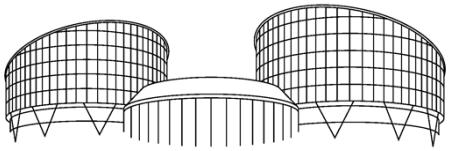

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DANILOV v. RUSSIA

(Application no. 88/05)

JUDGMENT

Art 6 § 1 (criminal) • Impartial tribunal • Participation in trial of jurors with security clearance granted by same body investigating the applicant for disclosure of State secrets sufficient to raise doubts as to impartiality • Judge's dismissal on purely formal grounds of applicant's objections to the jurors in the particular case • Lack of procedural safeguards to dispel doubts as to objective impartiality
Art 6 § 1 (criminal) and 6 § 3 (d) • Fair hearing • Examination of witnesses • Failure of domestic court to carefully consider request for appearance of experts, in spite of crucial relevance of their evidence • Inability of applicant to otherwise examine experts and justified concerns as to their credibility and conclusions • Necessity of expert appearance in trial to be assessed primarily by fair hearing guarantees and applying Art6 § 3 (d) as relevant
Art 38 • Obligation to furnish all necessary facilities • State's refusal to submit material requested by the Court

STRASBOURG

1 December 2020

FINAL

01/03/2021

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

In the case of Danilov v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Helen Keller,
Dmitry Dedov,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Milan Blaško, *Section Registrar,*

Having deliberated in private on 10 November 2020,

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

PROCEDURE

1. The case originated in an application (no. 88/05) 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 Valentin Vladimirovich Danilov ("the applicant"), on 11 December 2004.

2. The applicant, who had been granted legal aid, was represented by Ms Karinna Moskalenko and Ms Anna Stavitskaya, lawyers of the Centre of Assistance to International Protection based in Moscow. The Russian Government ("the Government") were initially represented by Mr P. Laptev, Ms V. Milinchuk and Mr G. Matyushkin, the former Representatives of the Russian Federation to the European Court of Human Rights, and then by their successor in that office, Mr M. Galperin.

3. The applicant complained that as a result of an unfair trial by a partial tribunal, he had been convicted on the basis of unforeseeable domestic law for having divulged data which had been available from open sources. He relied on Articles 6, 7 and 10 of the Convention.

4. By a decision of 14 April 2015 the Court declared the application partly admissible.

5. The parties submitted observations. The Government filed further written observations, but the applicant did not (Rule 59 § 1). The Chamber takes the decision, after consulting the parties, that no hearing on the merits is required (Rule 59 § 3 *in fine*).

INTRODUCTION

6. The present case concerns the applicant's criminal conviction for high treason in the form of disclosure of State secret information related to space studies.

THE FACTS

7. The applicant was born in 1948 and lives in Novosibirsk, Novosibirsk Region.

8. The applicant is a renowned physicist, whose research deals with the effect of solar activity on satellites.

9. At the relevant time the applicant was employed as the head of the Thermophysics Centre at Krasnoyarsk State Technical University ("the University", *Теплофизический центр Красноярского государственного технического университета*).

I. BACKGROUND TO THE CASE

10. In November 1998 the applicant was in correspondence with two Chinese citizens who were acting on behalf of the Lanzhou Institute of Physics of the Chinese Academy of Space Technology. The applicant was invited to develop a laboratory-scale experimental setup to simulate a space environment (a "space simulator"), a device to be used in the field of space research. Upon receiving a draft contract from the Chinese colleagues, the applicant made a number of modifications to the preliminary specifications for the device and sent it back to them. The applicant signed the contract on 11 March 1999 in the city of Lanzhou, China.

11. In late 1999 the applicant continued his partnership with the Chinese citizens. Their correspondence was about "Aquagen", a space simulation system installed in the cosmophysics laboratory belonging to the University.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. First set of proceedings

1. Pre-trial investigation

12. On 18 May 2000 an investigator from the Federal Security Service ("the FSB", *Федеральная служба безопасности РФ*) opened a case in relation to a suspicion that State secrets had been disclosed by a person with security clearance. The authorities firstly questioned the applicant and then charged him in that connection. After a number of amendments to the charges, the applicant was eventually accused of high treason in the form of disclosure of a State secret, and fraud in respect of his employer, the University.

13. On 1-2 August 2000 and 24 October 2000 the investigator ordered four expert examinations to ascertain whether the data divulged by the applicant had amounted to a State secret.

14. It appears that four expert reports nos. 50/2000-73 DSP of 4 August 2000, B-7/10 DSP of 7 August 2000, 50/2009-93 of 27 October 2000

and 37-51-107 DSP of 1 November 2000 all stated that the divulged data had to be considered "a State secret" within the meaning of Russian law, including paragraph 5.2.9. of the "Detailed list of information to be classified within the system headed by the Ministry of General and Professional Education of Russia" approved by that ministry on 16 April 1998 ("the 1998 Detailed List").

2. Court decisions

15. On 24 January 2002 the applicant asked the first-instance court to admit as evidence documents written by a number of Russian scientists which supported his position that the data divulged by him did not contain any State secrets.

16. In view of that evidence, the prosecutor requested that the case be remitted for further investigation.

17. On 6 February 2002 the Krasnoyarsk Regional Court ("the Regional Court") granted that application. The court decision of 6 February 2002 was classified. According to the applicant, the court identified a number of deficiencies in the bill of indictment, including the use of expert conclusions. It also noted that an additional expert examination should be carried out, taking into account the scientists' opinions submitted by the defence.

18. On 24 April 2002 the Supreme Court of Russia ("the Supreme Court") rejected an appeal by the applicant and upheld the decision of 6 February 2002.

B. Second set of proceedings

1. Pre-trial investigation

19. During the fresh investigation into the case, the investigator ordered four additional expert examinations.

20. The four additional expert reports dated 6-7 June, 10 June (two reports) and 10-11 September 2002 indicated that the information concerning the space simulator and the "Aquagen" space simulation system had to be considered a "State secret".

21. By a decision of 24 July 2002 the charges were amended. The applicant was additionally accused of having divulged the description of the "Aquagen" space simulation system to the Chinese nationals.

