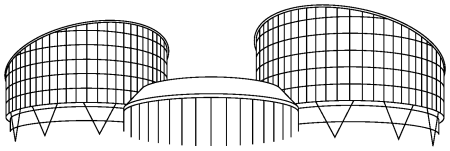

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF YEVDOKIMOV AND OTHERS v. RUSSIA

(Applications nos. 27236/05, 44223/05, 53304/07, 40232/11, 60052/11, 76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12)

JUDGMENT

STRASBOURG

16 February 2016

FINAL

16/05/2016

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

In the case of Yevdokimov and Others v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 26 January 2016,

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

PROCEDURE

1. The case originated in eleven applications (nos. 27236/05, 44223/05, 53304/07, 40232/11, 60052/11, 76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12) 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 eleven Russian nationals ("the applicants"), whose names and the dates on which they introduced their applications are set out in Annex I.

2. Some of the applicants were represented by lawyers whose names are listed in Annex II. The applicants Mr Makhov, Mr Gromovoy and Mr Martirosyan had been granted legal aid. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicants complained, in particular, that they had been denied an opportunity to appear in person before the court in the civil proceedings to which they were parties.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

4. At the material time all the applicants were detained in Russian penal facilities. Where relevant, the dates of their detention are listed in Annex I.

5. While in detention, the applicants Mr Yevdokimov, Mr Rezanov, and Mr Morozov lodged defamation claims against private third parties; the

applicants Mr Makhov, Mr Resin, Mr Anikanov, Mr Lebetskiy, Mr Gromovoy, Mr Gordeyev and Mr Vinokhodov brought claims seeking compensation for the allegedly inhuman conditions of their detention; and the applicant Mr Martirosyan lodged a civil claim for compensation, alleging that the criminal proceedings had been instituted unlawfully.

6. None of the applicants were able to attend the hearings at which their claims were examined. The domestic courts refused them the possibility to be present at the hearing, on the ground that there was no domestic legal provision for bringing detainees to courts. In particular, they quoted Article 77.1 of the Code on the Execution of Sentences (see paragraph 11 below) and the relevant provisions of the Code of Civil Procedure. In the other cases, the issue of the applicants' presence in court was not addressed.

7. The applicants appealed, raising the question of their appearance in court in the appeal statement. Some submitted a separate request seeking leave to appear before the appeal court. The appeal courts either dismissed the applicants' arguments or concluded that their absence from the court was in line with the legislation and did not contravene the principle of fairness.

8. The applicants' claims were refused at two levels of jurisdiction. The dates of the final judgments are set out in Annex I.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure

9. The relevant provisions of the Code read as follows:

Article 48: Representation in the proceedings

"1. Citizens may conduct their business in court in person or through a representative ..."

Article 49: Individuals who can act as representatives in court

"Any legally capable individual ... who has a duly formalised authority to conduct business in court may be a representative before the court ..."

Article 50: Court-appointed representatives

"The court may appoint a lawyer to represent a defendant who is not represented and whose place of residence is unknown. The court may also appoint a lawyer in other situations set out in federal laws ..."

Article 62: Letters of request

"1. If the trial court needs to obtain evidence which is located in a different town or region, it may request that the competent court carry out certain procedural acts.

2. The decision on sending a letter of request shall state briefly the nature of the dispute, information about the parties, including their place of residence or stay, the facts that need to be ascertained and the evidence to be collected by the requested court ...”

Article 63: Procedure for fulfilling the request

“1. The request must be fulfilled in a hearing in accordance with the requirements of the present Code. The parties must be notified of the time and place of the hearing but their absence shall not prevent the request from being fulfilled ...”

Article 155: Court hearing

“Civil cases shall be examined in a hearing upon mandatory provision of information to the parties about the time and place of the hearing.”

Article 155.1: Participation in the hearing by means of a video-conference[1]

“1. If the court has facilities for organising a video-conference, the parties and their representatives, as well as witnesses, experts, specialists and interpreters, can take part in the hearing by means of a video-conference. The video-conference is organised at the initiative of the court or at the request of the parties.

2. The parties and their representatives ... participate in the hearing by means of a video-conference using the video-conferencing equipment that is installed in the competent courts at their place of residence, stay or location. For persons who are in remand centres or in penitentiary facilities, the equipment installed in such facilities can be used ...”

Article 157: Direct, oral and continuous character of civil proceedings

“1. The court must take direct cognizance of the evidence in the case, including by hearing the parties and third parties, witness testimony ...”

2. Proceedings are conducted orally before the same judicial formation...”

Article 160: Opening of the hearing

“At the scheduled time the presiding judge opens the hearing and announces the case to be examined.”

Article 161: Checking the attendance of the parties

“1. The clerk to the court reports to the bench which of the summonsed persons are in attendance, whether the absent persons have been notified [of the hearing] and what information is available about the reasons for their absence.”

Article 166: Decisions on motions lodged by the parties

“Motions by the parties relating to the proceedings in the case are decided upon by means of a judicial decision, after the views of the other participants have been heard.”

