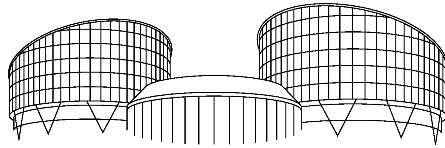

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF JEMEĻJANOVS v. LATVIA

(Application no. 37364/05)

JUDGMENT

STRASBOURG

6 October 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Jemeļjanovs v. Latvia,

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

Angelika Nußberger, *President,*
Ganna Yudkivska,
Erik Møse,
André Potocki,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 30 August 2016,

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

PROCEDURE

1. The case originated in an application (no. 37364/05) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Vasilijs Jemeļjanovs ("the applicant"), on 23 September 2005.

2. The applicant, who had been granted legal aid, was represented by Ms J. Kvjatkovska, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

3. The applicant complained that he had been deprived of his right to legal assistance from 1 September 2005 onwards, and that he had been unrepresented at trial.

4. On 17 January 2012 the Court adjourned the examination of the applicant's complaint concerning the alleged deprivation of his right to legal assistance after 1 September 2005, and the latter complaint was communicated to the Government. The remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Daugavpils.

A. Pre-trial stage

6. On 5 October 2004 at about 5 p.m. the applicant, who was under the influence of alcohol, was involved in a fight outside a grocery store in the presence of several witnesses. He stabbed another individual with a knife, as a result of which the latter died. The same day the police opened a murder investigation into the death.

7. At 9 p.m. on the same day the applicant – who in August 2004 had been released from prison, having served a sentence for an earlier conviction for inflicting physical injuries – was placed under arrest on suspicion of murder. The record of his arrest contained a written statement from him confirming that he did not need a lawyer.

8. On 6, 7 and 13 October 2004 the police questioned the applicant as a suspect. The interview records contained his signatures confirming that he had been informed of his right to instruct a lawyer to attend his interview, and that he did not need one.

During his first interview the applicant denied any involvement in the fight or the murder.

During his second interview he stated that on 5 October 2004, having consumed alcohol, he had been riding a bicycle when O. had suddenly run into him from an alley. They had started arguing and O. had hit the applicant, who had responded with several punches. Afterwards, two other young men had joined in the fight, and the applicant had been kicked to the ground. At some point the applicant had noticed that a woman was restraining O. and not letting him approach the applicant. Another unknown young man, who had not taken part in the fight, had restrained the applicant. The applicant had thought that the young man was going to attack him, and had therefore picked up his knife from the ground and stabbed him.

9. On 4 November 2004 the applicant was formally accused of murder under section 116 of the Criminal Law (*Krimināllikums*) for having stabbed the victim with the intent to kill him "because of a personal conflict".

10. On 5 November 2004 the applicant was provided with a State-appointed lawyer, S., to assist him during the preliminary investigation. On the same day he was questioned as an accused person in the presence of S. He partially admitted his guilt. In essence, he reiterated the statements made in his earlier interviews. He stated that he had used the knife against the victim because he had known that the victim wanted to hit him, although he could not say whether the victim had already hit him at that point or, if not, when the victim was going to attack him.

11. On 30 November 2004 the judge extended the applicant's detention until 5 February 2005. The judge noted that S. had submitted that keeping the applicant in detention was not justified, as he did not present any danger and had no reason to evade justice, since he had a job and a permanent place of residence.

12. On 22 December 2004 the public prosecutor charged the applicant with murder under section 116 of the Criminal Law. S. was present. On the same day the applicant was questioned in the presence of S. and confirmed his earlier testimony of 5 November 2004 (see paragraph 10 above).

13. On 24 December 2004, between 10 a.m. and 1 p.m., the applicant familiarised himself with the case file in the presence of S. He wrote in the relevant record that he had no remarks or requests, and also asked to be provided with a lawyer for his trial.