2. Court decisions

22. On 3 December 2002, having received the case file from the prosecution, the Regional Court refused to examine it, and returned the case to the investigating authorities for further investigation. The court held that the investigation had been tainted by serious defects. In particular, the bill of

indictment had lacked a precise list of the classified information divulged by the applicant, an interpretation of the expert conclusions, or any references to the applicable law.

23. On 5 February 2003 the Supreme Court, presided over by Judge K., upheld the above decision on appeal.

C. Third set of proceedings

1. Pre-trial investigation

24. The charges against the applicant were amended, and on an unspecified date the case was resubmitted to the Regional Court for examination on the merits. It appears that the charges against the applicant were based on the eight expert reports in the case file which had previously been obtained by the prosecution (see paragraphs 14 and 20 above).

2. First-instance judgment

25. On 16 May 2003 the Regional Court held a preliminary hearing in the applicant's case. By a decision of that date the court found that the investigator had committed various breaches of domestic procedure, and once again it remitted the case for further investigation, citing reasons which were largely the same as those in the decision of 3 December 2002 (see paragraph 22 above).

26. The prosecution appealed against the decision of 16 May 2003.

27. On 23 July 2003 the Supreme Court, sitting in a composition which included Judge K., granted the appeal and remitted the case to the Regional Court for examination on the merits. It concluded that the charges against the applicant were sufficiently specific. It also held that the defects which had been noted by the court were insufficient to justify the decision to remit the case for additional investigation.

28. On 3 September 2003 the Regional Court decided to have the case heard by a jury. It appears that on 3 December 2003 the Regional Court excluded as inadmissible a number of documents submitted by the defence, including opinions by Russian scientists (see paragraph 15 above).

29. By a verdict of 29 December 2003 the jury acquitted the applicant, and on 30 December 2003 the Regional Court rendered a judgment clearing him of all charges.

3. Appeal proceedings

30. On an unspecified date the prosecution appealed against the applicant's acquittal.

31. On 9 June 2004 the Supreme Court, presided over by Judge K., accepted the prosecution's arguments and quashed the judgment, owing to various procedural irregularities, including errors in the procedure for

counting and submitting the votes of the jury. Accordingly, the case was remitted for a retrial.

D. Fourth set of proceedings

1. First-instance judgment

(a) Jury selection

32. On 12 July 2004 the Regional Court initiated the jury selection procedure.

33. According to the applicant, several jurors in his case failed to disclose relevant information which could have disqualified them from taking part in the trial.

34. On an unspecified date the defence unsuccessfully challenged eleven jurors. Seven of them were challenged on account of the fact that they had security clearance.

35. The court refused to dismiss the seven jurors who had security clearance, because national law did not prevent such jurors from participating in criminal proceedings. Four out of those seven potential jurors with security clearance became jurors in the applicant's case.

(b) Examination of the case on the merits

36. According to the applicant, during the trial he did not dispute the fact that he had communicated the information in question to the Chinese nationals; the only contentious point was the classified status of the information divulged. The presiding judge considered the issue of whether the information constituted a State secret a legal question, and excluded it from the jury's examination.

37. On 25 October 2004 the applicant lodged an application to examine ten experts for the prosecution who had drafted reports in his criminal case, and seventeen other experts who would be witnesses on his behalf. The application read as follows:

> "... During the trial the prosecution submitted several expert reports.
>
> In order to ensure the exercise of my right provided for under Article 6 § 3 (d) of the Convention, I request that [the experts] who took part in the preparation of the expert reports be questioned.
>
> I also request that the following experts be questioned on behalf of the defence: [a list of experts followed]."

38. The prosecution submitted that the applicant had not substantiated his application, but had merely referred to the Convention.

39. Having examined the parties' submissions, the court dismissed the applicant's application to question ten experts for the prosecution and summon seventeen experts for the defence. According to the applicant, the judge's reasoning for his decision was as follows:

> "The defence's application of 25 October 2004 to call and question experts and specialists should be dismissed, owing to the lack of legal grounds and necessity.
>
> Under Article 282 of the Code of Criminal Procedure, a court has the right to question experts to clarify and supplement an opinion which has been given. [Neither] the content of the [applicant's] application [nor] the material of the case indicates that any clarification or additional information is necessary. The contents of the application also do not contain legal grounds for calling the indicated people as specialists. The material of the case also does not contain such grounds."

40. On 5 November 2004 the jury unanimously rendered a guilty verdict.

41. On 24 November 2004 the Regional Court convicted the applicant as charged for having committed high treason by disclosing to Chinese nationals information about the space simulator and the "Aquagen" space simulation system which constituted a State secret, in breach of Article 275 of the Criminal Code (see paragraph 58 below); the applicant was also convicted of fraud in respect of his former employer, the University, an offence in breach of Article 159 § 3 of the Criminal Code (see paragraph 59 below). The applicant was sentenced to fourteen years' imprisonment.

42. The parties did not submit a copy of the judgment of 24 November 2004, owing to its classified status. It appears that the judgment relied on the eight expert reports prepared during the pre-trial stages of the investigation.

43. On 25 November 2004 there was a seminar of physicists who specialised in the electrisation of space mechanisms in orbit. Leading scientists – including Dr V. Ginzburg, a Nobel laureate and astrophysicist, and Dr S. Kapitsa, a physicist – discussed the preliminary specifications drafted by the applicant. The scientists concluded that those specifications did not contain any State secrets. All data included in the preliminary specifications had been published a long time ago and were known to the specialists of all countries dealing with space studies. During the seminar the scientists also noted that the expert examinations of the preliminary specifications drafted by the applicant had been performed by people who had no specific expertise in the relevant subject area. For instance, the scientists observed that the same people had prepared expert reports in both the applicant's case, which had concerned the electrisation of space mechanisms, and another similar case regarding the movement of an object in a gas cavern in water. The scientists considered that experts who were not competent had made erroneous findings which had then become the basis of the applicant's conviction.

44. The applicant appealed against the judgment of 24 November 2004. He complained that his conviction had been based on only the expert findings concluding that the data included in the preliminary specifications had been a State secret. The applicant contested the expert reports and their conclusions on a number of grounds. He complained that the expert

examinations had been carried out on the basis of the investigator's requests at the pre-trial stage of the investigation. The applicant claimed that he had not been informed about those requests, and thus in particular he had had no opportunity to challenge the experts, suggest other people as experts, put additional questions to the experts, attend the expert examinations or provide his own explanations.

