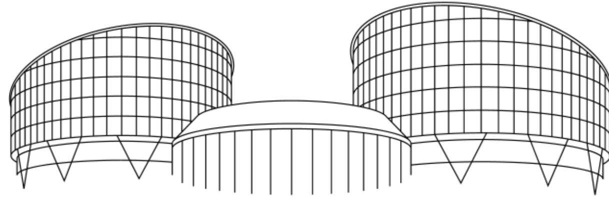

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAMOSHENKOV AND STROKOV v. RUSSIA

(Applications nos. 21731/03 and 1886/04)

JUDGMENT

STRASBOURG

22 July 2010

FINAL

22/10/2010

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

In the case of Samoshenkov and Strokov 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 1 July 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 21731/03 and 1886/04) 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 two Russian nationals, Mr Andrey Petrovich Samoshenkov ("the first applicant") and Mr Igor Gennadiyevich Strokov ("the second applicant"), on 19 May and 10 November 2003.

2. The applicants, who had been granted legal aid, were represented by Mr P.A. Finogenov, a lawyer with the International Protection Centre, a Moscow-based human-rights NGO. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 May and 23 June 2008 the President of the First Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1962 and 1967 respectively and are now serving their sentence in the Chelyabinsk Region.

A. Criminal proceedings against the first applicant

6. On 14 January 1995 the first applicant was arrested on suspicion of murder, an offence punishable with up to fifteen years' imprisonment or capital punishment. On 28 February 1996 he was formally charged with murder and on 6 December 1996 committed to stand trial before the Chelyabinsk Regional Court.

7. On 26 February 1997 and 5 February 1999 the Regional Court returned the case to the prosecutor for additional investigation.

8. On 9 November 2000 the Chelyabinsk Regional Court convicted the first applicant of inflicting grievous bodily harm and sentenced him to six years' imprisonment. However, he was immediately released on the basis of a general amnesty.

9. On 31 October 2001 the Supreme Court of the Russian Federation quashed the judgment on appeal and ordered a retrial by a different bench.

10. The new trial opened on 6 December 2001. Owing to the absence of co-defendants, the hearing was first adjourned until 29 December 2001 and then again until 11 February 2002. The first applicant failed to appear at that hearing and on 20 February 2002 the Regional Court issued a search warrant and severed his case from the proceedings against the other defendants.

11. On 25 April 2002 the first applicant was arrested and remanded in custody. The trial resumed on 22 August 2002.

12. On 19 September 2002 the Chelyabinsk Regional Court convicted the first applicant of aggravated murder and sentenced him to eleven years' imprisonment.

13. Counsel for the first applicant filed a statement of appeal.

14. On 27 December 2002 the Supreme Court upheld the judgment on appeal. The hearing was conducted by means of a videolink connecting the courtroom with the remand prison where the first applicant was held. Counsel for the first applicant was not invited to take part in the appellate proceedings.

15. On 10 September 2007 the first applicant sent an application for supervisory review to the President of the Supreme Court of the Russian Federation, complaining that he had not been represented in the appellate

proceedings. It appears that the institution of supervisory review proceedings was refused.

B. Criminal proceedings against both applicants

16. In 2002 both applicants were charged with beating a Mr O., and fraudulently gaining possession of his car.

17. On 16 August 2002 the second applicant was remanded in custody for an initial two-month detention period.

18. On 10 October 2002 the first applicant and his counsel asked the investigator, among other matters, to secure the attendance of the witnesses Ms E., Mr B., Mr U., as well as unnamed garage employees and others, at the trial. On the following day the investigator acceded to that request and directed that the witnesses be included in the witness list accompanying the charge sheet.

19. The case was sent for trial to the Miass Town Court of the Chelyabinsk Region on 17 October 2002.

20. On 6 November 2002 the Town Court returned the case-file to the prosecutor on the ground that the charge sheet had not been properly served on the defendants.

21. On 25 February 2003 the Town Court held a preliminary hearing. The court rejected the first applicant's request to call further witnesses, other than those already listed on the charge sheet. The applicants did not appeal against the decision.

