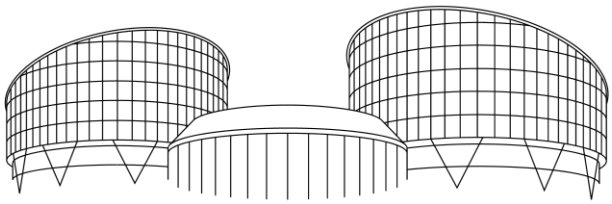

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ORLOV v. RUSSIA

(Application no. 29652/04)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 29652/04) 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 Andrey Yevgenyevich Orlov ("the applicant"), on 22 July 2004.

2. The applicant, who had been granted legal aid, was represented by Mr P. Finogenov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr A. Savenkov and then by Mr G. Matyushkin, acting and current Representatives of the Russian Federation at the European Court of Human Rights respectively.

3. On 26 March 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to grant priority treatment to the applicant (Rule 41 of the Rules of Court) and to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

4. On 18 June 2009 the President of the Chamber, to which the case had been allocated, decided under Rule 54 § 2 (c) of the Rules of Court that the parties should be invited to submit further written observations on the admissibility and merits of the above application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and is serving a prison term in prison no. 3 in the Altay Region.

A. Criminal proceedings against the applicant

1. First round of proceedings

6. On 4 March 2003 the applicant was arrested on suspicion of murder. The investigating authority authorised a search in his house; it was carried out on the same date. After having rejected his request to retain Ms Y. as counsel, on the same evening the investigator appointed Mr Yu., a legal-aid lawyer, to represent the applicant and then proceeded to interview him.

7. On 5 March 2003 the applicant contacted Ms Y. and she was appointed as his (legal-aid) counsel. Allegedly, the applicant also obtained advice from Mr K., who subsequently became counsel to his co-accused, Mr R. Mr R. testified against the applicant.

8. On 6 March 2003 the Tsentralniy District Court of Barnaul confirmed the lawfulness of the applicant's arrest and authorised his continued detention. On an unspecified date that detention order was upheld on appeal. The applicant's detention was extended on 30 April, 19 June and 29 July 2003.

9. After the investigation had been completed, the applicant studied the case file, including the expert reports commissioned by the investigator. Allegedly, for unspecified reasons the applicant was not assisted by counsel at that time (see also paragraph 16 below).

10. The case was sent for trial before the Altay Regional Court. The applicant sought to be tried by a jury. On 11 August 2003 the Regional Court held a preliminary hearing on that matter and appointed Ms Ro., on whose advice the applicant withdrew his request for trial by a jury. After this hearing the applicant was assisted by Ms Y.

11. On 20 November 2003 the Regional Court convicted the applicant as charged and sentenced him to nineteen years' imprisonment. The court relied, *inter alia*, on written statements made by Mr R. and other witnesses, and on several expert reports.

12. The applicant appealed to the Supreme Court of Russia and requested the appointment of legal-aid counsel. It appears that both the Regional Court and Supreme Court refused his requests.

13. Ms Y. submitted a statement of appeal on the applicant's behalf.

14. On 30 March 2004 the applicant informed the Supreme Court that he had not been given copies of the statements of appeal lodged by his co-defendants and the public prosecutor.

15. On 14 May 2004 the applicant asked the Supreme Court to appoint legal-aid counsel for the appeal proceedings. An adjournment was ordered on one occasion to enable the applicant's father to retain counsel (see also paragraph 20 below). In the same proceedings, Y., who had assisted the applicant at first instance, informed the Supreme Court that she had not been retained for the appeal proceedings and would no longer represent the applicant.

16. On 18 June 2004 the Supreme Court held an appeal hearing. It appears that the applicant participated in it by a video link from a remand centre in Chelyabinsk. The appeal court examined the appeals and reduced the applicant's prison term to eighteen years and six months. The appeal court found as follows:

> "Advocate K. did not represent [the applicant] and did not participate in any investigative measures...The search in [the applicant's] house was authorised by an investigator and a prosecutor. Since at that time [the applicant] was not formally taken into custody legal assistance was not required. He was interviewed as a suspect after his arrest; lawyer Yu. was present at the interview; [the applicant] did not object to the appointment of Mr Yu. as counsel...[The applicant] studied the case file with a lawyer...He did not object to be assisted by lawyer Ro. at the preliminary hearing and was served with copies of the statements of appeal submitted by his co-defendants..."

The appeal court also noted that the applicant had been present at the appeal hearing and had made submissions to the court; that "the applicable legislation [did] not require a court of appeal to appoint counsel".

17. The judgment became final on 18 June 2004. On 28 July 2004 the applicant was transferred to prison no. 10 in the town of Rubtsovsk to serve his prison term.

2. Supervisory-review proceedings

18. In May 2008 the deputy Prosecutor General of the Russian Federation lodged a request for supervisory review of the judgment of 18 June 2004. The request reads as follows:

> "As can be seen from the case file, [the applicant] had asked that the appeal court designate a legal-aid lawyer and admit his mother and brother as lay defence representatives. An adjournment had been ordered to enable [the applicant's] father to retain counsel.
>
> At the same time, the appeal court stated that the applicable legislation did not require a court of appeal to appoint counsel. In the same proceedings, Y., who had assisted [the applicant] at first instance, informed the court of appeal that she had not been retained for the appeal proceedings and would no longer represent [the applicant].

> Despite this, the appeal court did not take any measures to provide [the applicant] with counsel and held an appeal hearing without [the applicant being represented by] counsel...This omission was capable of affecting the conclusions made by the appeal court."

19. On 19 June 2008 a judge of the Supreme Court of Russia examined this request and held that the case should be submitted to the Presidium of the Supreme Court. On an unspecified date, the applicant was brought from Rubtsovsk prison (in the Altay Region) to a remand centre in Moscow on the instructions of the Supreme Court. In October 2008 the applicant was authorised to receive visits from his father, who had been admitted as a lay defence representative in the supervisory review proceedings. Ms O., who had been appointed by the Supreme Court as the applicant's counsel, also visited him in the remand centre.