B. First-instance proceedings

14. On 3 January 2005 the public prosecutor transferred the case to the Daugavpils Court (*Daugavpils tiesa*) for trial.

15. On 10 and 13 January 2005 the applicant complained to the Daugavpils Court that he had not been assisted by a lawyer when he had familiarised himself with the case file.

1. The applicant's complaints regarding his State-appointed lawyer, S.

16. On 18 February 2005 S. was assigned to the applicant's case to assist him in the proceedings before the Daugavpils Court. On the same day S. familiarised himself with the case file.

17. On 23 March 2005 the applicant complained to the Daugavpils Court that S. had convinced him to partially admit his guilt, although he had not wished to do so. Furthermore, S. had not been present when he had familiarised himself with the case file. He did not wish to be assisted by S.

18. On 7 April 2005 a first-instance hearing was held. The court examined the applicant's complaint regarding S., who stated that his client's own interests and those relating to his defence diverged. S. invited the court to uphold the applicant's application for him to be released from his duties. After the court decided to release S. from his duties, the applicant stated that he needed to be assisted by a lawyer. The proceedings were adjourned.

2. Appointment of another State-appointed lawyer, D., and the applicant's complaints regarding D.

19. On 27 May 2005 a senior lawyer of the Daugavpils Bar refused the court's request to provide the applicant with another State-appointed lawyer, stating that S. had carried out his duties diligently, and Article 98 of the Code of Criminal Procedure (*Kriminālprocesa kodekss*) did not give an accused the right to freely choose a lawyer. The applicant had the right to appoint a lawyer of his own choice (and pay for his or her services), and the right to waive his right to legal assistance.

20. On 6 June 2005 the applicant asked the Daugavpils Court to provide him with a State-appointed lawyer.

21. On 9 June 2005 the Latvian Bar Association informed the applicant that, in the event that an accused raised an unjustified challenge in respect of his or her lawyer, he or she had a right to request another lawyer, at his own expense.

22. On 16 June 2005 the applicant was provided with a State-appointed lawyer, D., to assist him in the proceedings before the Daugavpils Court. On the same day D. familiarised himself with the case file.

23. On 17 June 2005 a hearing was held before the Daugavpils Court. The applicant asked the court to ensure the attendance of several witnesses. D. maintained that application. The next hearing was fixed for 1 September 2005.

24. On 20 June 2005 the applicant wrote a letter to D. and asked why he had agreed to represent him, given their "unpleasant" first meeting during which D. had indicated his intention to refuse to act as the applicant's counsel. The applicant also asked D. to guarantee that he would persuade the trial court to order three new measures in order to obtain evidence. According to the applicant, the following measures would prove his innocence in relation to the murder charge: searches of other unspecified witnesses, polygraph testing, and another psychiatric examination. The applicant stated that if D. did not wish to defend him, then he had the opportunity to withdraw from the case, which would provide a satisfying solution for them both. However, if D. acted in the same way as his previous defence lawyer, the applicant would ask the trial court to discharge D. from his duties.

25. On 1 September 2005 the applicant submitted several written applications to the Daugavpils Court. He asked for the criminal case to be remitted to the prosecutor's office in order to rectify the bill of indictment by changing his motive for the alleged offence. The court dismissed the application, as it had not yet started its adjudication or assessment of the evidence. The court further dismissed the applicant's second application to end his pre-trial detention. As regards a third application to examine evidence concerning the scene of the crime and search other unspecified witnesses, the court decided to postpone examination of those requests until the end of its adjudication. In that regard, it noted that all defence witnesses had been summoned to the hearing. The court then dismissed the applicant's application for another forensic medical examination on the grounds that one had already been carried out in November 2004. All the applications were dealt with at a hearing and the applicant was present when the relevant decisions were announced.