1. This article was inserted by Law no. 66-FZ of 26 April 2013.

Article 167: The consequences of a failure to attend the hearing by the parties or their representatives

"1. The participants must inform the court of the reasons for their failure to attend and produce evidence of valid reasons.

2. If there is no information in the case file that the absent person has been notified [of the hearing], the hearing must be adjourned.

If the parties have been notified of the time and place of the hearing, the court adjourns the proceedings if it finds that they have valid reasons for being absent.

3. The court may still examine the case in the absence of a party that was notified of the time and date of the hearing if it finds that the party failed to explain the reasons for its absence or does not have valid reasons for the absence."

Article 327: Procedure for examining cases in the appellate court[1]

"1. The appellate court notifies the parties about the time and place of the appellate hearing.

The appellate court carries out a new examination of the case in a hearing in accordance with the rules of procedure in the first-instance court ...

The parties, their representatives ... may participate in the hearing by means of a video-conference in accordance with the procedure set out in Article 155.1 ..."

Article 350: Hearings in the court of cassation[2]

"Hearings in the court of cassation shall be conducted in accordance with the rules of the present Code that govern the conduct of a hearing before the first-instance court ..."

Article 392: Grounds for reviewing judgments that have come into force (on account of new or newly discovered circumstances)

"2. Judicial decisions that have come into force may be reviewed in the following cases:

...

(2) [on account of] new circumstances listed in paragraph 4 of this Article which emerged after the adoption of the judicial decision and which have significant importance for the correct determination of the matter.

...

4. New circumstances include:

...

(4) the finding of a violation of the European Convention on Human Rights by the European Court of Human Rights with regard to the specific case that was examined by the court, provided that the applicant lodged an application with the European Court of Human Rights in connection with the decision in that case ..."

1. In force since 1 January 2012.
2. In force before 1 January 2012.

B. Legal Aid Act (Law no. 324-FZ of 21 November 2011)

10. Section 6(1)(3) establishes that legal aid can in particular take the form of legal representation of individuals before the courts. Section 20(1)(1) provides that indigent persons whose household income is below the regional minimum subsistence level are eligible for legal aid. Section 20(3) describes the categories of disputes in which the State may provide legal aid for representation of individuals before the courts. The disputes listed concern immovable property, alimony, compensation for health damage, legal capacity, reparation for political repression, and mandatory commitment to a psychiatric hospital.

C. Code on the Execution of Sentences

11. Article 77.1 provides that a convicted person may be transferred from a correctional colony to a temporary detention facility if his or her participation is required as a witness, a victim or a suspect in connection with certain investigative measures in a criminal case. It does not mention the possibility for a convicted person to take part in civil proceedings, whether as a claimant or a defendant.

D. Case-law of the Russian courts

1. Constitutional Court of the Russian Federation

12. The Constitutional Court has on several occasions examined complaints by incarcerated individuals whose requests to appear in civil proceedings had been refused by the courts. It declared the complaints inadmissible, finding that the contested provisions of the Code of Civil Procedure and the Code on the Execution of Sentences did not, as such, restrict the convicted person's access to court or undermine the fairness of the proceedings. It emphasised, nonetheless, that the detainee should be able to make submissions to the court, either through a representative or in some other way provided for by law, such as by means of a video link. If necessary, the hearing may be held at the location where the convicted person is serving his or her sentence or, alternatively, the court hearing the case may instruct the court with territorial jurisdiction over the correctional colony to obtain the detainee's submissions and carry out any other procedural measures (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004, no. 94-O-O of 21 February 2008 and no. 576-O-P of 19 May 2009).

13. The relevant part of decision no. 94-O-O of 21 February 2008 read as follows:

> "It must be borne in mind that a person who is in detention and who is a party to a civil case must be able to exercise his rights: the judge at the preliminary stage ... must send him a letter setting out his rights, including the right to appoint a representative; he should be served in advance with a copy of the claim form ... and other documents, including judicial decisions; he should be allowed sufficient time in view of his situation to appoint a representative, to prepare his legal position and to submit it to the court ..."

14. In decision no. 576-O-P of 19 May 2009, the Constitutional Court held:

> "[Article 77.1 of the Code on the Execution of Sentences] does not prevent the court from deciding that the detainee's presence at the hearing is mandatory as long as it considers that the interests of justice and of the protection of human rights so require.
>
> ... [T]here is an obligation on the court which determines the issue of the detainee's personal participation at the hearing ... on his civil claim, to take into account all the relevant circumstances, including the [legal] character of the constitutional rights involved and the need to take oral evidence from the detainee at the hearing, and adopt a reasoned decision as to means of ensuring [his] participation in the proceedings."

2. Supreme Court of the Russian Federation

15. In Resolution no. 21 of 27 June 2013 on the "Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols by the courts of general jurisdiction", the Plenary Supreme Court issued the following guidance to the courts:

> "16. It follows from Article 6 § 1 of the Convention, as interpreted by the European Court of Human Rights, that an imprisoned person has the right to participate in hearings of his civil case."