22. On 11 March 2003 the Town Court noted that the witnesses had not appeared but decided to proceed with the trial. It heard the parties' views on the order of oral argument and examined the victim Mr O.

23. On 7 April 2003 the Town Court issued an order requiring the witness Ms E. and others to attend. On 7 and 21 April 2003 a bailiff filed two reports, stating that he would be unable to bring the witnesses to the court because he did not have enough money to travel to their places of residence.

24. On 17 April 2003 the witness Mr B. sent a telegram to the Town Court informing it that he would not be able to attend because of financial constraints. On the following day the nurse of a child of the witness Mr U. contacted the court by telephone and said that Mr U. had been away for professional reasons.

25. On 22 April 2003 the Town Court, among other procedural matters, rejected the first applicant's request for examination of Mr U. before the court.

26. On 15 May 2003 the Town Court examined the prosecutor's application for a further extension of the applicant's detention. It noted that the authorised period of detention had expired on 17 April 2003 and held that it should be extended for a further three months, until 17 July 2003.

27. During the trial the Town Court overruled the applicants' objection to the reading-out of Ms E.'s written statement made at the stage of the preliminary investigation and authorised the prosecutor to use this piece of evidence. Subsequently, the court rejected the applicants' second request to obtain the attendance and examination of Ms E.

28. On 25 June 2003 the Town Court rejected the applicants' request for examination of the investigators Ms K. and Ms P. and the expert witness Mr Ku. It noted that the investigator Ms P. had already been examined in court, that the investigator Ms K. had not taken part in the investigating of the criminal case, and that the expert Mr Ku. had not been required to give his opinion on the origin of the victim's injuries. The applicants did not appeal against the decision.

29. On 1 July 2003 the Miass Town Court delivered its judgment. It found that, driven by personal enmity against the victim Mr O., the applicants had beaten him and had also forced him to hand over the keys and registration papers for his Mercedes car. The court did not accept the applicants' defence that the first applicant had legitimately purchased the car from Mr O. In finding the applicants guilty of robbery, the court referred to the following evidence:

(a) The testimony by the victim, Mr O., who related to the court that on 5 October 2001 he had gone to an office in Miass for business negotiations concerning a failure to make payment for a shipment of metal belonging to his uncle Mr St. He had been surprised to see in the office both applicants, whom he had not previously known. They had shouted at him and the first applicant had broken a leg off a chair and attempted to hit him with it. They demanded that he give them keys and registration papers for his Mercedes car. When he refused, they had punched and kicked him and also hit him on his head with the chair leg. Subsequently Mr O. had been told by a middleman that he was to pay 1,000 United States dollars "to settle the problem" and also transfer the registration of his Mercedes car to the first applicant, which he did on 12 October 2001 at the traffic police department of Magnitogorsk.

(b) The testimony by Mr St. who had gone to the meeting together with Ms E. and his nephew Mr O. He had seen both applicants shout at Mr O. and wield the chair leg. He had not seen what had happened thereafter because the first applicant had told him to go outside. Later, he had seen Mr O. with his face covered in blood and the first applicant driving Mr O.'s car.

(c) The pre-trial statement by Ms E. who had gone to the meeting together with Mr St. and had seen both applicants in the office. Although she had remained outside, she had seen through the window that the first applicant had been beating Mr O. with some kind of a wooden stick, and that Mr O. was covered in blood and swollen when leaving the office.

(d) The pre-trial statement by Mr B. who had seen the applicants in the office. He had gone away on a personal errand for some fifteen minutes and upon his return he had seen Mr O. with a wound on his head and bloodstains on his jacket.

(e) The testimony of Ms M. who had not been present in the office but who had seen Mr O. covered in blood.

(f) The testimony of Mr and Ms V., who had been around the office but had not seen anyone beat Mr O.

(g) The testimony of Mr U., a former traffic-police officer in Magnitogorsk, who said that it might be possible that he had registered the transfer of ownership of the Mercedes car but he could not remember it clearly.