20. The Presidium of the Supreme Court of Russia heard lawyer O., the applicant and his father. By a ruling of 15 October 2008, the Presidium court set aside the judgment of 18 June 2004 and ordered a fresh appeal hearing. The court held as follows:

> "As can be seen from the case file, [the applicant] had asked that the appeal court designate a legal-aid lawyer and admit his mother and brother as lay defence representatives. An adjournment was ordered to enable [the applicant's] father to retain counsel.
>
> At the same time, the appeal court stated that the applicable legislation did not require a court of appeal to appoint counsel. In the same proceedings, Y., who had assisted [the applicant] at first instance, informed the court of appeal that she had not been retained for the appeal proceedings and would no longer represent [the applicant].
>
> Despite this, the appeal court did not take any measures to provide [the applicant] with counsel and held an appeal hearing without [the applicant being represented by] counsel...This omission was capable of affecting the conclusions made by the appeal court."

By a separate ruling the applicant was required to pay legal fees of 7,161 Russian roubles (RUB) for O.'s services rendered in the supervisory review proceedings.

3. New round of appeal proceedings

21. On 10 November 2008 the case file was submitted to the appeal section of the Supreme Court; a hearing was scheduled for 25 November 2008. The applicant asked that O. be appointed as his counsel in the appeal proceedings and that O. be assisted by his parents and a former cellmate, still in prison, as lay defence representatives. Lastly, the applicant unsuccessfully sought that he be afforded time to study the case file again and that counsel's fees be borne by the State.

22. On 11 November 2008 the Supreme Court dispatched telegrams to the applicant's parents and to lawyer Y., who had lodged the statement of

appeal on behalf of the applicant in late 2003 or early 2004 (see paragraph 13 above). They were thereby informed of the date and time of the appeal hearing listed for 25 November 2008. On 13 or 14 November 2008 the applicant was also informed. According to the applicant, Y. was not informed of the appeal hearing listed for 25 November 2008. The applicant states that he did not have contact with her after 2004.

23. On an unspecified date, A., a lawyer, was appointed by the Supreme Court to provide legal assistance to the applicant in the appeal proceedings. According to the applicant, he was not aware of this appointment, and A. did not visit him in the Moscow detention facility or discuss the defence position with him. He first met her at the court hearing on 25 November 2008.

24. The applicant participated in the hearing on 25 November 2008 by way of a video and audio link from the Moscow detention facility. The applicant's father (admitted as a lay defence representative), A. and the prosecutor were present in the courtroom. According to the applicant, A.'s participation in the appeal hearing was limited to making a supporting statement in relation to Y.'s statement of appeal.

25. The appeal court rejected the applicant's father's request for an adjournment in order to ensure O.'s presence in the courtroom (see also paragraph 20 above). The court also dismissed requests concerning the admission of the applicant's mother and former cellmate as lay defence representatives. The court held as follows:

> "Article 50 of the Code of Criminal Procedure authorises a defendant to choose and retain a lawyer as paid counsel or counsel is appointed by a court of appeal under Article 51 of the Code...Since [the applicant] has not retained any counsel, the court appointed lawyer A., who studied the case file for several days before the hearing...It is also noted that, as explained by the lay representative, [the applicant's mother] is absent for health reasons and that [the applicant's cellmate] is serving a sentence of imprisonment..."

26. According to the respondent Government, in 2008 the case file comprised nine volumes, compared to six volumes during the proceedings in 2003 and 2004. The Government submitted that in the first round of proceedings, the applicant had been afforded adequate opportunity to study the material (see paragraph 9 above), had been provided with a copy of the indictment and a copy of the trial judgment, and had been given an opportunity to study the transcript of the trial and other materials. Volumes 7 to 9 of the case file contained, *inter alia*, the following documents: the transcript of the trial; statements of appeal lodged by the defendants and their lawyers in 2003 and 2004; the prosecutor's observations in reply; and the applicant's motions and applications to the courts made after the appeal hearing in 2004 and in relation to the 2008 reopening.

27. According to the applicant, in November 2008 he was not afforded an opportunity to have knowledge of additional statements of appeal lodged

by his co-defendants and their counsel or certain submissions made by the public prosecutor.

28. By judgment of 25 November 2008, the Supreme Court amended the trial judgment of 20 November 2003 by applying more favourable legislation which had entered into force after 2003. In particular, the appeal court reduced the applicant's prison term to eighteen years and removed an additional order for confiscation of property.

29. Lawyer A. applied for payment of her fees covering five working days, including time spent studying the case file and providing legal assistance at the appeal hearing. By a decision of 25 November 2008 the Supreme Court awarded her RUB 5,967.50 against the State; the applicant was required to repay this sum to the State. The appeal court held as follows:

> "Advocate A. studied the case file for four days and then participated in the appeal hearing before the Supreme Court. According to [the applicable legislation] one day of service in proceedings before the Supreme Court should be paid 1,193.50 roubles. Thus, the sum to be paid for five days amounts to 5,967.50 roubles."

4. New request for supervisory review

30. On an unspecified date, the applicant lodged an application for supervisory review of the judgments of 20 November 2003 and 25 November 2008. He complained that during the appeal proceedings in 2008 he had not been afforded an opportunity to have access to the materials in the case file; the appeal court had not appointed O. as counsel and had not adjourned the hearing. On 13 August 2009 the Supreme Court rejected the applicant's complaints as follows:

> "The defence's requests were properly examined and rejected in the appeal proceedings. There were no fundamental defects in the appeal proceedings, which could justify annulment or amendment of the court decisions."