THE LAW

I. JOINDER OF THE APPLICATIONS

16. The Court notes that all the applicants complained that they had been unable to attend the hearings in the civil proceedings to which they were parties. Having regard to the similarity of the applicants' grievances, the Court is of the view that, in the interests of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicants complained that their right to a fair hearing under Article 6 § 1 of the Convention had been breached on account of the

domestic courts' refusal of their requests to appear in court. Article 6 § 1 reads in the relevant part as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public ... hearing ... by [a] ... tribunal ..."

A. Submissions by the parties

18. In the cases of Mr Yevdokimov and Mr Rezanov, Mr Morozov, Mr Anikanov and Mr Vinokhodov, the Government denied that there had been a violation of Article 6 § 1. They submitted that the Code on the Execution of Sentences made no provision for the transfer and attendance of incarcerated litigants at any proceedings to which they were parties other than criminal proceedings. Transferring a prisoner between the custodial facility and the civil court was a complicated business given the distance sometimes involved. In the case of Mr Yevdokimov and Mr Rezanov, they were serving their sentences in Barnaul and the court hearing their defamation claim was in Irkutsk, more than 1,300 kilometres away. The Government pointed out that all the applicants had been duly notified of the hearing dates and had received copies of all procedural documents. They could also have made written submissions or appointed a representative for the defence of their position. The Government argued that in Mr Morozov's case, since the other party had not been present at the appeal hearing, the principle of equality of arms had not been breached. Lastly, Mr Vinokhodov had been present at the preliminary hearing of his case but had not expressed a wish to take part in the subsequent proceedings.

19. In the cases of Mr Makhov, Mr Gordeyev, Mr Resin (two applications), Mr Lebetskiy, Mr Gromovoy and Mr Martirosyan, the Government acknowledged a violation of Article 6 § 1 on account of the domestic authorities' failure to secure the applicants' right to appear in person before the civil courts.

20. The applicants maintained that their exclusion from the proceedings had undermined the adversarial nature of the latter and placed them at a disadvantage *vis-à-vis* their opponents. They had been unable to know about and comment on the evidence submitted by the other parties or ask the court to hear oral evidence in support of their position. Mr Vinokhodov pointed out that he had wished to participate in the proceedings and had reasonably expected that he would be allowed to do so because the court had allowed him to attend the preliminary hearing. He had not been informed that the subsequent hearings would take place in his absence. Nor had he been given an opportunity to retain counsel or to ask someone else to represent him before the court.

B. Admissibility

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

C. Merits

1. General principles

22. The Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court but enshrines a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II). Thus, the questions of personal presence, the form of the proceedings – oral or written – and legal representation are interlinked and must be analysed in the broader context of the "fair trial" guarantee of Article 6. The Court should establish whether the applicant, a party to the civil proceedings, had been given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that did not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Siwiec v. Poland*, no. 28095/08, § 47, 3 July 2012; *Larin v. Russia*, no. 15034/02, §§ 35-36, 20 May 2010; *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

23. As regards the form of proceedings, the right to a "public hearing" under Article 6 § 1 has been interpreted in the Court's established case-law to include entitlement to an "oral hearing". Nevertheless, the obligation under this Article to hold a hearing is not an absolute one. An oral hearing may not be necessary due to the exceptional circumstances of the case, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see *Koottummel v. Austria*, no. 49616/06, § 19, 10 December 2009; *Pursiheimo v. Finland* (dec.), no. 57795/00, 25 November 2003; *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Göç v. Turkey* [GC], no. 36590/97, § 47, ECHR 2002-V). Also, provided that an oral hearing has been held at first instance, a less strict standard applies to the appellate level, at which the absence of such a hearing may be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, even if the appellant

was not given an opportunity of being heard in person by the appeal or cassation court (see *Miller v. Sweden*, no. 55853/00, § 30, 8 February 2005).

24. In cases where the applicant was in custody, the Court has accepted that, in view of the obvious difficulties involved in transporting prisoners from one location to another, representation of the detained applicant by a lawyer would not be in breach of the principle of equality of arms provided that the claim was not based on the applicant's personal experience (see, for example, *Mukhutdinov v. Russia*, no. 13173/02, § 116, 10 June 2010, in which a claim for damages against the applicant had been brought by the victims of his crimes; *Kozlov v. Russia*, no. 30782/03, §§ 44-45, 17 September 2009, which concerned a housing dispute; and *Fidler v. Austria* (dec.), no. 28702/95, 23 February 1999, in which the dispute concerned the extent of the applicant's maintenance obligations).

25. By contrast, the personal participation of the litigant was held to be necessary from the standpoint of Article 6 in cases where the character and way of life of the person concerned was directly relevant to the subject matter of the case or where the decision involved the person's conduct or experience. The Court thus found a violation of Article 6 in cases in which the nature of the civil dispute was such as to justify the claimant's personal presence before the court, irrespective of whether or not he had been represented at the hearing (see, as regards claims for compensation for inadequate conditions of detention: *Insanov v. Azerbaijan*, no. 16133/0, § 145, 14 March 2013; *Skorobogatykh v. Russia*, no. 4871/03, § 64, 22 December 2009; and *Shilbergs v. Russia*, no. 20075/03, § 111, 17 December 2009; see also *Gryaznov v. Russia*, no. 19673/03, § 49, 12 June 2012, and *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007 concerning the applicant's ill-treatment claim against the police; *Mokhov v. Russia*, no. 28245/04, §§ 46-47, 4 March 2010, and *Helmers v. Sweden*, 29 October 1991, § 38, Series A no. 212-A concerning a defamation claim; *Sokur v. Russia*, no. 23243/03, §§ 33-35, 15 October 2009, and *Göç*, cited above, § 48 concerning a dispute about the quantum of damages claimed as a result of unlawful detention and prosecution; see also *Súsanna Rós Westlund v. Iceland*, no. 42628/04, § 41, 6 December 2007).