(h) The testimony by the former police officer Mr F. and investigator Ms P., who had detained and interviewed the first applicant in April or May 2002.

(i) Documents concerning the financial transaction which had been the source of conflict, and the Mercedes car.

(j) Forensic reports showing that Mr O. had injuries from being struck with a blunt object that may have been caused in October 2001, and that Mr O. was a person of sound mind.

30. The Town Court sentenced the first applicant to eight years' imprisonment and the second applicant to three years' imprisonment. The applicants and their counsel appealed against the conviction.

31. The first applicant, among other matters, specifically complained about the trial court's failure to examine the witness Ms E. and the reading-out of her written statement.

32. The second applicant complained, in particular, that the trial court had not taken measures to obtain the attendance of the defaulting witnesses Ms E. and Mr B. and had read out their written statements despite the objections by the defence. He maintained that the trial court had unlawfully decided to examine the witnesses for the defence before those for the prosecution. Finally, he submitted that his detention from 17 April to 15 May 2003 had been unlawful.

33. On 4 September 2003 the Chelyabinsk Regional Court upheld the conviction on appeal. As regards the applicants' specific grievances, it found as follows:

> "The convicts' argument that the trial court did not take measures for summoning the witnesses is unfounded because the case-file contains several court orders requiring the witnesses to attend, which shows that the court complied with the requirements of the criminal-procedure law.
>
> The convicts' argument that the trial court breached the order of examination of evidence is unfounded because the trial record shows that the decision on the order of examination of evidence was made upon consultation with the parties and that the witnesses were examined in the order of their appearance before the trial court.

...

The convicts' argument that there was no reason to read out the written statement by the witness Ms E. is unfounded because the grounds and procedure for making such a decision are compatible with Article 281 of the Code of Criminal Procedure.

The convict Strokov's argument that he was unlawfully detained from 17 April to 15 May 2003 is unfounded because this period, like all other detention periods, was credited towards the sentence imposed on him."

II. RELEVANT DOMESTIC LAW

A. Custody matters

34. The Russian Constitution establishes that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

35. The Code of Criminal Procedure ("CCrP") provides that the term of detention "during the trial" is calculated from the date the court received the file and to the date the judgment is given. The period of detention "during the trial" may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3 of the CCrP).

B. Legal representation in the appellate proceedings

36. Article 51 of the CCrP provides for mandatory legal representation if the accused faces serious charges carrying a term of imprisonment exceeding fifteen years, life imprisonment or the death penalty. Unless counsel is retained by the accused, it is the responsibility of the investigator, prosecutor or the court to appoint legal-aid counsel.

37. The Constitutional Court, in its decision of 18 December 2003, confirmed the applicability of the requirements of Article 51 of the CCrP to the appellate proceedings.

THE LAW

I. JOINDER OF THE APPLICATIONS

38. Having regard to the fact that the applicants were co-defendants in the same criminal proceedings, the Court decides to join their applications, in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

39. The first applicant complained under Article 5 of the Convention that his pre-trial detention from 14 January 1995 to 9 November 2000 and from 25 April to 19 September 2002 had been excessively long and procedurally defective. The second applicant complained that his detention from 17 April to 15 May 2003 had been unlawful. The relevant parts of Article 5 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so..."

A. Admissibility

1. Complaints by the first applicant

40. The Court observes that the first applicant's pre-trial detention, in so far as it falls under the Court's jurisdiction *ratione temporis*, ended on 19 September 2002 when he was convicted by the Chelyabinsk Regional Court. However, he lodged his application only on 19 May 2003, that is more than six months later. 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. Complaint by the second applicant

41. The Government submitted that the second applicant had not made use of domestic remedies in connection with his complaint about the unlawfulness of his detention in the period from 17 April to 15 May 2003.

42. The Court observes that the Government did not identify a specific remedy of which the second applicant should have made use. In these circumstances, the Government's objection must be dismissed.