26. During the hearing, D. reserved his comments as regards the applicant's application to call other unspecified witnesses and have a new indictment, on the grounds that those were matters to be examined at the end of court's adjudication. He supported the applicant's application for additional psychiatric examination and the attendance of all the defence and

prosecution witnesses summoned to the trial. With regard to the applicant's other application, D. stated that it was at the court's discretion.

27. In his subsequent written application ("a refusal" (*отвод*)), the applicant relied on Article 99 of the Code of Criminal Procedure and asked the court to release D. from his duties. In that application, the applicant referred to his letter to D. dated 20 June 2005 (see paragraph 24 above), to which the applicant had expected a favourable response, but to which D. had not responded. The written application stated that the applicant was refusing the services of D. on the grounds that all applications made to the court on 1 September 2005 had been drafted by the applicant, and D. had not shown any interest in asking the court to order the examination of witness statements about the scene of the crime, new psychiatric expert evidence, or the correction of the motive in the bill of indictment. D. had merely supported the above applications.

At the end of the written application the applicant asked the Daugavpils Court to provide him with another State-appointed lawyer who would carry out his function in compliance with Article 97 of the Code of Criminal Procedure.

28. In reply to the applicant's application, D. presented the applicant's letter of 20 June 2005 to the court and invited it to establish whether the applicant needed a lawyer at all. In reply to a question put by the court, the applicant could not name a lawyer to be provided for him.

29. On the same day the Daugavpils Court decided to uphold the applicant's application to release D. from his duties and rejected his application for appointment of another legal aid lawyer. It noted that the applicant had declined the services of D. because the latter could not guarantee that he would be acquitted, and the applicant had been of the opinion that D. had not adequately defended him. Daugavpils Court dismissed the applicant's application on the grounds that he had twice been provided with a lawyer and had twice refused their services. Under Article 96 of the Code of Criminal Procedure, a lawyer was appointed by a court and not chosen by an accused himself. In accordance with Article 99, an accused had the right to waive his or her right to legal assistance, but no right to request replacement of a lawyer. According to the Daugavpils Court, the applicant's refusal of D.'s services had been unjustified, and meant that he did not wish to have a legal aid lawyer at all. The court stated that the applicant was seeking to delay the proceedings.

3. *The applicant's defence before the first-instance court*

30. From 1 September 2005 onwards the applicant did not have legal assistance in the first-instance proceedings.

31. During the hearing of 1 September 2005, when invited by the court to put questions to witnesses, he refused to do so, stating each time that he would either ask questions when represented by a lawyer or not ask

questions at all. At the applicant's request, the Daugavpils Court adjourned the hearing to summon other absent witnesses.

32. During the hearing of 24 October 2005 the applicant, referring to section 71 of the Criminal Procedure Law (*Kriminālprocesa likums*) (see paragraph 53 below), asked the court to ensure that his defence rights were respected. His earlier applications to replace the two State-appointed lawyers could not be construed as a waiver of his right to legal assistance; he had refused the assistance because of a "disagreement" and a "failure to provide legal assistance". The applicant asked the court to provide him with a list of lawyers and a means of communicating with them, or, in the alternative, to ensure that he was assisted by one of the two lawyers he named. The court explained that the applicant's application for a lawyer had been decided on 1 September 2005. It adjourned the hearing in order to summon absent witnesses.

33. During the next hearing on 17 November 2005 the applicant alleged that at least thirty people had been present when the alleged crime had taken place, but only eight of them had been called as witnesses. He therefore asked the court to identify the other witnesses. In reply to a question put by the court, the applicant confessed that he had stabbed the victim, but stated that he had not intended to kill him. At the applicant's request, the Daugavpils Court adjourned the hearing, giving him time to give evidence and to submit a list of defence witnesses.

34. On 21 November 2005 Judge Z. of the Daugavpils Court sent the applicant a list of lawyers practising in Daugavpils whom the applicant could contact in order to obtain a legal consultation. He noted that the case file contained no evidence pertaining to the applicant's status as a person of low income, and that the applicant would be provided with a State-appointed lawyer at appeal stage if the case were to reach it.