26. Lastly, the Court reiterates that legal assistance in civil cases is not mandatory. Only where a party would not receive a fair hearing without the provision of legal aid, with reference to all the facts and circumstances of the case, will Article 6 require legal aid, including the assistance of a lawyer (see *Siwiec*, cited above, § 55; *Larin*, cited above, §§ 53-54; *Steel and Morris*, cited above, § 61; and *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32). Moreover, where an applicant's request to appear was refused and the option of legal aid was not available to him, the domestic courts must at least afford him sufficient time to make the necessary arrangements for his representation. They must in particular verify whether, in view of the time the applicant has already spent in detention, he still has

someone willing to represent him before the domestic courts and, if so, whether he has been able to contact that person and give him authority to act (see *Mitkus v. Latvia*, no. 7259/03, § 114, 2 October 2012; *Roman Karasev v. Russia*, no. 30251/03, § 63, 25 November 2010; *Larin*, cited above, §§ 55-56; *Shilbergs*, cited above, § 108; *Khuzhin and Others v. Russia*, no. 13470/02, § 107, 23 October 2008).

2. Particular features of Russian civil procedure

27. The Court notes that, by contrast with some other jurisdictions (see the case-law cited in paragraph 23 above), the Russian rules of civil procedure stipulate that proceedings must be conducted orally (Article 157 of the Code of Civil Procedure, cited in paragraph 9 above). The Code of Civil Procedure makes no provision for conducting civil proceedings in writing or for dispensing with an oral hearing, which must be held before both the first-instance and the appeal courts (Articles 155, 327 (currently in force) and 350 (formerly in force) of the Code of Civil Procedure).

28. The right to be present in person is in principle not subject to any formalities and a party need not seek leave to appear in order to attend the hearing and to make oral submissions to the court. There is a requirement to inform the parties of the time and place of the hearing (Article 155 of the Code of Civil Procedure) and the bench has a corresponding duty to verify the attendance and due notification of the parties before embarking on the examination of the case (Article 161 of the Code). If it cannot be ascertained that an absent party has been notified, or if the party has valid reasons for being absent, the hearing must be adjourned (Article 167 of the Code). Identical requirements apply to proceedings before the first-instance and appeal courts (former Article 350 and current Article 327 of the Code).

29. In Russian civil procedure, representation is not the exclusive province of legal professionals. Any adult individual, be it a next-of-kin, a friend or anyone else, is legally entitled to represent the claimant or the defendant in the civil proceedings (Articles 48 and 49 of the Code of Civil Procedure). Representation by a professional lawyer is available free of charge to indigent litigants, but only in specific types of disputes which are exhaustively listed in the Legal Aid Act (see paragraph 10 above).

3. The Court's approach

30. The Court notes that the rules of Russian civil procedure require courts to hold an oral hearing in all categories of cases without exception (see paragraph 27 above). This prevents Russian courts from adjudicating on even small claims or disputes of a technical nature without holding a hearing, as courts in other jurisdictions may do. Whenever an oral hearing is held, the parties have the right to attend and to make submissions to the bench. Any party may, as a matter of course, waive this right of his or her

own free will and there will be no breach of the fair-hearing principle under Article 6 of the Convention as long as the waiver has been established in an unequivocal manner (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II; *Gladkiy v. Russia*, no. 3242/03, §§ 105-09, 21 December 2010; and *Belan v. Russia* (dec.), no. 56786/00, 2 September 2004).

31. In many previous cases, the Russian courts have routinely denied incarcerated litigants the possibility to appear, relying on the fact that there was no legally established procedure for bringing prisoners from the penal facility to the place where their civil claim was being heard (see the case-law cited in paragraph 24 above). Indeed, the right to appear in person before a court is in principle unrestricted in Russian civil proceedings (see paragraph 28 above) but the Code of Civil Procedure and the Code on the Execution of Sentences make no provision for the exercise of that right by litigants who are detained pending trial or are serving a sentence (see paragraph 11 above). The Court has rejected that approach by the Russian courts as being excessively formalistic, noting that the absence of legislation on prisoners' attendance at hearings cannot be interpreted as sufficient grounds for depriving them of the right to appear (see *Gryaznov*, cited above, § 50). Just as no provision of domestic law should be interpreted and applied in a manner incompatible with the State's obligations under the Convention (see *Ćosić v. Croatia*, no. 28261/06, § 21, 15 January 2009), a lacuna in the domestic law cannot be a justification for failing to give full force to the Convention standards.