43. The Court further notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

44. The second applicant submitted that from 17 April to 15 May 2003 he had been held in custody without judicial authorisation. This was evident from the text of the Town Court's decision which spoke of the six-month detention period that had expired on 17 April 2003. The Town Court had accepted the prosecutor's application for a three-month extension and granted such extension until 17 July 2003, which further corroborated the claim that the previously authorised detention period had expired on 17 April 2003. However, *ex post facto* authorisation of detention was not permitted by Russian law and was incompatible with the "right to security of person" under Article 5 of the Convention.

45. The Government emphasised that the second applicant had been held in custody on the basis of judicial decisions and in full compliance with the criminal-procedure rules.

46. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, among many other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-X (extracts)).

47. The Russian Constitution required that any period of detention be covered by a judicial authorisation. The Code of Criminal Procedure specified that the initial period of detention after a case was sent for trial may not exceed six months, with the possibility of an extension for a further three months (see paragraph 35 above).

48. On the facts, the Court observes that the case against the second applicant was sent for trial on 17 October 2002 and the authorised detention period expired six months later, that is on 17 April 2003. Since the second applicant was charged with a serious criminal offence, Article 255 of the Code of Criminal Procedure permitted the trial court to approve one or more extensions of his detention of no longer than three months each. However, no such extension was sought by the prosecutor or approved by the trial court before the expiry of the authorised detention period on 17 April 2003

or immediately thereafter. As it happened, a further extension was granted by the Miass Town Court only twenty-eight days later, on 15 May 2003. It follows that the applicant's detention in the intervening period, that is from 17 April to 15 May 2003, was not covered with any detention order, a situation that was incompatible with the Russian Constitution, the Code of Criminal Procedure and the requirements of Article 5 § 1 of the Convention.

49. Even though the Town Court's decision of 15 May 2003 purported to cover the three-month period starting from 17 April 2003 and ending on 17 July 2003, it could not have constituted a "lawful" basis for the second applicant's detention in the period preceding the date of its issue. The Russian Constitutional Court emphasised that Russian law did not contain "any provisions permitting the court to take a decision extending the defendant's detention on remand [some time] after the previously authorised time-limit ha[d] expired, in which case the person [would be] detained for a period without a judicial decision" (as cited in the *Khudoyorov* judgment, § 56). As the Court has already found in many similar cases, any *ex post facto* authorisation of detention is incompatible with the "right to security of person", as it is necessarily tainted with arbitrariness (see *Lamazhyk v. Russia*, no. 20571/04, § 70, 30 July 2009; *Moskovets v. Russia*, no. 14370/03, § 64, 23 April 2009; *Belov v. Russia*, no. 22053/02, § 81, 3 July 2008; *Shukhardin v. Russia*, no. 65734/01, § 69, 28 June 2007; *Solovyev v. Russia*, no. 2708/02, § 99, 24 May 2007; and *Khudoyorov*, cited above, § 142).

50. There has therefore been a violation of Article 5 § 1 of the Convention on account of the second applicant's unlawful detention from 17 April to 15 May 2003.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE FIRST SET OF CRIMINAL PROCEEDINGS

51. The first applicant complained under Article 6 § 1 of the Convention that the first set of criminal proceedings against him had been excessively long. The relevant parts of Article 6 read as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

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

B. Merits

1. Period to be considered

53. The Court notes that the first applicant was arrested on 14 January 1995. However, the period to be taken into consideration for the purposes of the present case began only on 5 May 1998, when the Convention entered into force in respect of Russia. In assessing the reasonableness of the time that elapsed after that date, account must nevertheless be taken of the state of the proceedings at that time. The period in question ended on 27 December 2002, when the Supreme Court upheld the first applicant's conviction on appeal. It had lasted, accordingly, a total of seven years eleven months and thirteen days, of which four years and almost eight months fall within the Court's jurisdiction. During that period the charges against the first applicant were examined twice at two levels of jurisdiction.

2. Reasonableness of the length of proceedings

54. The Government claimed that the overall length of the proceedings had been reasonable. It was accounted for by the complexity of the investigative measures, the large number of defendants, and the length of the period during which the defendants had studied the case file. The delays had been caused mainly by the first applicant himself, who had defaulted on several occasions.