45. Furthermore, the applicant asserted that the experts had no pertinent or sufficient expertise in the relevant area of physics.

46. In particular, he observed that expert report 50/2000-73DSP of 4 August 2000 had been prepared by four experts from Baltic State Technical University ("BSTU") called S., Sch., B. and I. The only information about them was as follows: S. worked for the university's security department and was a graduate of an artillery school; Sch. worked for the department of launching facilities; B. had "experience with the thermal regulation of space objects"; and I. worked in the university's security services.

47. Report B-7/10DSP of 7 August 2000 had been prepared by two employees of Moscow State Technical University ("MSTU"), Sych. and P., who also had identification documents showing that they were FSB experts. Their area of expertise was indicated as being "rocket and space technologies". The applicant also noted that those two experts had participated in expert examinations in a similar "spy" case against another scientist, but one which had concerned a different area of physics.

48. Report 37-51-107DSP of 1 November 2000 by the Ministry of Education, MSTU and Moscow State Technical Aviation University ("MSTAU") had been prepared by Sh., U. and A. Sh. had graduated from a school for border guards, U. was a "main specialist in a special department" of the Ministry of Education, and A. (from MSTAU) had a "radio-technical specialisation".

49. The other expert reports had been prepared by the same people mentioned above, working in other combinations. No further information about the experts' areas of specialisation, experience, academic research publications or other publications had been available.

50. The applicant complained that despite his application, the Regional Court had refused to question the ten experts for the prosecution and summon experts in his defence. That refusal had effectively prevented him from challenging the conclusions of the expert reports.

51. The applicant joined the records of the scientific seminar on 25 November 2004 (see paragraph 43 above) to his appeal.

52. The applicant also asserted that the jury in his case had not been selected in accordance with the applicable laws. He further claimed that the jury had not been independent and impartial. In particular, some of the jurors had withheld certain information about themselves demonstrating that they were not independent from the FSB. Furthermore, the jurors with

security clearance should not have participated in his trial, as they also could be deemed to be not independent from the FSB. The applicant also complained that the jury had been precluded from examining the only contentious matter in the case – whether the information divulged had constituted a State secret – as that matter had been reserved to the experts and the presiding judge.

2. Appeal proceedings

53. On 29 June 2005 the Supreme Court, presided over by Judge K., held an appeal hearing.

54. The defence challenged Judge K.'s involvement in the appeal proceedings, on the grounds that she had previously taken part in the examination of the applicant's case: on 23 July 2003, when the Supreme Court had granted the prosecutor's appeal against the remittal of the case for additional investigation (see paragraph 27 above); and on 9 June 2004, when the court had quashed the applicant's acquittal and remitted the case for a retrial (see paragraph 31 above).

55. The Supreme Court rejected the challenge. The court held that during the examination of the applicant's case Judge K. had made no statements disclosing any personal interest as to the outcome of the proceedings. The court found no other circumstances which would prevent her participation in the proceedings.

56. As to the alleged bias of some of the jurors, the Supreme Court held that security clearance did not indicate, as such, a lack of impartiality, and that there was no evidence to conclude that the jurors had withheld any relevant information which could have cast doubt on their impartiality. The court also held that the Regional Court's refusal to summon the prosecution's experts had been justified, in view of the nature of the proceedings before a jury. The relevant part of the decision read as follows:

> "The court is not persuaded by the defence's arguments about the alleged flaws in the formation of the jury.
>
> ...
>
> ... the parties questioned the [potential jurors] to establish any individual circumstances which might have prevented their participation in the proceedings.
>
> ...
>
> There is no indication that the selection of the jury was not random.
>
> ...
>
> As regards the defence's allegation that members of the jury were biased because they had security clearance, such an argument has no basis in law. The procedure whereby access is granted to State secrets, [which is] established in the State Secrets Act, does not make a person with security clearance dependent on the Federal Security Service.

The above [argument] is also not [supported by] the Russian Constitutional Court's ruling no. 8-П of 27 March 1996 relied on by the defence. The legal position of the Constitutional Court in that ruling is related to the impossibility of removing an advocate from a case owing to a lack of security clearance. [This] is based on the fact that the FSB authorities which perform the verification procedures [for security clearance] actually predetermine the decision[s] on access to State secret[s]. Due to this circumstance (the procedure to obtain security clearance), the advocate objectively becomes dependent on the authorities carrying out the criminal prosecution. There is no prohibition in either the Code of Criminal Procedure or section 80 of the Federal Law on the Judiciary of the RSFSR [Russian Soviet Federative Socialist Republic], which were applicable at the material time, on a citizen participating as a juror because of his security clearance. The Federal Law on Lay Judges in the Russian Federation also does not contain such a prohibition.

The applications challenging the jurors were duly examined by the trial court ...

...

... [the crime of] disclosure of a State secret, [an act] criminalised by Article 275 of the Criminal Code, has two mandatory elements: the transfer of information in a sphere of State activity ..., which represents the factual circumstances of the crime; and an indication that that information is protected by the State because its disclosure might damage Russian security. Those circumstances have a legal nature, because their establishment requires specialist knowledge in a particular sphere of State activity related to [State] security and within the competence of relevant agencies and State officials, as set out in the State Secrets Act.

Therefore, the [act of] categorising particular information as a State secret and giving it classified status ... is performed by the heads of State authorities, in accordance with the [official] list of State officials who are vested with such powers, which is approved by the Russian President. ...

In accordance with section 6(4) of the [State Secrets] Act, the justification for categorising information as a State secret and giving it classified status is established by means of an expert assessment of [both] the reasonableness of classifying particular information [and] the potential and other consequences of that act, based on the balance between vitally important interests of the State, society and citizens.

Therefore, the question of categorising as a State secret the information whose disclosure [was] imputed to the accused [was] a legal one, and ... it could not be put before the jurors ...

...