32. The Court has found a violation of Article 6 in a large number of cases in which Russian courts refused to secure attendance of imprisoned applicants wishing to take part in the hearing on their civil claims (see, in addition to the cases cited above, *Dmitriyev v. Russia*, no. 40044/12, § 48-51, 24 October 2013; *Bortkevich v. Russia*, no. 27359/05, §§ 63-69, 2 October 2012; *Karpenko v. Russia*, no. 5605/04, § 89-94, 13 March 2012; *Rozhin v. Russia*, no. 50098/07, §§ 31-34, 6 December 2011; and *Artyomov v. Russia*, no. 14146/02, §§ 204-08, 27 May 2010). Whereas all of those cases concerned the same Convention issue, namely the incarcerated applicant's right to present his case effectively before the courts, some of them presented a slight variation in the underlying factual circumstances. Accordingly, before embarking on an analysis of the present cases, the Court considers it useful to set out the way in which it analyses an alleged violation of the right to a fair trial, as it has emerged in its case-law in respect of this type of case.

(a) Whether the domestic courts weighed the necessity of the applicant's personal presence

33. The first element of the Court's analysis is to determine whether the domestic courts weighed the necessity of the applicant's appearance in court

in relation to the nature of the dispute and whether they adduced convincing reasons for denying the applicant possibility to appear.

34. The Court reiterates at the outset that, by virtue of Article 53 of the Convention, the domestic law may set a higher or more comprehensive standard for the protection of human rights than that afforded by the provisions of the Convention and its Protocols. In establishing a universal right of the parties to civil proceedings to have an oral hearing on their claim, the Russian law endows the litigants with a legitimate expectation that they will be given an opportunity to appear before the judge. As noted in paragraph 22 above, this approach goes beyond the requirements of Article 6 of the Convention, which does not guarantee the right to an oral hearing or the right to appear before a court in person, but rather enshrines a more general principle of fairness of proceedings (see *Gladkiy*, cited above, § 103, with further references). The Court has previously accepted that in civil proceedings concerning claims of a technical nature, the parties' presence was of lesser significance. Where the claim was not based on the applicant's personal experiences, his or her appearance at the hearing was not considered to be indispensable for the proceedings to be recognised as having been "fair" (see the case-law cited in paragraph 24 above). Nevertheless, in a situation where an applicant is incarcerated and cannot freely decide whether or not to attend the hearing, in order for the proceedings to be considered "fair" it is not sufficient that the applicant's absence should coincide with the absence of the procedural adversary, for such coincidence is merely fortuitous given that the absence or presence of the other party is beyond the applicant's control.

35. Thus, to ensure compliance with the requirements of Article 6, the domestic courts must assess whether the nature of the dispute is such as to require the incarcerated litigant's appearance before the bench. The Court has already given indications in its case-law as to the types of disputes that call for the litigant's mandatory appearance before the court, irrespective of whether he or she is represented (see the case-law cited in paragraph 25 above). Given the large variety of types of civil disputes, compiling an exhaustive list of such cases is a daunting task and the domestic courts, which have the advantage of possessing direct knowledge of the situation, are better placed to determine the nature of each claim and the underlying legal interests (see *Lagardère v. France*, no. 18851/07, § 42, 12 April 2012).

36. It is therefore incumbent on the domestic courts, once they have become aware of the fact that one of the litigants is in custody and unable to attend the hearings independent of his or her wishes, to verify, prior to embarking on the examination of the merits, whether the nature of the case is such as to require the incarcerated litigant's personal testimony and whether he or she has expressed a wish to attend. If the domestic courts contemplate dispensing with the litigant's presence, they must provide specific reasons why they believe that the absence of the party from the

hearing will not be prejudicial for the fairness of the proceedings as a whole. It falls to them to examine all the arguments for and against holding hearings in the absence of one of the parties, taking into account, in particular, the Court's case-law in similar cases and the nature of the contentious issues, and to apprise the incarcerated litigant in good time of their decision on the matter and the reasons for it (see the resolution by the Russian Supreme Court in paragraph 15 above). The decision must be communicated to the litigant sufficiently in advance so that he or she may dispose of adequate time for deciding on a further course of action for the defence of his or her rights (see *Gryaznov*, cited above, § 48, and *Khuzhin and Others*, cited above, § 107).

37. It is essentially on the basis of the reasons in the domestic decisions that the Court will determine whether or not the exclusion of an applicant undermined the fair-hearing principle. A lack or deficiency of reasons in the domestic decisions cannot be supplemented *ex post facto* in the proceedings before the Court, for the Court cannot take the place of the national courts that considered the issue of the litigant's appearance before the court (see, *mutatis mutandis*, *Valeriy Kovalenko v. Russia*, no. 41716/08, § 49, 29 May 2012). It is apposite to recall in this connection that the Russian Constitutional Court reminded the courts of general jurisdiction of their duty to take into account "all relevant circumstances, including the legal character of the constitutional rights involved" when deciding whether a convicted prisoner should participate in civil proceedings and to give a "reasoned decision" on this matter (see paragraph 13 above).