35. At a hearing on 12 January 2006 the Daugavpils Court examined several applications lodged by the applicant. As regards another application for appointment of a lawyer, the court held that the matter had previously been decided and could not be re-examined. During the same hearing the Daugavpils Court verified that the applicant had duly received the document setting out the charges against him. The court upheld the applicant's application for an adjournment, and adjourned the hearing to give him time to prepare for the arguments in court.

36. On 31 January 2006 the prosecutor amended the charges against the applicant by changing the motive of the crime to, "acting with no reason, being guided by hooligan tendencies".

37. On 6 February 2006 the Daugavpils Court found the applicant guilty of murder. The court noted that the applicant had partly admitted his guilt during the preliminary investigation in saying that he had stabbed the victim, but claiming that he had not intended to murder him. The court went on to refer to the evidence of seven witnesses who had been in the

immediate vicinity of the incident. The court did not have any doubts as regards the applicant's intent. He had stabbed the victim in the chest and had himself testified that he had aimed to stab the victim in the left part of his chest. All the witnesses, except one, had confirmed that the applicant had stabbed the victim after the fight had ended. The applicant had had no need to defend himself, because the victim had been unarmed and had not posed any threat to him. On the contrary, the victim had not taken part in the fight at all, but had wanted to stop it. The court dismissed as unreliable the evidence of an eyewitness who had been transported to a hearing and detained with the applicant.

38. In addition, the court relied on documentary evidence, such as the conclusions of the forensic psychiatric examination. The applicant was sentenced to twelve years' imprisonment.

39. As regards the applicant's right to legal aid assistance, the court observed that he had twice refused the services of State-appointed lawyers. The Code of Criminal Procedure, as in force on 1 September 2005, did not provide for the right of an accused to decline the services of a lawyer. The court further dismissed the applicant's allegation that the State-appointed lawyers had not provided him with adequate legal assistance. At that point, the court had not yet started to hear the evidence. In addition, the applicant had wanted the lawyers to guarantee that he would be acquitted, and had referred to their performance in cases where they had assisted other individuals. The court also noted that witnesses had twice been called to testify, once following an application by the applicant, who had then refused to put any questions to them, arguing that he had not been granted a lawyer.

C. Appeal proceedings

40. On 26 February 2006 the applicant lodged an appeal, which he supplemented on 26 March 2006. He submitted that his defence rights had been violated and asked the Latgale Regional Court (*Latgales apgabaltiesa*) to call all the witnesses, without providing any reason for that application. He stated that he needed a lawyer at an appeal hearing, and asked for an opportunity to meet him or her prior to the appeal hearing to agree on a defence strategy.

41. On 11 May 2006 the applicant was provided with a State-appointed lawyer, M.

42. At a hearing on 17 May 2006 the applicant was assisted by M. He and M. asked the court to adjourn the hearing, stating that more time was needed in order to prepare a defence. The hearing was adjourned until 8 November 2006.

43. On 8 November 2006 the applicant was represented by a State-appointed lawyer, V. At a hearing held on the same day the court read out witness statements and the applicant did not raise any objections to the

statements in substance. When invited to ask questions, the applicant asked the court to call all the witnesses who had testified before the first-instance court again, in addition to some other witnesses. His application was on the grounds that he had twice refused legal assistance as a result of the different opinions of his lawyers about the conduct of his defence. The court dismissed that application, because the applicant had not made it in his appeal.

44. On 8 November 2006 the Regional Court dismissed the applicant's appeal and upheld the first-instance judgment. The appellate court noted that there were no discrepancies in the witness testimonies and they were concordant with the applicant's testimonies. It also noted that it was the applicant who had started the fight and demonstrated a readiness to use a knife against an unarmed victim, therefore no question of self-defence arose.