As indicated by the case-file material, the trial court examined only admissible evidence. The allegation that inadmissible expert reports were examined is not supported by the material of the case file, which indicates that in order to perform expert examinations the investigating authorities engaged people with a specialised, high level of education who had specialist knowledge about the research issues in this criminal case, and who had carried out academic research, including [research] on the subject matters related to the charges against the applicant; they [had] extensive work experience in these areas. ... the applicant and his defence [team] were acquainted with this information.

The procedure whereby the experts were appointed and the performance of the expert examinations in this criminal case were in accordance with Chapter 27 of the Code of Criminal Procedure. The expert findings concerned the technical features of

the devices which had been disclosed by the applicant, and the issue of whether the information constituted a State secret. The experts had to [come to conclusions] about the latter issue, because under section 6(4) of the State Secrets Act, the justification for categorising information as a State secret had to be established by an expert assessment.

The jury verdict was based on a careful examination of the circumstances of the case and the case-file documents. The court cannot accept the defence's argument that the trial court's refusal to summon and question ... the experts ... was arbitrary ... The case-file material shows that the trial court did examine the expert reports. Questioning the experts was incompatible with the nature of the proceedings before a jury ...

The records of the seminar at the International Engineering Institute on 25 November 2004, which took place after the judgment had been issued in the present case, are not evidence, because they do not comply with the requirements of Articles 74 and 86 of the Code of Criminal Procedure defining the notion of the collection of evidence and [the relevant] procedure.

..."

57. On the same day the Supreme Court upheld, for the most part, the judgment of 24 November 2004, reducing the sentence to thirteen years' imprisonment.

RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL MATERIAL

I. APPLICABLE CRIMINAL OFFENCES

A. The Criminal Code of the Russian Federation

58. Article 275 of the Criminal Code defines high treason as espionage, disclosure of State secrets or assistance otherwise provided to a foreign State, a foreign organisation or their representatives for ... subversive activities undermining the external security of the Russian Federation, committed by a citizen of the Russian Federation, which is punishable by the deprivation of liberty for a term of twelve to twenty years, with or without a fine.

59. Under Article 159 § 3 of the Criminal Code, fraud committed by a person through his official position is punishable by deprivation of liberty for a period of two to six years.

B. The State Secrets Act

60. Rules governing the information to be classified as officially secret are set out in the State Secrets Act (*Закон о государственной тайне*) No. 5485-1, dated 21 July 1993. The Act specifies the type of military

information which is protected by State secrecy, subject to its specification in a list approved by the President and duly published (sections 5 and 9).

61. The justification for categorising information as a State secret and giving it classified status is established by means of an expert assessment of both the reasonableness of classifying particular information and the potential economic and other consequences of that act, in view of the balance between vitally important interests of the State, society and citizens (section 6(4) of the State Secrets Act).

62. Article 5 of Presidential Decree no. 1203 of 30 November 1995 contains a detailed list of information which must be considered a State secret.

II. JURY TRIAL

63. The relevant provisions of Russian law were summarised in *Danilov v. Russia* (dec.), no 88/05, §§ 81-90, 14 April 2015.

64. In accordance with the applicable legislation in force at the material time (the Federal Law of 8 July 1981 on the Judiciary of the Russian Soviet Federative Socialist Republic (RSFSR) as amended on 12 July 2003 (section 80), and Federal Law No. 113-ФЗ of 20 August 2004 on Lay Judges of the Federal Courts of General Jurisdiction in the Russian Federation (section 3)), lists of potential jurors could not include the following people: people not on recent voters' registers; people under twenty-five years old; people with a criminal record; people who were fully or partially legally incapable; people with a registered history of addiction or mental disorders; people suspected or accused of criminal offences; people who did not understand the language of proceedings; and people with a physical or mental handicap preventing them from participating fully in proceedings.

65. At their own request, the following people could also be excluded from jury duty (the Federal Law of 8 July 1981 on the Judiciary of the RSFSR as amended on 12 July 2003 (section 80), Federal Law No. 113-ФЗ of 20 August 2004 on Lay Judges of the Federal Courts of General Jurisdiction in the Russian Federation (section 7), and Article 326 of the Code of Criminal Procedure ("the CCrP")): people without knowledge of a local language; people with certain physical or mental handicaps; people over sixty years old; heads and deputy heads of legislative and executive authorities; people in the military; judges; prosecutors; investigators; advocates; notaries; police officers; officers in the firefighting service; State security officers; priests and other people who considered that they could not serve as jurors owing to their religious beliefs; women with children under three years old; people whose absence from work could negatively affect public or State interests, such as doctors, teachers, pilots and others; and other people with valid reasons.

66. At the material time parties had the right to make an unlimited number of challenges for cause and two peremptory challenges in respect of potential jurors. The presiding judge decided on the challenges. After deleting the names of the successfully challenged potential jurors, the court secretary or the judge's assistant made up a list of the remaining potential jurors, whose names were to appear in the same order as on the first list. The twelve potential jurors whose names appeared first on the list formed the jury, and the two potential jurors whose names appeared next became substitutes. Before the jury was sworn in the parties could challenge the entire panel if they argued that, owing to the particular features of the criminal case in question, the panel would be unable to render an objective verdict. The presiding judge was to decide on any such challenge in respect of the empanelled jury (Articles 326-330 of the CCrP).

III. SECURITY CLEARANCE

67. In accordance with the State Secrets Act (section 21), security clearance is to be granted on a voluntary basis. It may be granted to State officials and other citizens.

68. The Russian legislation in force at the material time did not contain an exhaustive list of persons who might obtain security clearance. The State Secrets Act and the Rules on Security Clearance approved by the Russian Government on 28 October 1995 indicate that it may be granted to, among others: military officers, crew members, ambassadors, judges, lawyers, members of the Russian Parliament, high-ranking officials, employees of private and State companies working with secret information, students and other citizens.

69. Security clearance is granted after competent authorities carry out a verification check on the person concerned (sections 21 and 22 of the State Secrets Act). In accordance with the Federal Law on the Federal Security Service (section 12(k)), its agencies have an obligation to ensure the confidentiality of State secrets in State authorities, military formations, companies, establishments and organisations (regardless of whether they are publicly or privately owned) and implement measures related to citizens' access to State secrets, in accordance with the established procedure.