38. The analysis that the Court expects to find in domestic decisions must go beyond a reference to deficiencies in the legal framework which rendered the attendance of the incarcerated litigant impossible. It must build on the concrete reasons for and against the litigant's presence, interpreted in the light of the Convention requirements and all relevant factors, such as the nature of the dispute and the civil rights concerned.

(b) Whether the domestic courts considered making procedural arrangements with a view to upholding the fairness of the proceedings

39. The second limb of the Court's analysis concerns the counterbalancing measures that need to be put in place to guarantee that incarcerated litigants can participate in court proceedings effectively.

40. The issue of the exercise of procedural rights by detainees in civil proceedings has been examined on several occasions by the Russian Constitutional Court, which has identified various ways in which their rights can be secured (see paragraphs 12-14 above). The Constitutional Court emphasised the importance of making incarcerated litigants fully aware of their procedural rights and obligations, ensuring a timely service of claim forms, procedural documents and judicial acts and affording them sufficient time to appoint a representative and to prepare their position. It pointed out

that the court hearing a claim may resort to conducting proceedings via a video link or move the hearing to a location closer to the custodial facility.

41. The particular form of procedural arrangements for securing a detainee's effective participation depends on many factors, the most important one being the question whether the claim involves his or her personal experience and, accordingly, whether the court needs to take oral evidence directly from him or her. Concrete practical solutions consistent with the fairness requirement ought to be found by the domestic courts with regard to the local situation, the technical equipment available in the courthouse and in the detention facility where the detainee is being held, the accessibility of legal aid services, and other relevant elements. Having considered such arrangements, the domestic courts must inform the detainee accordingly and in good time, so that he has adequate time and facilities to decide on the course of action for the defence of his rights (see *Shilbergs*, cited above, § 108, and *Khuzhin and Others*, cited above, § 107).

42. If the claim is based largely on the detainee's personal experience, his oral submissions to the court would be "an important part of [his or her] presentation of the case and virtually the only way to ensure adversarial proceedings" (see, most recently, *Margaretić v. Croatia*, no. 16115/13, § 128, 5 June 2014, and *Shilbergs*, cited above, § 111). Only by testifying in person could the detainee substantiate his claims and answer the judges' questions, if any. In these circumstances, obvious solutions would be to conduct the proceedings at the place where the claimant is being detained, or to use a video link (see *Vladimir Vasilyev v. Russia*, no. 28370/05, § 84, 10 January 2012).

43. As regards the use of a video link or videoconferencing equipment, this form of participation in proceedings is aimed, among other things, at reducing the delays incurred in transferring detainees and thus simplifying and accelerating the proceedings (see *Kabwe v. the United Kingdom* (dec.), nos. 29647/08 and 33269/08, 2 February 2010, and *Marcello Viola v. Italy*, no. 45106/04, § 70, ECHR 2006-XI (extracts)). Resorting to such facilities is not, as such, incompatible with the notion of a fair and public hearing, but it must be ensured that the detainee is able to follow the proceedings, to see the persons present and hear what is being said, but also to be seen and heard by the other parties, the judge and witnesses, without technical impediment (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 98, 2 November 2010, and *Marcello Viola*, cited above, §§ 72-74).

44. Organising a court session outside the courtroom is, by contrast, a time-consuming exercise. In addition, holding it in a place such as a detention facility, to which the general public in principle has no access, is attended by the risk of undermining its public character. In such cases, the State is under an obligation to take compensatory measures to ensure that the public and the media are duly informed about the place of the hearing and are granted effective access (see *Starokadomskiy v. Russia (no. 2)*,

no. 27455/06, §§ 55-63, 13 March 2014, and *Riepan v. Austria*, no. 35115/97, § 30, ECHR 2000-XII).

45. The taking of evidence on commission is also consistent with the notion of a fair trial. The authority to hear the detainee may be delegated to a judge or a court at a location closer to the custodial facility. Combined with oversight by the trial judge throughout the proceedings, in order to ensure that the detainee is at all times aware of the arguments by the opposing party and able fully and properly to answer it, the questioning of the detainee outside the courtroom would not be contrary to the principle of a fair trial (compare *Kabwe v. the United Kingdom* (dec.), cited above).

46. In cases where the domestic court determined that it was less important for the detainee to testify in person, his or her right to a fair trial may be guaranteed by way of some form of representation. The Russian Legal Aid Act establishes the criteria for eligibility to legal aid based on the litigant's income and the type of dispute to which he is a party (see paragraph 10 above). The list of dispute types is exhaustive and does not include, for instance, a claim for compensation for degrading conditions of detention. In cases involving this type of claim, the Court has not been satisfied on the basis of the available information that the Russian legal aid system offered applicants sufficient protection of their rights (see *Vladimir Vasilyev*, cited above, § 85; and also, for comparison, *Staroszczyk v. Poland*, no. 59519/00, § 129, 22 March 2007, and *Larin*, cited above, §§ 53-55). If a detainee cannot afford the costs of professional legal representation, he has the option of appointing a relative, friend or acquaintance to represent him in the proceedings (see Article 49 of the Code of Civil Procedure and paragraph 29 above). In this situation the domestic courts must ascertain, firstly, that the detainee has sufficient time to find a person willing to represent him and to instruct that person and, secondly, that the detainee's chances of having a fair hearing are not prejudiced on account of non-professional representation.

