government, the applicant was not provided with a copy of the prosecution's written observations in reply to the defence's statements of appeal.

75. Lastly, in the Court's opinion, it can be accepted that a telegram containing the notification about the hearing was sent to counsel several days in advance and that the prosecution submissions were read out at the hearing. However, the Court considers that in the circumstances mentioned in the preceding paragraphs, the applicant was not afforded a reasonable opportunity to present his case.

76. There has accordingly been a violation of Article 6 § 1 of the Convention.

77. In view of the above, there is no need to examine separately the remaining allegations made by the applicant in relation to the appeal proceedings.

III. ALLEGED VIOLATIONS OF ARTICLE 34 OF THE CONVENTION

A. Opening and inspection of the letter of 13 July 2004

78. The applicant complained that the opening and inspection by the prison staff of the Court's letter of 13 July 2004 addressed to him and the delay in handing it over to the applicant had been in breach of the State's obligation not to hinder his exercise of the right of individual application under Article 34 of the Convention.

79. Article 34 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."

80. The Government submitted that the applicant had twice refused to have the letter handed to him by the prison staff. The latter had wrongly assumed that, as with other letters, the addressee should have displayed due diligence in receiving correspondence from the European Court. However, there had been no intention to delay that letter. Moreover, thereafter the staff of the prison had been reminded of the special status of correspondence from the European Court and the requirement that it be handed over to detainees immediately. Lastly, the applicant's allegation about the opening and inspection of that letter was unsubstantiated.

81. The applicant contested that he had been required to come to the office in charge of correspondence to receive the letter. The Government had submitted no proof of this assertion. In any event, a refusal on his part would have amounted to a breach of the prison rules. Moreover, the delayed handing over of the letter had been acknowledged by the authorities in their letter of 3 November 2004 (see paragraph 46 above). He added that all letters from the Court, including the letter in question, had been and continued to be opened by the same prison administration. He submitted copies of other letters bearing the stamp of the detention facility, the receipt date and the registration number.

82. The Court notes at the outset that the present complaint is limited to an alleged violation in relation to one letter, that is, the Court's letter of 13 July 2004 addressed to the applicant. As regards its opening and inspection, it is noted that the Russian legislation at the time prohibited the opening and inspection of incoming and outgoing correspondence between a detainee and the Court (see paragraph 50 above). The Court finds that there is insufficient evidence to show that the letter of 13 July 2004 was opened and inspected.

83. Thus, there has been no breach by the respondent State of their obligation under Article 34 of the Convention on that account.

84. At the same time, the Court observes that the national authorities have acknowledged the delay in handing over the letter to the applicant. The applicant submitted that he had received the letter on 21 September 2004, that is, after the expiry of the time-limit set by the Court. The Government did not contest this.

85. It is well known that various proceedings before the Court are subject to time-limits, the non-observance of which is liable to entail legal consequences for the parties. It is noted that by the letter of 13 July 2004 the applicant was given a time-limit by which to submit additional documents and information. An applicant's failure to comply with the Court's instructions would in principle lead the Court to decide on the admissibility of the case on the basis of the file as it then stood, or to conclude that the applicant was no longer interested in pursuing the application and to decide to strike it out of its list of cases under Article 37 § 1 of the Convention (see, among many others, *Kupryakov v. Russia* (dec.), no. 18792/03,

20 September 2007). While admitting that the responsible prison officer should have handed over the letter to the applicant without delay, the Government submitted that the applicant had contributed to that delay by failing to comply with the order to present himself to the office in charge of correspondence.

86. Bearing in mind the vulnerable position of detainees in so far as their communication with the outside world is concerned, the Court considers that it was incumbent on the respondent State in the present case to ensure that the applicant received the above-mentioned registered letter without undue delay.

87. Thus, the respondent State has not complied with their obligation under Article 34 of the Convention.

B. Other allegations under Article 34 of the Convention

88. The applicant also alleged that the authorities' failure to assist him in gathering evidence in support of his complaint before the Court concerning the conditions of detention amounted to a violation of the respondent State's obligation under Article 34 of the Convention. In addition, he alleged that a letter dated 23 January 2003 had not been dispatched by the prison administration (see paragraph 43 above).