55. The first applicant pointed out that the delay attributable to his conduct had been negligible: following his absence at the hearing on 11 February 2002, he had been arrested just two months later, on 25 April 2002. On the other hand, the aggregate delay of approximately seven months resulted from the decisions to return the case for additional investigation and was attributable to the authorities. The almost one-year period of inactivity before the appeal hearing on 31 October 2001 was also due to the conduct of the Russian judicial authorities. Finally, the first applicant emphasised that he had been held in custody for six years and four months and that this called for particular expedition in the proceedings.

56. The Court accepts that the case at issue was one of a certain complexity since it involved a series of criminal offences allegedly committed by several co-defendants. Nevertheless, in the Court's view, the complexity of the case, taken on its own, cannot justify the overall length of the proceedings.

57. With regard to the first applicant's conduct, the Court notes that his failure to appear at the hearing of 11 February 2002 led to a delay of approximately two and a half months, until he was apprehended in April 2002. It does not appear that the first applicant caused any other appreciable delays in the proceedings.

58. As to the conduct of the domestic authorities, it is observed that the case was twice returned to the investigator because of procedural and substantive lacunae in the initial investigation. As a result, more than five years had elapsed before the first conviction was pronounced, and two and a half of those years fall within the Court's jurisdiction *ratione temporis*. Following that conviction, it took the Supreme Court almost one year to fix the date for the appeal hearing. Furthermore, after the first applicant had been apprehended in April 2002 and although the case against him had already been severed in February 2002, the Regional Court began the trial only in August 2002, that is approximately four months later.

59. Lastly, the Court observes that more than three years of the first applicant's detention extended into the post-ratification period, and that that fact required particular diligence on the part of the domestic courts to ensure that justice be administered expeditiously (see *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI).

60. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that in the instant case the length of the criminal proceedings against the first applicant leading up to his conviction of aggravated murder was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 on that account.

IV. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION IN THE CRIMINAL PROCEEDINGS AGAINST THE FIRST APPLICANT ALONE

61. The first applicant complained under Article 6 §§ 1 and 3 (c) about a violation of his right to a fair trial, in the proceedings leading up to his conviction of aggravated murder, because his counsel had not been afforded an opportunity to take part in the appellate proceedings before the Supreme Court of the Russian Federation on 27 December 2002. The relevant parts of Article 6 read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

A. Admissibility

62. The Government submitted that, after the Constitutional Court had confirmed the applicability of the right to legal assistance in the appellate proceedings in its decision of 18 December 2003 (see paragraph 37 above), Russian courts began instituting supervisory-review proceedings with a view to remedying the convicted person's right to legal representation in the appellate proceedings in cases where such representation had been mandatory in accordance with Article 51 of the CCrP (see paragraph 36 above). Accordingly, an application for supervisory review would have been an effective domestic remedy in the first applicant's case.

63. The first applicant replied that in 2007 he had already asked the President of the Supreme Court to institute supervisory-review proceedings on the same ground, but his application had been rejected.

64. The Court has found in a number of cases against Russia that supervisory-review proceedings are not an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Berdzenishvili v. Russia* (dec.), no. 1697/03, 29 January 2004; and, more recently, *Sutyagin v. Russia* (dec.), no. 30024/02, 8 July 2008). Moreover, as matters transpired, in the instant case the first applicant did make use of the remedy suggested by the Government but his request was rejected. Finally, the Court notes that the Government did not produce any evidence confirming the existence of an automatic review of final convictions in cases where legal assistance was denied to defendants at the appeal stage. Accordingly, the Court rejects the Government's objection.

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

B. Merits

66. The Government stated that counsel for the first applicant had not applied to participate in the appellate proceedings. The arguments she had put forward in the statement of appeal had been properly reviewed and assessed by the Supreme Court.

67. The applicant maintained that, having regard to the gravity of the charges, the severity of the sentence and his lack of legal expertise, he should have had legal representation at the appeal stage if the proceedings were to be considered fair.