47. Lastly, the Court observes that whenever the domestic courts opt for procedural arrangements aiming to compensate for the handicap which a detainee's absence from the courtroom has created, they are expected to verify whether the chosen solution would respect the absent party's right to present his case effectively before the court and would not place him at a substantial disadvantage *vis-à-vis* his opponent. It will then fall to the Court to judge whether the safeguards that were put in place to ensure that the detainee could participate fully in the proceedings were sufficient and whether the proceedings as a whole were fair in terms of Article 6 of the Convention.

(c) Conclusion

48. The Court must first examine the manner in which the domestic courts assessed the question whether the nature of the dispute required the

applicants' personal presence. Secondly, it must determine whether the domestic courts put in place any procedural arrangements aiming at guaranteeing their effective participation in the proceedings.

4. Application of the above principles to the instant cases

49. In the present cases, the applicants' civil claims varied in nature. However, the decisions of the domestic courts disclose no consideration of the issue whether the nature of each dispute was such as to require the applicants' attendance and whether their attendance was essential in order to ensure the overall fairness of the proceedings. Failure to pay due attention to the particular characteristics of each civil claim brought before them led the domestic courts to deny the applicants an opportunity to participate in the hearing, irrespective of the subject matter of the proceedings.

50. The domestic courts refused the applicants' request for appearance, relying on the absence of any legal norm making their presence mandatory. As the Court has noted in paragraph 31 above, invoking a technical ground without addressing the substantive issue whether the nature of the dispute is such as to require the party to appear in person is incompatible with genuine respect for the principle of a fair hearing, for an applicant cannot be expected to bear the burden of the legislator's failure to provide for the special situation of incarcerated parties to civil proceedings. Contrary to the Government's claim that the applicants could have effectively presented their case to the courts because they had been duly informed of all the hearings, merely informing the applicants of the hearing date was insufficient in a situation where the current state of the domestic law in reality prevented them from attending.

51. A number of other possibilities for securing the applicants' participation in the proceedings – which were mentioned in the case-law of the Russian Constitutional Court – was available to the domestic courts. As it happened, the domestic courts did not at all consider those options (compare *Shilbergs*, cited above, § 109). The Court finds it particularly striking that the national courts not only failed to approach each case individually but also disregarded the options that were explicitly listed by the Constitutional Court for securing the applicants' procedural rights in similar circumstances (see paragraphs 12-14 and 40 above).

52. Having regard to its previous case-law and the circumstances of the present cases, the Court finds that (i) by failing to properly assess the nature of the civil claims brought by the applicants with a view to deciding whether their presence was indispensable and by focussing instead on deficiencies in the domestic law, and (ii) by failing to consider appropriate procedural arrangements enabling the applicants to be heard, the domestic courts deprived the applicants of the opportunity to present their cases effectively and failed to meet their obligation to ensure respect for the principle of a fair trial enshrined in Article 6 of the Convention.

53. There has therefore been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicants Mr Makhov, Mr Resin (in two cases), Mr Anikanov, Mr Lebetskiy, Mr Gromovoy, Mr Gordeyev, Mr Martirosyan and Mr Vinokhodov complained that the conditions of their detention in the Russian penal facilities or the conditions of transport between them had amounted to inhuman and degrading treatment prohibited under Article 3 of the Convention. The Court reiterates that in the absence of an effective remedy for that grievance, the complaint about inadequate conditions of detention or transport should have been introduced within six months of the last day of the applicants' detention or transport (see *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013, and *Markov and Belentsov v. Russia* (dec.), nos. 47696/09 and 79806/12, 10 December 2013). However, the periods complained of had ended more than six months before they lodged their complaints with the Court. The date of the final decision rejecting their claims for compensation cannot be relied upon as resetting the time-limit for their complaints. It follows that these complaints are inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

55. The Court has also examined the other complaints submitted by the applicants. However, having regard to all the material in its possession, and in so far as those complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these parts of the applications must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicants claimed various amounts in respect of pecuniary and non-pecuniary damage. The Government considered their claims to be excessive.

58. The Court does not discern any causal link between the violation found under Article 6 of the Convention and the pecuniary damage alleged by some of the applicants; it therefore rejects these claims. On the other hand, it awards 1,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable, to each of the applicants, except Mr Morozov. Mr Morozov claimed EUR 1,000 in respect of non-pecuniary damage and, by virtue of the *non ultra petita* principle, the Court awards him that sum, plus any tax that may be chargeable.

59. The Court holds that when an applicant has suffered an infringement of his right to a fair hearing guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded. The most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested, without unduly upsetting the principles of *res judicata* or legal certainty in civil litigation, in particular where such litigation concerns third parties with their own legitimate interests to be protected (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, §§ 57-58, ECHR 2015, and also *Bortkevich*, § 76, and *Rozhin*, § 40, both cited above, with further references). A finding by the Court of a violation of the Convention or its Protocols is a ground for reopening civil proceedings under Article 392 §§ 2(2) and 4(4) of the Code of Civil Procedure and for reviewing the domestic judgments in the light of the Convention principles established by the Court (see *Davydov v. Russia*, no. 18967/07, §§ 10-15, 30 October 2014).