70. In ruling no. 8-П of 27 March 1996 (paragraph 5), the Constitutional Court of the Russian Federation held as follows:

> "Criminal procedural law confers on FSB agencies the power to investigate most criminal cases containing material which constitutes a State secret. Under sections 21 and 22 of the State Secrets Act, the same agencies perform the verification procedure in respect of people applying for security clearance, and thus predetermine the decision[s] on the grant of such applications. In such circumstances, an advocate objectively becomes dependent on the agencies carrying out the criminal prosecution, which puts the defence and the prosecution in an unequal position."

IV. EXPERT REPORTS OBTAINED BY THE INVESTIGATION

71. Chapter 27 of the CCrP regulates the obtaining of expert opinions at the investigation stage (namely, before the trial). Article 195 § 2 provides that a "judicial expert examination" (for use in court) must be carried out by "State forensic experts or other experts who have specialist knowledge". Article 193 § 3 provides that the investigator must notify the defendant about the decision to order an expert examination. Under Article 198, the defendant has the right to challenge the expert, request that the examination be entrusted to another expert institution, ask the investigator to put additional questions to the expert and, with the approval of the investigator, participate in the expert's examination and provide him or her with comments.

72. Under Article 282 of the CCrP, the court, on its own initiative or at the parties' request, may call for the expert who has prepared a forensic report at the pre-trial stage to be questioned, to clarify or supplement that report.

THE LAW

I. COMPLIANCE WITH ARTICLE 38 OF THE CONVENTION

73. The preliminary issue the Court needs to deal with before examining the merits of the applicant's complaints is whether or not the Government have complied with their procedural obligation under Article 38 of the Convention to submit the evidence that the Court has requested from them. Article 38 reads as follows:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

74. On 2 February 2007 the Court gave notice of the present application and put a number of questions to the parties. It also asked the Government to produce copies of all relevant documents in the case. In reply, the Government refused to submit documents from the criminal case file, as they had been classified as a State secret.

75. On 14 April 2015 the Court declared the present application partly admissible. On 7 May 2015 the Court invited the parties to submit additional information and legal arguments pertaining to a set of questions. The Court requested that the Government provide the following documents: a copy of the first-instance judgment of the Krasnoyarsk Regional Court in the applicant's criminal case, dated 24 November 2004; the trial records; the relevant expert reports assessing the level of confidentiality of the information divulged by the applicant; and the 1998 Detailed List. The

Court indicated that those documents could be redacted in order to address the Government's confidentiality concerns.

76. In their additional observations of 28 July 2015, the Government refused to provide the requested documents. They submitted once again that the criminal case-file documents had been classified as a State secret, and thus under Russian law they could not be provided to the Court.

77. The Court will examine the matter in the light of the general principles concerning compliance with Article 38 of the Convention as summarised in *Janowiec and Others v. Russia* ([GC], nos. 55508/07 and 29520/09, §§ 202-06 and 208, ECHR 2013). In that judgment, the Court reiterated that Article 38 of the Convention required the respondent State to submit the requested material in its entirety, if the Court so requested, and to account for any missing elements.

78. The Court has also previously found unsatisfactory the respondent Government's explanation that the domestic law did not lay down a procedure for communicating information classified as a State secret to an international organisation (see *Nolan and K. v. Russia*, no. 2512/04, § 56, 12 February 2009). The Court pointed out that if legitimate national security concerns had existed, the Government should have edited out the sensitive passages or supplied a summary of the relevant factual grounds (ibid.).

79. In the present case, the Court twice requested that the Government provide the relevant documents (see, by contrast, *Yam v. the United Kingdom*, no. 31295/11, § 81, 16 January 2020). On the second occasion it specifically indicated to the Government that they could redact the documents to address the confidentiality concerns. The Government, however, refused to produce any of the requested material in either its original or redacted form. The Court also notes that the Government's refusal was not subject to some form of adversarial proceedings before an independent domestic body competent to review the reasons for the decision to refuse and the relevant evidence (compare ibid., § 82).

80. Accordingly, the Court considers that the respondent State has failed to comply with its obligations under Article 38 of the Convention, on account of its refusal to submit the requested documents.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

81. The applicant complained that the tribunal in his criminal case had not been independent and impartial because: (1) four of the twelve jurors in his case had had security clearance; (2) some jurors had withheld certain information which could have cast doubt on their impartiality; and (3) the judge who had presided over the appeal hearing, Judge K., had been personally biased against him.

82. The applicant also complained that he had not had a fair trial. In particular, he had been denied an opportunity: (1) to cross-examine ten

expert witnesses for the prosecution; and (2) to question seventeen expert witnesses in his defence.

83. The applicant relied on Article 6 of the Convention, which, in so far as relevant, provides:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.
>
> ...
>
> 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 ..."

A. Impartiality of jurors with security clearance

1. The parties' submissions

(a) The applicant

84. The applicant submitted that the jurors with security clearance had had access to State secrets and could not be impartial in his particular case, which had concerned the alleged disclosure of a State secret. The applicant claimed that the lack of a general legal prohibition on people with security clearance being jurors did not imply that such people should not have been excluded from being jurors in his particular case. As people who had suffered violent crimes could not be considered impartial jurors in cases involving violence, people with security clearance could not be impartial in a case like his.

85. The applicant further noted that the investigation of his case had been carried out by the FSB. People with security clearance were necessarily subjected to a verification procedure carried out by the FSB (sections 21 and 22 of the State Secrets Act), which therefore might demonstrate that they were not independent from the FSB. The applicant referred to the Constitutional Court's ruling no. 8-П of 27 March 1996 (see paragraph 70 above), whereby it had found the requirement for a defendant's representative to apply for security clearance unconstitutional, because that would imply the need for the representative to pass the verification procedure carried out by the FSB and thus, to a certain extent, make the defendant dependent on the FSB. The same logic was even more relevant in respect of jurors, as a judge should be free from undue pressure and comply only with the law. Thus, the presiding judge in the applicant's case should have granted his application to have jurors with security clearance removed from his case. The applicant lastly noted that the FSB's supervision did not stop after security clearance had been granted to a

person, as the FSB continued to monitor people with security clearance, to ensure the confidentiality of State secrets.