68. The Court observes that the first applicant stood trial on the charge of murder, an offence punishable with up to fifteen years' imprisonment or capital punishment. Article 51 of the Code of Criminal Procedure imposed mandatory legal representation of defendants who faced criminal charges of

that gravity (see paragraph 36 above). As it happened, the first applicant was not represented in the appellate proceedings before the Supreme Court, which were conducted by videolink with the remand prison, and his counsel had not been invited to take part in those proceedings.

69. The Court has already examined several similar cases against Russia in which applicants had not been represented during the appeal proceedings in a criminal case. Taking into account three factors – (a) the fact that the jurisdiction of appeal courts in Russia extended to both legal and factual issues and that they were thus empowered to fully review the case and to consider additional arguments which had not been examined in the first-instance proceedings, (b) the seriousness of the charges against the applicant and (c) the severity of the sentence which he had faced – the Court considered that the interests of justice demanded that, in order to receive a fair hearing, the applicant should have had legal representation at the appeal hearing. The Court therefore found a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention (see *Shilbergs v. Russia*, no. 20075/03, § 123, 17 December 2009; *Potapov v. Russia*, no. 14934/03, § 24, 16 July 2009; and *Shulepov v. Russia*, no. 15435/03, §§ 34-39, 26 June 2008). Those elements were present in the instant case and the Government did not furnish any arguments that would have allowed the Court to reach a different conclusion.

70. Moreover, the Court reiterates that the exercise of the right to legal assistance takes on particular significance where the applicant communicates with the courtroom by videolink (see *Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006, and *Shulepov*, cited above, § 35). In the present case, the appeal hearing was conducted by videolink which was yet another factor that should have prompted the appeal court to verify the reasons for the absence of defence counsel for the first applicant (compare *Grigoryevskikh v. Russia*, no. 22/03, § 92, 9 April 2009).

71. In view of the Supreme Court's failure to do so in the present case, the Court concludes that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION IN THE PROCEEDINGS CONCERNING BOTH APPLICANTS

72. The applicants further complained under Article 6 § 3 (d) that the trial court, in the proceedings concerning the charge of robbery, had not secured the attendance and examination of the witnesses Ms E., Mr B. and Mr U., garage employees, the investigators Ms K. and Ms P., or the forensic expert Mr Ku. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine the applicants' complaints under those two provisions

taken together (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 49, *Reports of Judgments and Decisions* 1997-III). Article 6 § 3 (d) reads as follows:

> “3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (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.”

73. The Government submitted that the domestic authorities had repeatedly attempted to obtain the attendance of witnesses Ms E. and B. However, Ms E. had been away on a business trip and Mr B. had not been able to travel for financial reasons. The reading-out of their statements had been authorised in compliance with the domestic law and had not impaired the applicants' rights. They further indicated that the investigator Ms P. had been examined in open court. Finally, the examination of the investigator Ms K. and the forensic expert Mr Ku. had not been necessary: Ms K. had taken part only in the initial verification of materials prior to the institution of the criminal proceedings, and Mr Ku. had recorded the origin of the victim's injuries on the basis of the victim's own statements.

74. The applicants submitted that they had repeatedly requested that the witnesses be examined in open court. An examination of Ms E. and Mr B. would have provided important evidence with a view to establishing whether they had coerced the victim into transferring the ownership of his car by force, or by threatening him with a weapon, and why the victim had waited for so long after the events before going to the police. The domestic authorities had not deployed sufficient efforts to obtain the attendance of witnesses. The insufficient funding of court bailiffs, preventing them from travelling to the witnesses' places of residence, did not release the authorities from the obligation to secure the applicants' right to a fair trial.