45. As to the fairness of the proceedings, the Regional Court found that the first-instance court had afforded the applicant an opportunity to choose a lawyer and exercise his defence rights. Referring to the reasoning of the first-instance court, the Regional Court agreed that his refusal to accept the services of the two lawyers had been unjustified. Having examined the content of the applicant's submissions, applications and complaints in the criminal proceedings, it did not find that any of the conditions of section 83 of the Criminal Procedure Law had been fulfilled. The appellate court concluded that the applicant had been able to defend himself. The first-instance court had called the witnesses twice, however the applicant had refused to put any questions to them, citing unfounded excuses.

D. Appeal on points of law

46. On 13 December 2006 the applicant lodged an appeal on points of law against the aforementioned decision with the Criminal Cases Division of the Senate of the Supreme Court (*Augstākās tiesas Senāta Krimināllietu departaments*). He made a complaint regarding the quality of the legal services provided by the State-appointed lawyers and the decision of the first-instance court to deprive him of legal assistance.

47. In addition, the applicant alleged that his guilt could have been "mitigated" if he had been given a psychiatric assessment and polygraph testing, and if additional defence witnesses had been questioned. He also complained in a general manner that neither of the lower courts had granted him permission to put questions to the witnesses.

48. On 16 January 2007 the Senate of the Supreme Court refused to consider the applicant's appeal.

II. RELEVANT DOMESTIC LAW

A. Criminal Law

49. Under section 116, murder was punishable by imprisonment for a term of five to fifteen years, with or without subsequent police control for up to three years.

B. Code of Criminal Procedure (in force until 30 September 2005)

50. Under Article 95, an accused had the right to ask for defence counsel to assist him or her during court proceedings. Article 96 provided that defence counsel had the right to participate in proceedings from the moment a person was declared a suspect. If defence counsel was unable to participate in the proceedings, an investigator, prosecutor or court had the right to recommend that the suspect, accused or person on trial appointed another defence counsel, or to provide him or her with a defence counsel. In accordance with Article 97, defence counsel had an obligation to use all legal means available to identify exculpatory or mitigating circumstances. In addition, he or she could not withdraw from the duties which he or she had assumed.

51. Article 98 set out circumstances where defendants had to be legally represented, and covered offences committed by minors and persons who were mute, deaf, blind or displayed signs of mental disorder or disability and were therefore incapable of effectively defending themselves, as well as those involving persons who did not understand the language of the proceedings.

52. Under Article 99, a suspect, accused or person on trial had the right to waive the right to the services of defence counsel on his or her own initiative. The waiver was not binding in the event that minors or persons (suspects, accused or persons on trial) who displayed signs of mental disorder or disability and were therefore incapable of effectively defending themselves waived that right.

C. Criminal Procedure Law (in force from 1 October 2005)

53. Under section 71 an accused has the right to instruct (*uzaicināt*) defence counsel or ask that defence counsel's participation in a trial be ensured (*lūgt nodrošināt aizstāvja piedalīšanos tiesas sēdē*). An accused also has the right to ask a court to replace defence counsel if there are circumstances precluding his or her participation in the trial. In accordance with section 87, defence counsel may not participate if he or she has a personal or professional conflict of interest.

54. Under section 80, defence counsel is appointed by an accused. The competent investigating authority may not appoint or invite a particular lawyer to assist the accused. It may, however, provide him or her with the information to instruct defence counsel themselves. In cases where participation of defence counsel is mandatory but the accused has not appointed one, the competent investigating authority shall inform an institution responsible for providing legal assistance that it must secure defence counsel.

55. Section 83 sets out categories of defendants who must be legally represented in criminal proceedings: minors; persons without capacity and persons of limited capacity; persons who display signs of mental disorder or disability and are therefore incapable of effectively defending themselves; and persons who are unable to defend themselves owing to illiteracy or low-level literacy. Such mandatory representation also covers the application of medical treatment measures, the rehabilitation of deceased persons, and plea bargaining.