B. Conditions of detention

1. Barnaul temporary detention centre

31. From 5 to 18 March 2003 the applicant was detained in a temporary detention centre in Barnaul. The applicant states that he had been kept in an overcrowded cell, which had afforded less than two square metres of personal space per detainee. He had not been provided with a bed, bedding or items of personal hygiene; no arrangement for washing clothes had been made. The toilet had not been separated from the living area. The cell windows had been covered with metal shutters limiting access to air and natural light. The cell had been excessively cold and damp. The applicant

had been fed twice a day and the food had been poor quality. He had not been allowed to have any stationery or paper in the cell.

32. The Government submitted that the applicant had been kept, together with three to six other detainees, in a cell measuring twenty-two square metres. Although there had been no proper beds, the applicant had been given a mattress and could sleep on a wooden deck. No bedding had been provided. The remaining conditions of detention had been acceptable and in compliance with the applicable national standards and regulations.

33. The applicant was subsequently detained in Barnaul remand centre, apparently in acceptable conditions.

2. Rubtsovsk prison no. 10

34. From 28 July 2004 to late 2008 the applicant was kept in prison no. 10 in the town of Rubtsovsk. In late 2008 he spent several months in a Moscow detention facility. He was then brought back to the prison. In late 2009 the applicant was transferred to prison no. 3 in the Altay Region.

(a) The applicant's account

35. According to the applicant, he was afforded less than two square metres of the floor space; he was placed in the same cell or dormitory as smokers, despite his asthma. It appears that the applicant has chronic obstructive pulmonary disease, a progressive narrowing of the airways resulting in limitation of the flow of air to and from the lungs and causing shortness of breath. Apparently, the applicant also suffers from other diseases such as syphilis, hypotrophy and encephalopathy. After two stays in hospital, the medical staff classified his condition as "satisfactory" and stable, in that it was not worsening ("unstable remission"). However, the disability commission refused to afford the applicant any disability benefits. As can be seen from the medical file, the applicant was provided with medical treatment and nutrition.

36. The toilet facilities were located in an open courtyard seven metres away from the dormitory, and were dirty and unheated in winter; he was not provided with sufficient nutrition or adequate medical assistance. Allegedly, on several occasions in 2004 and 2006 the applicant had not been allowed to receive visits from his family.

37. On several occasions the applicant had been detained in appalling conditions in punishment cells and special cells (*ПКТ*). The applicant had been afforded around two square metres of cell space in ordinary cells in the prison for several relatively short periods of time in 2005 and 2006. These cells had had no functioning ventilation. The applicant had been afforded forty minutes of outdoor exercise per day during the periods of his detention in these cells.

(b) The Government's account

38. The Government submitted that under the Code concerning the Service of Sentences a convicted detainee is to be afforded no less than two square metres of floor space. Since July 2004 the applicant had been kept in large dormitories measuring between 220 and 238 square metres together with 103 to 111 other inmates. Thus, he had been afforded an average of 2.3 square metres of floor space in the living areas of the dormitories. The windows had not been covered with any metal shutters or wooden plates. Each dormitory had had five windows affording sufficient access to natural light. Each dormitory had had a system of light, heating, ventilation and water supply. The toilets had been situated in separate buildings and had been constructed in a way as to secure sufficient privacy. The applicant had been provided with individual bed and bedding in all dormitories. The applicant had been properly fed, in compliance with statutory standards. The Government submitted a number of official statements, logbooks and other documents in support of their above submissions.

39. As can be seen from the available documents, between June 2005 and December 2007 the applicant had spent varying periods of time (three to thirty days, on average) in punishment cells. At times, when he had been detained with several other prisoners in such cells, he had been afforded less than three square metres of cell space.

3. Complaints to national authorities

40. The applicant complained to the trial and appeal courts in his criminal case of the allegedly appalling conditions of his detention. It appears that those complaints met with no response.

41. In 2004 the applicant sought to obtain from the head of the temporary detention centre an official statement concerning the conditions of his detention in 2003. In a letter of 23 August 2004, the official stated that the applicant had been held in a cell measuring twenty-four square metres together with four to seven other inmates.

42. The applicant also complained to the local prosecutor's office but received no reply. In August 2004 he brought court proceedings under Article 125 of the Code of Criminal Procedure ("the CCrP"). On 28 September 2004 the Tsentralniy District Court of Barnaul terminated the proceedings, indicating that the applicant should have used a different procedure for his complaint. The applicant appealed. On 16 November 2004 the District Court invited the applicant to lodge a statement of appeal in conformity with the requirements of the CCrP within ten days of having received the court's decision. It appears that the applicant received the District Court's decision on 26 November 2004.

43. In separate proceedings, the applicant complained of an alleged refusal to allow a visit from his mother. His claim was not examined on procedural grounds.

C. Correspondence with the Court and communication with the applicant's representative before the Court

44. On 3 April 2006 the applicant submitted a letter addressed to the Court to the prison correspondence unit. On 13 April 2006 the letter was registered under no. 16/4-0-8. In reply to a request made by the applicant in October 2006, the Registry of the Court informed the applicant that the letter had not been received.

45. It appears that in May 2006 the applicant gave a copy of his letter to his mother and asked her to send it to the Court. According to the applicant, she was subjected to a search before leaving the prison and the letter was seized. On 16 June 2006 the letter was returned to the applicant.

46. On an unspecified date the applicant was placed in a punishment cell, allegedly as a result of a violation of the internal rules concerning the dispatch of correspondence.

47. On 7 June 2006 the applicant lodged a complaint with the Prosecutor's Office of the Altay Region. It appears that it was forwarded to another prosecutor's office and rejected as unfounded.

48. On 27 October 2006 the applicant submitted another letter addressed to the Court to the prison correspondence unit. On 16 November 2006 the letter was registered under no. 16/4-0-54.

49. According to the Government, the correspondence logbooks of prison no. 10 showed that since 2004 the applicant had submitted over 149 letters with or without annexes for dispatch, of which three letters had been addressed to the Court in 2004 and two letters in 2005. In 2006 he had submitted four letters to the Court for dispatch. All of the letters had been dispatched.