86. The applicant submitted that it was improbable that so many jurors with security clearance would have been selected if the selection had been truly random. He claimed that the Government had not supported their statement about random selection.

87. As regards particular jurors who had withheld certain information about themselves, the applicant submitted that the Government had not denied this, and had only repeated that the case-file material contained no such information, which was exactly his point.

(b) The Government

88. The Government submitted that the applicant had challenged eleven potential jurors, seven of whom had been challenged on the basis of their security clearance. The judge had dismissed the applicant's challenges in that regard, because the fact that the potential jurors had had access to State secrets had not demonstrated their partiality or personal interest in the outcome of the case.

89. The Government further cited the applicable provisions of Russian law on the grounds for requiring or allowing the removal of a juror (see paragraphs 64-65 above), and indicated that none of those included security clearance.

90. The Government concluded by submitting that the Russian legislation setting out the grounds for removing jurors could not be interpreted extensively, also taking into account the principles of legal certainty and predictability.

91. As for the assertion that some jurors had allegedly withheld particular information about themselves during the selection process, the Government submitted that the applicant's case-file material did not contain documentary proof to support the allegations in that regard.

92. The Government claimed that the selection of jurors had been random. The participation in the trial of four jurors with security clearance did not give grounds to question the impartiality of the majority of the jurors.

93. The Government indicated that the Constitutional Court's ruling no. 8-П of 27 March 1996 prohibited the removal of advocates with no security clearance from cases concerning State secrets, because in order to obtain security clearance they would need to pass the verification check performed by the FSB, the service which was also responsible for investigating such cases. The situation of those advocates was different from that of jurors. Furthermore, the four jurors concerned had already been issued with security clearance by the start of the trial.

2. The Court's assessment

(a) General principles

94. The Court will examine the matter in the light of the relevant general principles as summarised in *Kyprianou v. Cyprus* ([GC], no. 73797/01, §§ 118-121, ECHR 2005-XIII and *Micallef v. Malta* [GC], no. 17056/06, §§ 93-99, ECHR 2009).

95. The Court also reiterates that even appearances may be of a certain importance, as "justice must not only be done, it must also be seen to be done" (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86). In deciding whether, in a given case, there is a legitimate reason to fear that a particular judge or jury member lacks impartiality, the standpoint of the accused is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 161, 26 July 2011).

96. Lastly, the Court reiterates that it is incumbent on the national judicial authorities to check whether, as required by Article 6 § 1 of the Convention, the trial court was "an impartial tribunal" within the meaning of that provision, where this is disputed on grounds that do not immediately appear to be manifestly devoid of merit. In performing the check, they have a duty to use all the means in their power to dispel any doubts as to the reality and nature of the applicant's allegations (see *Farhi v. France*, no. 17070/05, §§ 25 and 28, 16 January 2007).

(b) Application of the general principles to the facts of the present case

97. Turning to the present case, the Court notes that the applicant's complaints in respect of jurors with security clearance do not contain allegations of actual subjective bias on their part, and thus fall to be examined under the objective test of impartiality.

98. The Court further notes that the applicant and the Government disagreed in their assessment of the probability that four out of twelve (one third) of the selected jurors – those with security clearance – could have been selected randomly. While Russian law (see paragraph 68 above) appears to provide grounds for granting security clearance to numerous categories of people, the Court considers it doubtful that such a considerable part of the Russian population, in so far as a jury panel may be deemed to be representative of it, has security clearance, and thus access to State secrets.

99. The Court further notes that the applicant's concerns about being judged by jurors with security clearance did not relate to the lack of a general legislative prohibition on such people acting as jurors, but rather the participation of such jurors in his particular case (see *Hanif and Khan v. the United Kingdom*, nos. 52999/08 and 61779/08, § 145, 20 December 2011). As the applicant was accused of treason for having disclosed a State secret, the case against him was investigated by the FSB. As is apparent

from Russian law (see paragraph 69 above), the Russian Constitutional Court's decision (see paragraph 70 above) and the parties' submissions, people with security clearance, which is necessary for holding certain jobs, have to pass a special verification procedure carried out by the FSB. Furthermore, as is also apparent from Russian law (ibid.) and is evidenced by the applicant's case, the FSB continues to monitor people with security clearance and their compliance with the obligation not to disclose State secrets. The Court considers that having security clearance does not automatically imply the lack of impartiality. However, taking into account that the applicant had been indicted by the FSB for treason for having disclosed a State secret, his fear that jurors with security clearance might, at least to some extent, be influenced by partial considerations, appears sufficiently serious to have warranted a concrete examination by the presiding judge.

100. Given that the applicant's doubts about the impartiality of jurors with security clearance in his case were sufficiently serious to warrant concrete examination, the Court will proceed to verify how the judge presiding over the trial reacted when the applicant raised his concerns. The Court observes that the applicant's complaints in that regard were dismissed on the following basis. As possession of security clearance is not one of the grounds which generally disqualify somebody from jury service under Russian law (see paragraphs 64-65 above), the judge considered that the fact that some jurors had security clearance could not affect their impartiality (see paragraphs 35, 56 and 89 above). Consequently, the Court finds that the applicant's objections to jurors with security clearance participating in his particular case, a case which concerned the alleged disclosure of a State secret, were dismissed in general terms without considering the nature and the subject matter of the trial and on purely formal grounds; those grounds were that the applicable legislation did not provide for security clearance being a reason to generally disqualify somebody from jury service. Thus, the national courts failed to take sufficient steps to check that the trial court had been established as an impartial tribunal within the meaning of Article 6 of the Convention and did not offer sufficient guarantees to dispel any doubts in this regard (see, by contrast, *Gregory v. the United Kingdom*, 25 February 1997, §§ 48-49, *Reports of Judgments and Decisions* 1997-I).

101. In the light of the above, the Court finds that the applicant's doubts as to the impartiality of the trial court in his criminal case may be said to have been objectively justified, in view of the participation of jurors with security clearance, and those doubts were not dispelled by any procedural safeguards.

102. There has therefore been a violation of Article 6 § 1 of the Convention on account of the trial court lacking impartiality under the objective test.