56. Section 88 provides that a person may refuse the services of defence counsel. Such a waiver shall be recorded in the formal report of the proceedings. The person shall sign it, confirming that the waiver is voluntary. The waiver is not binding in the case of a person falling within the categories listed in section 83.

57. Section 549 provides that a person wishing to institute appellate proceedings in criminal proceedings shall submit a written appeal against a non-final judgment or decision of a first-instance court, with the aim of repealing the contested judgment or decision in full or in part on either the facts or on points of law.

58. An appeal should be submitted within ten days of the full judgment of the first-instance court becoming accessible (section 550(1)), and the appellant may ask to extend the deadline for submitting an appeal (section 550(2)). Among other things, the appeal shall indicate the names of the persons the appellate court is being asked to question (section 551(3)). Within ten days of the expiry of the time-limit for submitting an appeal, the appellant may supplement the appeal, without changing the essence of the initial appeal (section 555(3)).

THE LAW

I. OBJECTION UNDER ARTICLE 34 OF THE CONVENTION AND RULE 47 OF THE RULES OF COURT

59. The Government submitted that the applicant had not set out his complaints on a duly completed application form, and had therefore failed to comply with the requirements of Article 34 of the Convention and Rule 47 of the Rules of Court.

60. The Court notes that the applicant did submit a completed application form. It therefore concludes that there is an application in the instant case for the purposes of Article 34 of the Convention. It follows that the Government's objection in this regard should be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

61. The applicant complained under Article 6 § 3 (c) of the Convention that he had been deprived of his right to legal assistance from 1 September 2005 onwards, and that he had been unrepresented at trial.

62. The relevant part of Article 6 of the Convention reads:

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

A. Admissibility

63. The Government in essence argued that the applicant wished to delay his criminal proceedings, and that therefore his actions had amounted to an abuse of rights within the meaning of Article 17 of the Convention.

64. The applicant did not comment on this argument.

65. The Court dismisses the Government's argument that the applicant abused the rights set forth in the Convention within the meaning of Article 17, which is applicable only on an exceptional basis and in extreme cases (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 114, 15 October 2015, and *Paksas v. Lithuania* [GC], no. 34932/04, § 87, ECHR 2011 (extracts)).

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

B. Merits

1. The parties' submissions

(a) The applicant

67. The applicant argued that his State-appointed lawyers had failed to defend him effectively, and had been just as passive as the legal aid lawyer in the case of *Gabrielyan v. Armenia* (no. 8088/05, 10 April 2012). In particular, S. and D. had not challenged the legal classification of the offence and had not taken any steps to prove that he had not intended to kill the victim, even though the witness statements had been inconsistent. They had not lodged any applications and had merely supported the applications which he had been compelled to prepare himself without any legal assistance. D. had refused to ask for additional psychiatric examination and the attendance of several witnesses, and had refrained from making any comment on some of the applicant's applications, or had left them to the court's discretion. That had been at an important stage of the proceedings, as it had been possible to ask the court to examine additional evidence and take further investigative measures.

68. The applicant had not refused D.'s services because the latter had not been able to guarantee that he would be acquitted. He had wanted D. to prove that he had not intended to kill. That had been a "reasonable defence strategy", given the circumstances of the case. The fact that D. had not lodged any applications or challenged the element of intent, and had failed to notice that the motive for the crime had been missing from the indictment, had been the main reason why the applicant had refused his services.

69. In their rulings, the domestic courts had failed to address the quality of the legal assistance provided by the State-appointed lawyers. Furthermore, the applicant had continually asked for legal assistance.

(b) The Government

70. The Government submitted that the domestic authorities had provided the applicant with the opportunity to defend himself with legal assistance. He had twice been provided with a State-appointed lawyer. On 5 November 2004 he had been provided with a State-appointed lawyer, S., who had then attended his questioning and detention hearing. Although the applicant had refused the services of S., he had been provided with another State-appointed lawyer, D., who had actively participated in the trial. Unlike

in the case of *Gabrielyan* (cited above, § 67), the State-appointed lawyers had not shown absolute passivity. D. had familiarised himself with the case file, and had defended the applicant at two hearings and supported his applications. The applicant, however, had also refused his services.