50. According to the applicant, from July 2008 onwards he had not been able to maintain contact with Mr P. Finogenov, his representative before the Court, either through correspondence or by having a meeting with him in Moscow remand centre or another detention facility, including prison no. 10 in the Altay Region.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal assistance in criminal proceedings

51. Article 51 of the Code of Criminal Procedure ("the CCrP") establishes that counsel shall be appointed by an investigator, prosecutor or

a court if, *inter alia*, the accused faces serious charges carrying a term of imprisonment exceeding fifteen years, life imprisonment or the death penalty. Counsel shall be appointed if the accused has not retained a lawyer.

52. In a decision dated 18 December 2003 (no. 497-0), the Constitutional Court held that nothing in the wording of Article 51 suggested that it was inapplicable to appeal proceedings. That position was subsequently confirmed and developed in decisions (nos. 251, 252, 253, 254, 255-O-П, 257-O-П, 276-O-П) delivered by the Constitutional Court on 8 February 2007. It found that free legal assistance in appellate proceedings should be provided on the same grounds as during earlier stages of proceedings, on the defendant's request or if mandatory (as in the situations listed in Article 51). No limitation of the right to legal assistance was allowed unless the person concerned waived this right.

53. Article 131 of the CCrP provided that litigation costs were to be borne by the parties to the proceedings or by the State. Such costs included sums due to a lawyer for legal assistance if that lawyer had been appointed by the State. Article 132 provided that litigation costs had to be paid by a convict or by the State. A court was empowered to order a convict to pay costs, except for sums paid to a lawyer if the court had previously rejected the defendant's waiver of counsel and the lawyer had been appointed by the State. The State was liable for costs if the person concerned was indigent. The court could also absolve the person concerned from the liability for costs or reduce their amount.

54. The Russian Government's decree no. 400 of 4 July 2003, as amended in 2007 and 2008, provides that a lawyer providing free legal assistance in criminal proceedings should be paid between RUB 298 and RUB 1,193 per day of service by the State, depending on the complexity of the case, the degree of jurisdiction, the gravity of the charges and the volume of the case file. Services remunerated include work at court hearings and in remand centres (following Supreme Court decision no. KAC08-667 of 23 December 2008) and related transport expenses (following Constitutional Court decision no. 289-O-П of 5 February 2009).

55. Pursuant to the Code of Advocates' Professional Ethics 2003, an advocate should withdraw from any agreement to provide legal advice, if, after having agreed to provide advice to a client (except during a preliminary investigation or trial proceedings) it becomes clear that he cannot provide advice to that client. The advocate should notify his client thereof in advance, if at all possible (section 10). An appointed or privately-retained advocate in criminal proceedings cannot withdraw from his agreement to provide advice to a client and must continue to represent the client until the stage of drafting and lodging any statement of appeal against the trial judgment (section 13 § 2). The advocate should appeal against a trial judgment upon the client's request, or if (i) there are legal grounds mitigating the sentence, (ii) the client is a juvenile or has a mental handicap,

and (iii) the trial court disagreed with counsel and imposed a heavier sentence or convicted his client of a more serious offence (section 13 § 4). The advocate should, as a rule, appeal against a trial judgment on grounds (ii)-(iii) above or if the advocate considers that there are legal grounds mitigating the sentence (section 13 § 4 *in fine*). The above provisions were amended in 2005 and 2007 to read as follows:

> "2. An appointed or privately-retained advocate in criminal proceedings cannot withdraw from his agreement to provide legal advice to a client, except in cases indicated by the law, and shall defend the client, including, if necessary, by drafting and lodging a cassation appeal against the trial judgment....
>
> 4. An advocate shall appeal against the trial judgment (i) if so requested by his client, (ii) if there are grounds for setting that judgment aside or for amending it in favour of his client, (iii) as a rule, if the court disagreed with the advocate and imposed a heavier sentence on or convicted the juvenile of a more serious offence..."

B. Other relevant provisions of criminal and civil procedure

56. By decision no. 455-O-O of 15 July 2008, the Constitutional Court held that Article 47 of the CCrP should be interpreted as allowing the defence to have knowledge of the written observations or comments submitted by the prosecution in reply to the defendant's statement of appeal. By decision no. 856-O-O of 20 November 2008, the Constitutional Court held that Article 47 of the CCrP should be interpreted as allowing a convicted person to seek, in person or through counsel, access to the criminal case file, even after the closure of the trial.

57. Under the Code of Civil Procedure, a statement of claim should inter alia indicate the nature of the violation of the claimant's right or interest, plea for relief, the relevant circumstances and evidence confirming those circumstances (Article 131). A statement of claim should be accompanied by a document proving payment of a court fee (Article 132). Article 333.36 of the Tax Code contains a list of court actions and claimants who are entitled to a waiver of a court fee requirement. None of the grounds cited therein is related to a claimant's indigence. By rulings of 13 June 2006 (no. 272-O) and 7 February 2008 (no. 226-O-O), the Constitutional Court declared that provision unconstitutional in so far as a court could not grant a request for a fee waiver on account of indigence.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

58. The applicant complained about the conditions of his detention in Barnaul temporary detention centre and Rubtsovsk prison. The Court will examine this complaint under 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."

A. Admissibility

1. Barnaul temporary detention centre from 5 to 18 March 2003

59. The Government argued that the complaint concerning the temporary detention centre covering the period from 5 to 18 March 2003 had been submitted out of time. The court proceedings instituted in 2004 had not determined any related claims because the applicant had not complied with formal requirements (see paragraph 42 above). Thus, they should not be taken into consideration for the purpose of applying the six-month rule. Moreover, the applicant had not exhausted domestic remedies, as he had failed to afford the national courts an opportunity to examine his claims in civil proceedings.

60. The applicant argued that he had lodged a complaint before this Court after having raised it, albeit to no avail, at his own criminal trial and on appeal against conviction. Any attempts to bring separate court proceedings were or would have been futile.