103. Given the above finding, the Court considers it unnecessary to examine separately the applicant's other misgivings about the impartiality of other jurors and Judge K. (see *Sutyagin v. Russia*, no. 30024/02, § 194, 3 May 2011).

B. Cross-examination of experts

1. The parties' submissions

(a) The applicant

104. The applicant submitted that on 25 October 2004 he had asked to cross-examine ten expert witnesses for prosecution. Those ten experts had prepared reports concluding, among other things, that the information divulged by him had constituted a State secret. The applicant noted that the expert examinations had been carried out during the pre-trial stage of the investigation and at the request of the investigator, and thus those experts had been witnesses for the prosecution. As the court had not granted his application, he had been unable to cross-examine the experts. By questioning them, the applicant had expected to challenge their competence and conclusions.

105. In the context of the same application, the applicant had sought to call and question seventeen specialists in his defence – employees of a number of academic institutions who specialised in various areas of physics. The testimony of those specialists had been important for the applicant, to demonstrate, among other things, that the preliminary specifications drafted by him had not contained a State secret, and had been available for a long time from open sources.

106. However, despite the applicant's requests, the national courts had refused to ensure that he could cross-examine the prosecution's experts and call experts in his defence. As a result, he had been unable to effectively challenge the only contentious matter lying at the heart of his conviction for treason – the issue of whether the divulged information had constituted a State secret.

(b) The Government

107. The Government submitted that on 25 October 2004 the applicant had asked to question the ten people who had prepared the expert reports in his case, and another seventeen people as expert specialists for defence. That application had been dismissed with reference to Article 282 of the CCrP, which provided that a court could question an expert to obtain clarification or additional information relating to an expert opinion (see paragraph 72 above). In the present case, there had been no need for any clarification or additional information, in view of the content of the

defence's application and the case-file material. Equally, there had been no grounds for calling the expert specialists indicated in the applicant's request.

2. The Court's assessment

(a) General principles

108. The Court reiterates that as a general rule, Article 6 §§ 1 and 3 (d) of the Convention requires that the defendant be given an adequate and proper opportunity to challenge and question a witness against him or her, either when he or she makes his or her statements or at a later stage (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011, *Schatschaschwili v. Germany* [GC], no. 9154/10, § 105, ECHR 2015 and *Khodorkovskiy and Lebedev v. Russia (no. 2)*, nos. 42757/07 and 51111/07, § 475, 14 January 2020).

109. The Court also reiterates that the term "witnesses" under Article 6 § 3 (d) of the Convention has an autonomous meaning which also includes expert witnesses. However, the role of an expert witness can be distinguished from that of an eyewitness, who must give to the court his personal recollection of a particular event. In analysing whether the appearance in person of an expert at the trial was necessary, the Court will therefore be primarily guided by the principles enshrined in the concept of a "fair trial" under Article 6 § 1 of the Convention, and in particular by the guarantees of "adversarial proceedings" and "equality of arms". That being said, some of the Court's approaches to the examination in person of "witnesses" under Article 6 § 3 (d) are no doubt relevant in the context of the examination of expert evidence, and may be applied, *mutatis mutandis*, with due regard to the difference in their status and role (see *Avagyan v. Armenia*, no. 1837/10, § 40, 22 November 2018, and *Khodorkovskiy and Lebedev v. Russia (no. 2)*, cited above § 476).

110. As a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses (see *Vidal v. Belgium, 22 April 1992, § 33, Series A no. 235-B*; *Avagyan*, cited above, § 41; *Khodorkovskiy and Lebedev (no. 2)*, cited above, § 478).

111. One of the requirements of a fair trial is the possibility for the accused to confront the witnesses in the presence of the judge who must ultimately decide the case, because the judge's observations on the demeanour and credibility of a certain witness may have consequences for the accused (see *Matytsina v. Russia*, no. 58428/10, § 153, 27 March 2014, with further references; *Avagyan*, cited above, § 43; and *Khodorkovskiy and Lebedev (no. 2)*, cited above, § 482). The same also applies to expert witnesses (see *Gregačević v. Croatia*, no. 58331/09, § 67, 10 July 2012, and *Constantinides v. Greece*, no. 76438/12, § 39, 6 October 2016): the defence

must have the right to study and challenge not only an expert report as such, but also the credibility of those who prepared it, by direct questioning (see, among other authorities, *Brandstetter v. Austria*, 28 August 1991, § 42, Series A no. 211; *Matytsina*, cited above, § 177; *Avagyan*, cited above, § 43, and *Khodorkovskiy and Lebedev (no. 2)*, cited above, § 482).

(b) Application of these principles to the present case

112. In the present case, the applicant asked to question before the court the ten experts who had prepared reports in his case and had established, among other things, that the disclosed information had constituted a State secret. His application was not particularly detailed, and only referred to his rights under Article 6 § 3 (d) of the Convention (see paragraph 37 above). The trial court held that it was not necessary to question the experts at the hearing, because their reports were clear and the court did not require any clarification or additional information from them (see paragraph 39 above). In his appeal, the applicant asserted that it had been necessary to cross-examine the expert witnesses before the court, in order to demonstrate that they had little or no expertise in the relevant fields of physics (see paragraphs 45-49 above) and then challenge their conclusions, especially those regarding the issue of whether the information had constituted a State secret. The appeal court dismissed that argument, generally asserting that the experts had the proper expertise and referring to the need for an expert assessment to determine whether the information had constituted a State secret (see paragraph 56 above). The Court thus finds that the applicant clearly indicated to the national courts that he wished to have the expert witnesses examined before the court in order to challenge their credibility and conclusions (see, *mutatis mutandis*, *Hanu v. Romania*, no. 10890/04, § 40, 4 June 2013, and *Avagyan v. Armenia*, cited above, § 44).

113. Furthermore, in the present case, eight reports were prepared by ten experts at the request of the prosecution during the pre-trial investigation, and those reports were relied upon by the prosecution in its bill of indictment and then by the court in its judgment.