71. The Government submitted that the applicant had waived his right under Article 6 § 3 (c) of the Convention. They contended that records of the applicant's arrest and questioning attested to the fact that he had refused the assistance of a lawyer.

72. The fact that the lawyers had refused to support some of the applicant's applications to the domestic courts or guarantee that he would be acquitted did not mean that they had provided him with poor quality services. In the absence of any indications of negligence or arbitrariness on the lawyers' part in relation to discharging their duties, the State had complied with its obligations to provide the applicant with effective legal aid (see *Kulikowski v. Poland*, no. 18353/03, § 68, 19 May 2009).

73. The Government contended that the applicant had tried to delay the proceedings. As long as he had been confident that the case would not be examined in the absence of a lawyer, he had continued to decline the services of State-appointed lawyers, exercising his right under Article 99 of the Code of Criminal Procedure. However, when the trial had continued, he had refused to exercise his rights, referring to the absence of a lawyer. Although the Daugavpils Court had provided him with contact details to obtain legal assistance, the applicant had not contacted any lawyer.

74. Furthermore, unlike in the case of *Nechto v. Russia* (no. 24893/05, § 111, 24 January 2012), the domestic courts had given meaningful rulings on the issue of legal assistance and the applicant's allegations as regards its quality, particularly the Daugavpils Court in its decision of 1 September 2005 and judgment of 6 February 2006, and the Regional Court in its decision of 8 November 2006.

2. The Court's assessment

75. The right set out in Article 6 § 3 (c) of the Convention is one element, among others, of the concept of a fair trial in criminal proceedings contained in Article 6 § 1 (see *Dvorski v. Croatia* [GC], no. 25703/11, § 76, 20 October 2015). Although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Poitrimol v. France*, 23 November 1993, § 34, Series A no. 277-A, and *Demebukov v. Bulgaria*, no. 68020/01, § 50, 28 February 2008).

76. The right of those charged with criminal offences to free legal assistance is subject to two conditions: the persons concerned must lack sufficient means to pay for legal assistance, and the interests of justice must require that they be granted such assistance (see, among other authorities, *Zdravko Stanev v. Bulgaria*, no. 32238/04, § 36, 6 November 2012).

77. Nevertheless, the guarantees enshrined in Article 6 § 3 of the Convention must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of the isolated consideration of one particular aspect or one particular incident (see *Pishchalnikov v. Russia*, no. 7025/04, § 64, 24 September 2009).

78. In essence, the present case concerns the restrictions on the applicant's right to effective legal assistance before the trial court. In the light of the general principles stated above, the Court shall examine whether, considering the proceedings as a whole, the applicant's defence rights were restricted to such an extent as to undermine the overall fairness of the criminal proceedings.

(a) Proceedings before the first-instance court

(i) Quality of the legal aid assistance

79. The Court observes that the applicant was first represented by S. and later by D. before the first-instance court. Both representatives were legal aid lawyers. At the applicant's request, the Daugavpils Court, acting as a first-instance court, released both lawyers from their responsibilities on the grounds that the applicant had a different view from them on the conduct of his defence (see paragraphs 18 and 26 above). According to the applicant, the reason for refusing their services was the poor quality of their legal assistance, which the domestic courts had failed to address (see paragraphs 67-69 above).

80. On the quality of legal assistance, the Court reiterates that it is for the Contracting States to choose the means of ensuring that Article 6 § 3 (c) guarantees are secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial. The competent national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see *Hermi v. Italy* [GC], no. 18114/02, § 96, ECHR 2006-XII).