61. It is noted that the complaint concerning the conditions of the applicant's detention in the temporary detention centre was raised before the Court in July 2004. The Court reiterates that the purpose of the six-month rule under Article 35 § 1 of the Convention is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought to protect the authorities and other persons concerned from being subject to any uncertainty for a prolonged period of time. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, *Worm v. Austria*, 29 August 1997, §§ 32 and 33, *Reports of Judgments and Decisions* 1997-V). The rule is intended to ensure that it is possible to ascertain the facts of the case before that possibility fades away, making a

fair examination of the question at issue next to impossible (see *Pavlenko v. Russia*, no. 42371/02, § 69, 1 April 2010).

62. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. However, where it is clear from the outset that no effective remedy was available to the applicant, the period runs from the date of the acts or measures complained of. Article 35 § 1 cannot, however, be interpreted in a manner which would require an applicant to bring a complaint before the Court before his position in connection with the matter has been finally determined at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to calculate the six-month time-limit from the date when the applicant first became or ought to have become aware of those circumstances (see, among others, *Zenin v. Russia* (dec.), no. 15413/03, 24 September 2009).

63. Having examined the available material, the Court observes that the matters relating to the material conditions of detention, as presented by the applicant, were extraneous to the determination of the criminal charges against him. The circumstances of the present case do not disclose that by raising matters in relation to Article 3 of the Convention at trial he could have been afforded any adequate redress and could have complied with the six-month rule (see *Pavlenko*, cited above, § 74; *Moskalyuk v. Russia*, no. 3267/03, § 44, 14 January 2010, and, for comparison, *Moiseyev v. Russia*, no. 62936/00, §§ 219-223, 9 October 2008, concerning the effects of conditions of transport and confinement in the context of Article 6 § 3 (b) of the Convention).

64. As to the domestic proceedings in 2004 (see paragraph 42 above), the Court observes that they were instituted after the end of the period complained of and after the applicant had lodged an application before this Court. The applicant should have been aware that his claims could not have been examined on the merits due to his failure to comply with the formal requirements of the Code of Criminal Procedure (CCrP). It is not apparent that a grievance arising from the conditions of the applicant's detention was capable of constituting a criminal offence which could have been attributable to any public official and would thus have required, in the context of Article 3 of the Convention, a criminal inquiry or even a full-fledged investigation (see *Volchkov v. Russia*, no. 45196/04, § 42, 14 October 2010).

65. In the Court's view, the applicant could not reasonably have considered that this attempted court action under the CCrP was capable of affording him adequate redress for the allegedly appalling conditions of his detention in the detention facility which he had previously been held in. Thus, the related proceedings should not be taken into account for the

application of the six-month time-limit in the present case (see, for comparison, *Artyomov v. Russia*, no. 14146/02, §§ 110-118, 27 May 2010, and *Skorobogatykh v. Russia*, no. 4871/03, §§ 32-34, 22 December 2009, concerning civil court proceedings).

66. The above considerations lead, in the circumstances of the present case, to the conclusion that the six-month time-limit should be calculated from the end date of the periods complained of in March 2003.

67. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Rubtsovsk prison no. 10 between 2004 and 2008

68. The Government argued that, under well-established administrative practice and the case-law of the national courts, the applicant should have brought proceedings before the national authorities in order to obtain an amelioration of the conditions of his detention and/or compensation in respect of pecuniary and non-pecuniary damage. They submitted that Article 53 of the Russian Constitution and Articles 151, 1069 and 1070 of the Civil Code safeguard the right to compensation in respect of damage caused by unlawful actions attributable to public authorities or officials, including those acting in the context of criminal proceedings against an individual. Referring to the Court's findings in *Rytsarev v. Russia* (no. 63332/00, §§ 31-36, 21 July 2005), the Government considered that the applicant had failed to prove the non-effectiveness of the suggested remedies.

69. The applicant argued that the insufficiency of the living space per detainee in dormitories, ordinary and punishment cells in the prison disclosed a widespread problem, which was of a systemic nature. The applicable legislation had provided that a detainee be afforded at least two square metres of cell space (see paragraph 38 above). The Government had not properly substantiated that any domestic complaints had led to the amelioration of material conditions of detention. Moreover, the prison administration had obstructed the applicant's attempts to complain to various national authorities. In particular, the applicant had been subjected to disciplinary punishment. All of his correspondence with the national authorities, including the courts, had had to be dispatched through the prison administration, against which his complaints had been directed. He had not been afforded an opportunity to be present at any civil court hearings. Nor had he been exempted from a court fee which he had been unable to afford.

70. The Court notes that the Government, without providing any further explanation, suggested that an action for damages lodged with a court could have been an effective remedy in the applicant's case for his complaints about the poor conditions of his detention. Without providing copies of domestic court judgments, the Government referred to cases from domestic

practice showing that by using the means in question it had been possible for the applicant to obtain compensation for damage in relation to detention in prison. In this connection, the Court observes that in the absence of documents supporting the Government's assertion, it is unable to identify the relevance of the judgments in question to the issue of the effectiveness of an action for damages as a remedy in the circumstances of the present case. Furthermore, in the Court's view, the Government's submissions in the present case do not suffice to show the existence of settled domestic practice that would prove the effectiveness of the remedy (see, for a similar approach, *Aleksandr Makarov v. Russia*, no. 15217/07, § 87, 12 March 2009).

71. In any event, the Court does not lose sight of the Government's argument that every aspect of the conditions of the applicant's detention, including the floor space in the living premises of the dormitories, lighting, food, medical assistance, sanitary conditions, and so forth, had complied with applicable legal regulations. It is doubtful that in a situation where domestic legal norms prescribed such conditions of the applicant's detention, the applicant would have been able to argue his case before a court or even state a cause of action that would have passed the admissibility stage of proceedings (see *Aleksandr Makarov*, cited above, § 88). Nor did the Government make any submissions concerning the applicant's argument relating to the alleged unavailability of exemption from a court fee, despite his alleged indigence (see paragraph 57 above). Thus, the Court is not convinced that the applicant had a realistic opportunity to apply effectively to a court.