89. The Court has examined those complaints as presented by the applicant. However, in the light of all the material in its possession, the Court finds that they do not disclose an appearance of a breach by the respondent State of its obligation under Article 34 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

90. Lastly, the applicant complained under Articles 3 and 13 of the Convention of ill-treatment and threats, to which he had allegedly been subjected on several occasions between 31 October and 2 November 2000.

91. The Court reiterates that allegations of ill-treatment brought to it must be supported by appropriate evidence (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may also follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, § 161 *in fine*, Series A no. 25).

92. Having examined the available material, the Court is not satisfied that the applicant has established that he was subjected to any proscribed treatment at the hands of State agents. The applicant did not provide a sufficiently clear and detailed account of the alleged physical ill-treatment on each relevant date. Nor is there any indication that the applicant was

subjected to any form of pressure or coercion that exceeded the minimum threshold of severity required under Article 3 of the Convention. The Court further observes that the applicant's allegation was, however, investigated by the national authorities who refused to initiate criminal proceedings against any public officers. The applicant did not put forward any cogent argument contesting the effectiveness of the domestic inquiries. Thus, the applicant's grievances under Article 3 of the Convention should be declared inadmissible.

93. The Court also reiterates that, according to its constant case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). In view of the Court's findings above, the Court does not consider that the applicant had an arguable claim under Article 3 of the Convention.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage for each violation established by the Court.

97. The Government considered this claim to be excessive.

98. Making an assessment on an equitable basis and having regard to the nature of the violations found, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

99. As regards the findings under Article 6 of the Convention, the Court also reiterates that when an applicant has been convicted despite an 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 the reopening of the relevant proceedings if requested (see *Somogyi v. Italy*, no. 67972/01, § 86, ECHR 2004-IV, and *Shulepov*, cited above, § 46). The Court notes in this connection that Article 413 of the Code of Criminal Procedure provides

that criminal proceedings may be reopened if the Court has found a violation of the Convention.

B. Costs and expenses

100. The applicant also claimed 20,000 Russian roubles for his counsel's fees for representing him before the Regional Court, paid apparently by the applicant's sister.

101. The Government contested the claim.

102. 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. It does not appear that the above expenses were related to the violations found or that they were incurred by the applicant or that he was under an enforceable legal or contractual obligation to do so (see *Salmanov v. Russia*, no. 3522/04, § 98, 31 July 2008). The Court therefore rejects the claim.

C. Default interest

103. The Court considers it appropriate that the default interest 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 of the Convention in relation to the proceedings before the appeal instance court;

3. *Holds* that the respondent State has complied with its obligation under Article 34 of the Convention in relation to the confidential nature of the Court's letter of 13 July 2004;

4. *Holds* that the respondent State has not complied with its obligation under Article 34 of the Convention in relation to the delivery of the Court's letter of 13 July 2004;

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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles 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 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following joint concurring opinion of Judges Spielmann and Malinverni is annexed to this judgment.

C.L.R.
S.N.

JOINT CONCURRING OPINION OF JUDGES SPIELMANN AND MALINVERNI

Paragraph 99 of the judgment states: "As regards the findings under Article 6 of the Convention, the Court ... reiterates that when an applicant has been convicted despite an 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 the provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the relevant proceedings if requested ..."

For reasons we have explained on many occasions, either alone or together with other judges,[1] we would very much have liked this principle, on account of its importance, to have been reflected in the operative part of the judgment.

[1] See for example our joint concurring opinions appended to the following judgments: *Vladimir Romanov v. Russia* (no. 41461/02, 24 July 2008); *Ilatovskiy v. Russia* (no. 6945/04, 9 July 2009); *Fakiridou and Schina v. Greece* (no. 6789/06, 14 November 2008); *Lesjak v. Croatia* (no. 25904/06, 18 February 2010); and *Prežec v. Croatia* (no. 48185/07, 15 October 2009). See also the concurring opinion of Judge Malinverni in *Pavlenko v. Russia*, (no. 42371/02, 1 April 2010), the concurring opinion of Judge Malinverni, joined by Judges Casadevall, Cabral Barreto, Zagrebelsky and Popović in the case of *Cudak v. Lithuania* ([GC], no. 15869/02, 23 March 2010), as well as the concurring opinion of Judges Rozakis, Spielmann, Ziemele and Lazarova Trajkovska in *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008-...).