114. The expert reports concerned not only technical matters, but also the issue of whether the relevant information constituted a State secret (see paragraph 56 above). The appeal court noted that the nature of the information (its constituting a State secret) formed one of the two essential elements of the offence of treason by disclosure of a State secret, the offence of which the applicant was accused. Furthermore, it held that that matter was a legal one, and thus not one for the jury to determine. Lastly, under Russian law, the justification for categorising information as a State secret could be determined only by experts (see paragraphs 56 and 61 above). Therefore, the expert opinions in question were of crucial relevance for the case in which the applicant was found guilty of high treason by disclosure of a State secret.

115. The Court further notes that the expert reports were prepared at the request of the investigator during the pre-trial stage of the investigation. While it appears that the applicant was notified that the expert reports had been requested and that he had an opportunity to study them, there is nothing to show that the applicant had an opportunity to put additional questions to the experts, suggest alternative experts or participate in the expert examinations and provide them with his comments, as guaranteed by the applicable law (see paragraph 71 above). There is also nothing to show that the applicant had other opportunities to confront those expert witnesses and challenge their credibility and conclusions during the investigation stage (see, by contrast, *Kashlev v. Estonia*, no. 22574/08, § 47, 26 April 2016).

116. In such circumstances, the trial court had to carefully consider the defence's application to question those experts at the hearing. Instead, the presiding judge decided that it was unnecessary to hear the experts in person because their written opinions were clear and he did not require any clarification or additional information from them. The Court notes that, even if there were no major inconsistencies in the reports, questioning the experts might have revealed possible conflicts of interests, the insufficiency of the material at their disposal, or flaws in the methods of examination (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 714, 25 July 2013).

117. The applicant's concerns about the credibility of the experts and their conclusions do not appear to be unjustified. On three occasions the Regional Court remitted the applicant's case for further investigation or rectification, owing to persisting issues with expert opinions and the use of those opinions in the bill of indictment (see paragraphs 17, 22 and 25). Furthermore, according to the applicant's submissions, which were not denied by the Government, the experts had no relevant or sufficient expertise in the relevant area of physics (see paragraphs 45-49 above). Lastly, on several occasions the applicant attempted to bring to the national courts' attention the alternative opinions of leading scientists who supported his position that the information divulged did not contain any State secrets (see paragraphs 15 and 44 above). Leaving aside the admissibility of those alternative opinions, it is only natural that the applicant had doubts about the conclusions of the prosecution's experts and sought an opportunity to cross-examine them.

118. The Court also discerns no valid reason why the experts were prevented from testifying before the judge at least in camera while giving the applicant, who had been accused of disclosure of a State secret, an opportunity to cross-examine them, and neither the domestic courts nor the Government referred to such reasons.

119. To sum up, the applicant's conviction for high treason by disclosure of a State secret was based on the opinions of experts who were

neither cross-examined during the trial (see *Avagyan v. Armenia*, cited above, § 46, and *Khodorkovskiy and Lebedev (no. 2)*, cited above, § 484), nor during the investigation stage.

120. Based on the above, the Court concludes that the refusal to allow the applicant to cross-examine the expert witnesses whose reports were later used against him was capable of substantially affecting his fair-trial rights, in particular the guarantees for "adversarial proceedings" and "equality of arms". There has accordingly been a breach of Article 6 §§ 1 and 3 (d) of the Convention.

121. Given the above finding, the Court considers it unnecessary to examine separately the applicant's other complaints related to his inability to challenge the prosecution experts' conclusions by questioning experts in his defence (see *Sutyagin*, cited above, § 201).

III. ALLEGED VIOLATIONS OF ARTICLES 7 AND 10 OF THE CONVENTION

122. The applicant complained that he had been convicted for acts which had not constituted the criminal offence of treason by disclosure of a State secret, because the information divulged by him had been available from open sources and thus had not been secret.

123. The Government submitted that the relevant court judgment had established that the information disclosed by the applicant to the Chinese citizens had constituted a State secret under the applicable laws. The court had examined the publications from the open sources referred to by the applicant and had concluded that they did not contain the same amount of information that he had disclosed, or the same content.

124. The Court notes that the issue central to the applicant's complaints under Articles 7 and 10 of the Convention was the question whether or not the disclosed information constituted a State secret. Having found a violation of Article 6 §§ 1 and 3 (d) of the Convention on the grounds that the applicant had been denied the right to challenge the experts' conclusion about the classified nature of the disclosed information (see paragraphs 119-120 above), the Court does not consider it necessary to examine separately the merits of the applicant's complaints under Articles 7 and 10 of the Convention (see *Sutyagin*, cited above, §§ 206-07).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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

126. The applicant submitted that although he had initially been acquitted, he had eventually been convicted by a jury which had been partial, in the absence of any evidence of his guilt, and on the basis of that unlawful conviction he had spent in total nine years and eight months in detention. The applicant requested 200,000 euros (EUR) in respect of non-pecuniary damage.

127. The Government submitted that the applicant's claim should be rejected, because if his conviction were found to constitute a violation of the Convention then he could apply at national level for the reopening of the criminal proceedings and compensation.

128. The Court has found two violations of Article 6 of the Convention in respect of the applicant. Given that, as a result of his conviction in breach of Article 6 of the Convention, the applicant was imprisoned for almost ten years, the Court considers that his suffering and frustration cannot be compensated for by a mere finding of a violation or the possibility of reopening his criminal proceedings. Making its assessment on an equitable basis, it awards him EUR 21,100 in respect of non-pecuniary damage.

B. Costs and expenses

129. The applicant submitted that his two representatives before the Court had each spent twenty-four hours preparing his submissions to the Court. As their hourly rate was EUR 150, he asked the Court to award EUR 3,600 to each of his representatives, or EUR 7,200 in total.

130. The Government submitted that the applicant's claims should be rejected, as he had not actually paid his representatives the above sums.

131. The Court notes that the applicant was granted legal aid. His claims in respect of costs and expenses are not supported by a copy of an arguably enforceable legal services agreement with his representatives, or copies of payment receipts. Therefore, the Court dismisses the claims in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the respondent State has failed to comply with its obligations under Article 38 of the Convention;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's right to be judged by an impartial tribunal;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention in respect of the applicant's right to cross-examine expert witnesses against him;

4. *Holds* that there is no need to examine the complaints under Articles 7 and 10 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 21,100 (twenty-one thousand one hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 1 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Paul Lemmens President