72. In the light of the foregoing, the Court concludes that the Government did not point to any effective domestic remedy by which the applicant could have obtained redress for the allegedly inhuman and degrading conditions of his detention (see, by contrast, *Łomiński v. Poland* (dec.), no. 33502/09, 12 October 2010). The Court therefore dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

73. Thus, as regards the conditions of the applicant's detention in Rubtsovsk prison from between 2004 and 2008, 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

74. The parties' submissions are summarised in paragraphs 35-39 above.

75. As can be seen from the available material, the applicant was afforded around two square metres of cell space in dormitories in the

correctional colony and, for several relatively short periods of time in 2005 and 2006, in various cells, including punishment cells.

76. The Court reiterates that in a number of cases the lack of personal space afforded to detainees in Russian remand centres was so extreme as to justify in itself a finding of a violation of Article 3 of the Convention. In those cases applicants were usually afforded less than three square metres of personal space (see, among others, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007). At the same time, the Court also noted that it cannot decide, once and for all, how much personal space should be allocated to a detainee in terms of the Convention. That depends on many relevant factors, such as the duration of detention, the possibilities for outdoor exercise, the physical and mental condition of the detainee (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007).

77. As to post-trial detention facilities such as correctional colonies in Russia, as in the present case, the Court considered that the personal space in the dormitory should be viewed in the context of the applicable regime providing for a wider freedom of movement enjoyed by detainees in correctional colonies during the daytime, which ensures that they have unobstructed access to natural light and air (see, among others, *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009, and *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). Having assessed the documents submitted by the respondent Government and the applicant's submissions in reply, the Court considers that it has not been established that the remaining material conditions of detention in dormitories of the colony were such as to amount to treatment in breach of the requirements of Article 3 of the Convention.

78. By contrast, the Court observes, and it is common ground between the parties, that during his detention in various cells, including punishment cells, the applicant was significantly limited in his ability to move within the territory of the prison (see paragraph 37 above). Thus, he was confined most of the time to his cell, which he had to share with several other detainees in cramped conditions.

79. The foregoing considerations are sufficient for the Court to conclude that the conditions of the applicant's detention in punishment cells in 2005 and 2006 amounted to inhuman and degrading treatment. There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ITS ARTICLE 3

80. The applicant complained under Article 13 of the Convention that he had not had at his disposal an effective and accessible remedy for his complaints, described above, about the conditions of his detention. Article 13 of the Convention reads as follows:

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

81. The parties' arguments are summarised in paragraphs 68 and 69 above.

A. Admissibility

82. The effect of Article 13 is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as "arguable" in terms of the Convention (see *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports* 1997-III, and *Camenzind v. Switzerland*, 16 December 1997, § 53, *Reports* 1997-VIII).

83. The Court observes that the applicant's complaints concerning the conditions of his detention in the temporary detention centre in March 2003 were declared inadmissible. Thus, the applicant's claim in this part cannot be considered as "arguable" (see, among others, *R.K. and A.K. v. the United Kingdom*, no. 38000/05, § 44, 30 September 2008).

84. At the same time, the Court considers that the applicant's grievances about the conditions of detention in Rubtsovsk prison between 2004 and 2008 were arguable. This also follows from the Court's above findings as regards Article 3 of the Convention.

85. Regarding Rubtsovsk prison, the Court considers that the complaint under Article 13 of the Convention 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

86. The Court reiterates that, where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability on the part of State officials or bodies for that breach (see *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 107, ECHR 2001-V (extracts), and *Łomiński v. Poland* (dec.), cited above). The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention (see, for instance, *Muminov v. Russia*, no. 42502/06, § 101, 11 December 2008, and *Cobzaru v. Romania*, no. 48254/99, § 82, 26 July 2007). Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law. The "effectiveness" of a "remedy" within the

meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant.

87. The Court has found in the present case that there was a violation of Article 3 of the Convention on account of lack of individual space in the punishment cells in which the applicant was detained.

88. The Court has previously found a violation of Article 13 on account of lack of an effective and accessible remedy under Russian law to complain about general conditions of detention, in particular on account of the issues relating to the cell space (see, amongst others, *Benediktov v. Russia*, no. 106/02, §§ 29 and 30, 10 May 2007). Having regard to the findings in paragraphs 64-65 and 70-72 above, the Court finds no reason to reach a different conclusion in the present case.

89. In view of the foregoing, there has been a violation of Article 13 of the Convention in conjunction with its Article 3.

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

90. The applicant complained that he had been wrongly convicted in unfair proceedings. He also alleged a number of violations arising in the appeal proceedings in his criminal case. The Court will examine the above complaints under Article 6 of the Convention, which reads in its relevant parts as follows:

> "1. In the determination of...any criminal charge against him, everyone is entitled to a fair and public 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..."

A. The parties' submissions

1. The applicant

91. As regards the preliminary investigation and the trial in 2003, the applicant raised a number of complaints concerning the legal assistance that he had had and complained that he had been convicted on the basis of unlawfully obtained evidence, such as his co-defendant's incriminating statements which had allegedly been given under duress. He further complained that he had not been able to put questions to the experts, as he had only been notified of their reports upon completion of the investigation;

that the length of the proceedings had been unreasonable; and that several articles branding him as a criminal had been published after the trial.

92. As to the appellate stage of the proceedings in 2004, the applicant alleged that he had not been provided with copies of the statements of appeal filed by the prosecutor and his co-defendants before the appeal hearing and that his right to prepare his defence had thereby been impaired. He also contended that he had been refused access to counsel of his choice on 4 March 2003; that Ms Y. had not assisted him in studying the case file and had been arbitrarily replaced at the hearing on 11 August 2003; and that he had not been given free legal assistance for the appeal proceedings.