60. Lastly, the Court points out that the failure to uphold the applicants' right to present their cases effectively before the courts which gave rise to the finding of a violation in this case appears to be linked to a deficiency of the Russian legal system which makes no provision for detainees' participation in civil proceedings (see paragraph 31 above). The Court has already highlighted the widespread nature of the problem in many previous cases that have come before it (see paragraph 32 above). This situation in principle calls for the adoption of general measures by the respondent State, which remains, subject to monitoring by the Committee of Ministers, free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

B. Costs and expenses

61. Mr Morozov claimed EUR 1,500 in legal costs and submitted his lawyer's invoice. Mr Makhov, who had been granted legal aid, stated that his representative had worked eighteen hours on his case at the rate of

EUR 150 per hour, totalling EUR 2,700. Mr Resin claimed approximately EUR 3,000 for the work of his representative in two cases. Mr Lebetskiy sought reimbursement of EUR 10. Mr Gromovoy, who had been granted legal aid, claimed approximately EUR 7,260 in legal costs. Mr Vinokhodov's claim in respect of costs amounted to approximately EUR 1,950. The applicants Mr Yevdokimov and Mr Rezanov, Mr Anikanov, Mr Gordeyev and Mr Martirosyan did not make a claim for costs or expenses.

62. The Government contested the claims as excessive and unsubstantiated.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sums set out in Annex II, plus any tax that may be chargeable to the applicants.

C. Default interest

64. 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. *Decides* to join the applications;

2. *Declares* the complaint concerning the unfairness of the civil proceedings admissible and the remainder inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts listed in Annex II to the applicants who are listed in this Annex, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on such amounts at a rate

equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 16 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President

Annex I

Application number and applicant's name	Date of intro-duction	Name of the court and date of the final decision in the civil proceedings concerned	Periods of detention or transport complained of
27236/05 Denis Viktorovich Yevdokimov and Artem Sergeyevich Rezanov	09/04/2005	Altay Regional Court, 2 February 2005	n/a
44223/05 Aleksandr Yevgenyevich Morozov	14/10/2005	Yaroslavl Regional Court, 12 July 2005	n/a
53304/07 Andrey Anatolyevich Anikanov	11/10/2007	Voronezh Regional Court, 15 November 2007; Moscow Regional Court, 19 January 2010.	6 March 2007 – 7 March 2007
40232/11 Petr Petrovich Makhov	25/05/2011	Murmansk Regional Court, 6 April 2011	1 April 2005 – 27 September 2007
60052/11 Oleg Aleksandrovich Gordeyev	02/09/2011	Chelyabinsk Regional Court, 14 April 2011	1 November 2005 – 18 November 2005
76438/11 Andrey Igorevich Resin	18/11/2011	Khabarovsk Regional Court, 3 August 2011	15 December 2008 - 25 March 2009
14919/12 Yuriy Aleksandrovich Lebetskiy	23/01/2012	Perm Regional Court, 5 December 2011	6 - 18 June 2007, 22 - 30 June 2007, 22 - 25 July 2007, and 29 September - 12 October 2007
19929/12 Dmitriy Aleksandrovich Gromovoy	01/02/2012	Chelyabinsk Regional Court, 15 August 2011	20 January 2011 – 15 April 2011
42389/12 Sergey Valeryevich Martirosyan	21/05/2012	Supreme Court of the Udmurtiya Republic, 16 January 2012	n/a
57043/12 Andrey Igorevich Resin	20/03/2012	Irkutsk Regional Court, 27 April 2012	12 - 15 January 2008, 15 - 18March 2008, 12 - 15 December 2008 and 25 - 29 March 2009
67481/12 Yuriy Mikhaylovich Vinokhodov	17/09/2012	Orel Regional Court, 25 July 2012	n/a

Annex II

Application number and applicant's name	Represented by	Award in respect of non-pecuniary damage	Award in respect of costs and expenses
27236/05 Denis Viktorovich Yevdokimov and Artem Sergeyevich Rezanov	P. Finogenov	EUR 1,500 to each applicant	
44223/05 Aleksandr Yevgenyevich Morozov	C. Meyer	EUR 1,000	EUR 850
53304/07 Andrey Anatolyevich Anikanov		EUR 1,500	
40232/11 Petr Petrovich Makhov	V. Bokareva	EUR 1,500	
60052/11 Oleg Aleksandrovich Gordeyev	E. Aminov	EUR 1,500	
76438/11 and 57043/12 Andrey Igorevich Resin	A. Molostov	EUR 1,500	EUR 850
14919/12 Yuriy Aleksandrovich Lebetskiy		EUR 1,500	EUR 10
19929/12 Dmitriy Aleksandrovich Gromovoy	M. Kuzmina	EUR 1,500	
42389/12 Sergey Valeryevich Martirosyan		EUR 1,500	
67481/12 Yuriy Mikhaylovich Vinokhodov	A. Polozova	EUR 1,500	EUR 850