75. The Court reiterates its constant case-law that evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. Although it may prove necessary in certain circumstances to refer to statements made during the investigative stage, the defendant should be given an adequate and proper opportunity to challenge such statements, for their admission in evidence to be compatible with Article 6 §§ 1 and 3 (d). The corollary of that, however, is that where a conviction is based solely or to a decisive degree on statements that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6 (see, most recently, *Makeyev*

v. Russia, no. 13769/04, §§ 34-35, 5 February 2009, and, as a leading authority, *Lucà v. Italy*, no. 33354/96, § 40, ECHR 2001-II).

76. The applicants had to answer the charge of physically assaulting the victim Mr O. and forcing him to hand his car over to them. The beating had allegedly happened during a business meeting in an office in Miass in October 2001. Many people had attended the meeting but nearly all of them had been ordered to vacate the premises by the first applicant and had not seen what had been happening inside. However, Mr St. testified in open court that even before he left he had seen both applicants shout at the victim Mr O. and the first applicant brandish the chair leg. Ms E. – whose attendance in court was not secured – had stated in her pre-trial statement that she had remained outside but had seen through the window as the first applicant was administering blows to Mr O. with some kind of wooden stick. Some time later, as Mr O. was leaving the office, several eyewitnesses – who testified in court – had seen bloodstains on his head and clothing. In the circumstances where Mr O. had entered the office in good health, had remained there in the company of the applicants who had been seen shouting at him and brandishing objects, and had later emerged from the office covered in blood, the Court is unable to find that the statements by Ms E. and her description of what she had seen through the window played a crucial role for establishing the fact that Mr O.'s injuries had been caused by the applicants. Likewise, the statement by Mr B., who had been away from the scene for a quarter of an hour, merely corroborated the other testimony and did not contain any new relevant elements. Accordingly, the Court considers that their statements were not of decisive importance for the applicants' conviction (compare *Makeyev*, cited above, § 40).

77. It is further noted that, contrary to the applicants' submissions, the former traffic-police officer Mr U. did actually appear before the trial court. In any event, he did not clearly remember the registration of the transfer of ownership of Mr O.'s car and could not confirm or disprove the applicants' claim that it had been a bona fide transaction.

78. The investigator Ms P. had been interviewed at the trial and the applicants did not explain what evidence could have been obtained in the event of her repeated appearance. It was noted by the trial court and by the Government and not contested by the applicants that the investigator Ms K. had not taken any meaningful part in their case and that the forensic expert Mr Ku. had only described the extent of the victim's injuries rather than making any findings as to their origin. Finally, the applicants never identified the garage employees whose attendance they sought to obtain, by name or otherwise.

79. The Court concludes from the above that the alleged inability to question the witnesses Mr B., Ms E., Ms K. or Mr Ku. did not deprive the applicants of a fair trial, as the way in which evidence was dealt with, taken as a whole, was fair. It follows that this part of the application must be

rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

80. The Court has examined the remainder of the applicants' complaints as submitted by them. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The first applicant claimed 163,352.02 Russian roubles (RUB) in respect of pecuniary damage, representing the value of the Mercedes car that had been kept by the authorities as real evidence throughout the trial. The applicants also claimed RUB 2,145,396 and RUB 1,560,288 in respect of non-pecuniary damage.

83. The Government submitted that the claims had been excessive.

84. The Court notes that the issue of the alleged damage to the first applicant's car was not subject to its examination in this case. Accordingly, it rejects his claim in respect of pecuniary damage.

85. The Court further considers that the applicants' claims in respect of non-pecuniary damage are excessive. Making its assessment on an equitable basis, it awards the first applicant EUR 2,400 and the second applicant EUR 9,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

86. The applicants did not file a claim for costs or expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

87. 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. *Decides* to join the applications;

2. *Declares* admissible the second applicant's complaint concerning his allegedly unlawful detention from 17 April to 15 May 2003 and the first applicant's complaints about the allegedly excessive length of proceedings and the lack of legal representation in the appellate proceedings, and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the second applicant's unlawful detention from 17 April to 15 May 2003;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of criminal proceedings against the first applicant;

5. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the lack of legal representation of the first applicant in the appellate proceedings;

6. *Holds*
(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) to the first applicant and EUR 9,000 (nine thousand euros) to the second applicant, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President