93. Following reopening of the appeal proceedings in 2008, the applicant argued that he had not lost his victim status in relation to his above grievances, in particular in so far as the right to legal assistance was concerned, because the supervisory review and the new appeal proceedings had been deficient in numerous respects. In the appeal proceedings, the Supreme Court had refused to admit his mother and a cellmate as lay defence representatives; he had not been afforded the opportunity to be assisted by Y. or O.; he had not been afforded enough time to prepare for the appeal hearing or an opportunity to study the case file again, including new volumes compiled after 2004; he had been required to pay for "free" legal assistance by A., who had not visited him in the detention facility, had not discussed the defence position with him and had not mounted an appropriate defence at the appeal hearing.

2. The Government

94. The Government submitted that the applicant's grievances, except for those concerning legal assistance relating to the appeal in 2004, were either unsupported by evidence or unfounded. They considered that, in any event, all alleged shortcomings should have been definitely remedied in the new appeal proceedings in 2008. The applicant had had free legal assistance provided by A., who had studied the case file and had conducted a proper defence in support of the appeal statement lodged by Y. in 2004. The applicant's mother could not have served as a lay defence representative for health reasons and, similarly, the applicant's cellmate had been serving a sentence of imprisonment. The applicant had studied the case file in 2003; the new volumes had not contained any information affecting the appeal proceedings; and the applicant had been given access to all relevant submissions made by the other parties. The obligation to bear counsel's fees was acceptable and had not offended against Article 6 of the Convention.

95. The Government submitted that, under Article 358 of the Code of Criminal Procedure, a convicted person could ask for a copy of the other party's statement of appeal and his comments on it to be joined to the case file. The applicable legislation did not require the provision of copies of the

other parties' comments or observations in reply to the main statement of appeal giving rise to appeal proceedings.

B. The Court's assessment

1. Admissibility

96. The Court considers that the question of victim status is closely linked to the merits of the complaints under Article 6 of the Convention (see, for the applicable approach, *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 47 et seq., 2 November 2010).

97. 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 (a) of the Convention. No other ground for declaring it inadmissible has been established.

2. Merits

98. 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).

99. As regards Article 6 of the Convention, the Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *Doorson v. the Netherlands*, 26 March 1996, § 67, *Reports* 1996-II, and *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports* 1997-III). 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*, 15 June 1992, § 49, Series A no. 238).

100. 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 first-instance trial. It has not been shown that the applicant was not afforded an adequate opportunity to present his arguments and evidence, as well as to contest the prosecution's arguments and evidence, in adversarial proceedings. 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.

101. As to the grievances specifically concerning the appeal proceedings in 2004, the Court first has to determine whether the applicant lost his victim status because of the new appeal proceedings in November 2008. The Court will carry out its analysis in the light of the principles set out in the *Sakhnovskiy* case, cited above, in particular in its §§ 66-71 and 76-84, and with reference to the parties' specific submissions concerning the resumed proceedings. In that connection, the Court does not find it necessary to examine the applicant's grievances in relation to the way in which the supervisory review proceedings were carried out in October 2008. Therefore, the Court will concentrate on the second set of appeal proceedings.

102. It is not disputed by the Government that the appeal proceedings in 2004 fell short of the requirements of Article 6 § 3 (c) of the Convention. However, they claimed that the authorities had done everything in their power to ensure that upon the rehearing of the case in 2008 the applicant had received legal assistance.

103. The Court observes that the original appeal decision was quashed by the Presidium of the Supreme Court in October 2008 because of the breach of the applicant's right to legal assistance in the appeal proceedings. It is common ground that the assistance of a lawyer was essential for the applicant in the second set of appeal proceedings.

104. It should be noted that a lawyer was appointed to provide legal assistance to the applicant in the appeal proceedings in 2008. The Court should consider whether the arrangements for the conduct of the proceedings, and, in particular for the contact between Ms A. and the applicant, respected the rights of the defence.

105. It is noted in that connection that, unlike in the *Sakhnovskiy* case, the applicant in the present case was transported from a distant region of Russia to take part in the appeal proceedings before the Supreme Court of Russia in Moscow. While thereby removing this "geographic obstacle", the Court finds it peculiar that instead of being brought to the hearing, the applicant participated in it by video and audio link from a Moscow remand centre (see also *Sevastyanov v. Russia*, no. 37024/02, § 72, 22 April 2010). The Court notes that the Government did not explain why different arrangements could not have been made.

106. The Court emphasises that the relationship between a lawyer and his client should be based on mutual trust and understanding. It is not always possible for the State to facilitate such a relationship: there are

inherent time and place constraints on meetings between a detained person and his lawyer. Any limitation on relations between clients and lawyers, whether inherent or express, should not thwart the effective legal assistance to which a defendant is entitled. Notwithstanding possible difficulties or restrictions, such is the importance attached to the rights of the defence that the right to effective legal assistance must be respected in all circumstances.

107. Noting the central importance of effective legal assistance, the Court must examine whether the respondent Government undertook measures which sufficiently compensated for the limitations of the applicant's rights (see *Sakhnovskiy*, cited above, § 106).

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

109. In the absence of any appropriate evidence to the contrary, the Court may give weight to the applicant's argument based on his lack of contact with A. before the appeal hearing. Nor does it transpire from the available material that she lodged any statement of appeal or motions or, at least, studied the case file in any adequate manner. In fact, it appears that the appeal proceedings in the present case were based on the statements of appeal lodged by the applicant and Y. after the first-instance judgment in November 2003. It has been affirmed that at the appeal hearing the applicant raised the matter concerning the legal advice provided by A.

110. Against this background, the Court cannot but note a number of other pertinent elements in the present case. It considers that, in view of the above noted difficulties with legal assistance, it was particularly important that the applicant be afforded an adequate opportunity to prepare his defence position based on actual knowledge of the case file material more than four years after the closure of the criminal proceedings by the final decision of 18 June 2004. Notably, as confirmed by the Government, its volume had necessarily been modified and the defence position could have evolved in view of the recent decision relating to the reopening of the case in 2008. Moreover, as acknowledged by the Government, the applicant was not afforded access to the material submitted in reply by the other parties, including the public prosecutor, both in 2004 and 2008.

111. The Court has also taken note of the applicant's argument concerning the obligation to reimburse to the State the fees awarded to A.

The Court has considered in the context of Article 6 § 3 (e) of the Convention that the term "free" has a clear and determinate meaning: "without payment, gratuitous", "not costing or charging anything, given or furnished without cost or payment" (see *Luedicke, Belkacem and Koç v. Germany*, 28 November 1978, § 40, Series A no. 29). As to Article 6 § 3 (c), the Court considered in *Croissant v. Germany* (25 September 1992, §§ 33 and 34, Series A no. 237-B) that the right to free legal assistance is not absolute; such assistance is to be provided only if the accused "[does] not [have] sufficient means to pay". The Court indicated that appointment of counsel under German law had been decided solely in the light of the requirement of the interests of justice rather than any "means test". It thus concluded that the *Croissant* case did not concern the issue of whether Article 6 in all circumstances prevents the State from subsequently seeking to recover the cost of free legal assistance given to a defendant who lacked sufficient means at the time of the trial (paragraph 34 of the judgment).

112. Subsequently, in *Morris v. the United Kingdom* (no. 38784/97, § 89, ECHR 2002-I) the Court found no violation of Article 6 in relation to an offer of legal aid which was subject to a contribution of GBP 240, bearing in mind the applicant's net salary levels at the time. In another case the Court found no violation of Article 6 of the Convention in relation to the appointment of a public defence counsel, "notwithstanding [the applicant's] obligation to pay a minor part of the litigation costs" (see *Lagerblom v. Sweden*, no. 26891/95, § 53, 14 January 2003).

113. The Russian Code of Criminal Procedure did not set up any "means test" to be employed in order to decide whether free legal assistance should be granted (see *Potapov v. Russia*, no. 14934/03, § 23, 16 July 2009). Rather, this matter is decided with reference to the presence or lack of waiver by a defendant, while accepting cases of mandatory legal assistance. The CCrP considered counsel's fees as "litigation costs" to be borne, in general, by the party concerned. It thus appears that even if a defendant was provided with "free" legal assistance he would still be required to pay for that after the trial. However, a total or partial exception remained possible, for instance on account of indigence (see paragraph 53 above).

114. In this respect the Court considers it admissible, under the Convention, that the burden of proving a lack of sufficient means should be borne by the person who pleads it (see *Croissant*, cited above, § 37). The Court observes that the fees awarded against the applicant in the appeal proceedings in November 2008 were not particularly high (approximately 170 euros). It is unclear whether this sum bore any relationship to an assessment of the applicant's resources or other pertinent circumstances (see paragraph 29 above).

115. In any event, in view of the foregoing considerations (paragraphs 105-110 above) the Court concludes that the arrangements made by the

Supreme Court were insufficient and did not secure effective legal assistance to the applicant during the appeal proceedings in 2008.

116. The Court concludes that these proceedings fell short of the requirements of Article 6 § 3 (b) and (c) of the Convention, taken in conjunction with Article 6 § 1. Accordingly, they failed to cure the defects of the appeal proceedings in 2004.

117. There has therefore been a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention in the proceedings taken as a whole which ended with the judgment of 25 November 2008.

IV. ALLEGED VIOLATIONS OF ARTICLE 34 OF THE CONVENTION

118. The applicant complained that he had not been afforded an opportunity to maintain contact with his representative before the Court and that the prison authorities had not dispatched his letters to the Court in 2006 (see paragraphs 49 and 50 above). The Court shall examine these issues under Article 34 of the Convention, which 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."

119. The Government argued that the applicant's letters had been dispatched. They also contended that the applicant had not submitted any evidence that he had ever sought or been refused permission to have contact with his representative before the Court, including by way of meetings in detention facilities. The Government concluded that the applicant's allegations in this part amounted to an abuse of the right of petition.

120. Having examined the parties' submissions and the material available to it, the Court considers that there is an insufficient factual basis to consider that there has been any unjustified interference by State authorities with the applicant's exercise of the right of petition in the proceedings before the Court in relation to the present application. Furthermore, it has not been convincingly established that the applicant was refused the opportunity to maintain contact with his representative before the Court during the relevant period of time.

121. Therefore, the Court concludes that the respondent State has complied with its obligations under Article 34 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

122. The applicant also raised a number of other complaints in relation to his arrest, pre-trial detention, conditions of detention, the length of the

criminal proceedings concerning him and the related supervisory review applications. He referred to Articles 4, 5, 6, 8, 13 and 34 of the Convention.

123. The Court has examined the above complaints, as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. The applicant claimed 6,000,000 euros (EUR) in respect of non-pecuniary damage.

126. The Government contested this claim.

127. Having regard to the nature of the violations found and making an assessment on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

128. Since no claim was made, the Court does not find it necessary to make any award under this head.

C. Default interest

129. The Court considers it appropriate that 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 complaints concerning the conditions of the applicant's detention in Rubtsovsk prison between 2004 and 2008, the lack of a remedy in this respect and the fairness of the criminal proceedings concerning him admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention as regards conditions of detention in the punishment cells of Rubtsovsk prison in 2005 and 2006;

3. *Holds* that there has been no violation of Article 3 of the Convention as regards the remaining period of the applicant's detention in Rubtsovsk prison;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with its Article 3;

5. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention as regards the appeal proceedings in 2004 and 2008;

6. *Holds* that the respondent State has complied with its obligations under Article 34 of the Convention;

7. *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 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President