81. The Court observes that, before it dismissed as unfounded the applicant's allegations about the quality of D.'s services, the first-instance court duly assessed the applicant's complaint (see paragraphs 29 and 39 above). Those allegations were also examined by the appellate court (see paragraph 45 above) and the Court finds no reason to disagree with the domestic courts' assessment.

82. Noting D.'s conduct in the proceedings (see paragraph 26 above), the nature of his applications, and the fact that the adjudication of the case was at an early stage, it cannot be concluded that his activities could be characterised as passive or manifestly negligent to the extent of denying the applicant the right to defend himself through legal assistance (compare with

the case of *Gabrielyan,* cited above, in which the somewhat passive behaviour of the defence did not amount to a manifest failure to provide legal assistance, and contrast with the case of *Sannino v. Italy*, no. 30961/03, § 50, ECHR 2006-VI, in which the Court found a violation on the grounds that replacement lawyers had no knowledge of the case).

(ii) Validity of the applicant's waiver

83. The applicant further argued in substance that by dismissing D., his second legal aid lawyer, he had not intended to waive his right to a lawyer.

84. In this connection, the Court reiterates that a waiver must be established unequivocally and must not run counter to any important public interest (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 89, 2 November 2010). Before an accused can be said to have, through his conduct, waived implicitly an important right under Article 6 of the Convention, it must be shown that he could reasonably have foreseen the consequences of his conduct in this regard (see *Idalov v. Russia* [GC], no. 5826/03, § 172, 22 May 2012).

85. The Court observes that, before the applicant asked the first-instance court to dismiss D., the domestic authorities had made him aware that the relevant legislation did not provide for an accused's right to freely choose a legal aid lawyer. The authorities also stated that, in the event of an unjustified refusal of the services of a legal aid lawyer, the applicant had a right to hire a lawyer of his own choosing and at his own expense, or defend himself without a lawyer (see paragraphs 19 and 21 above). In such circumstances, the Court considers that the applicant should have foreseen the high probability that the Daugavpils Court might thereafter dismiss his request for replacement of a legal aid lawyer.

86. The Court also observes that, as is apparent from the case file, the applicant's dismissal of his legal aid lawyer was based on a legal provision which explicitly served as grounds for waiving a right to legal assistance (see paragraph 52 above). Furthermore, on the date the adjudication of his criminal case started, the domestic legislation clearly set out an exhaustive list of circumstances where legal representation was mandatory (see paragraph 55 above). There is nothing in the case file to suggest that the applicant fell within any of the categories requiring legal representation, that he was unaware of the above legal provision, or that he lacked sufficient means to pay for legal assistance (see paragraph 34 above). In these circumstances, the Court considers that it would not have been unreasonable to expect the applicant to foresee that a repeated application to dismiss a legal aid lawyer – deemed by the court to be unfounded – might lead to his having to hire a lawyer of his own choosing at his own expense, or defend himself.

87. In the light of the above, particularly the fact that the applicant was informed about the applicable legal provision, the Court considers that, by

lodging another unfounded application to release his legal aid lawyer from his duties, the applicant *de facto* waived his right to defend his case with the benefit of legal aid.

(iii) Conduct of the applicant's own defence

88. Having interpreted the applicant's dismissal of D. as an express waiver of his right to legal assistance, the first-instance court dismissed his application for appointment of another legal aid lawyer. Therefore, from 1 September 2005 onwards the applicant defended himself in person in the proceedings.

89. The Court notes that the interests of justice in principle call for legal representation both before and during a hearing on all questions of guilt or innocence and where a deprivation of liberty is at stake (see *Benham v. the United Kingdom*, 10 June 1996, § 61, *Reports of Judgments and Decisions* 1996-III). Nevertheless, the interests of justice are to be judged with reference to the facts of a case as a whole, having regard, *inter alia*, to the seriousness of the offence, the severity of the possible sentence, the complexity of the case, and the personal situation of an applicant (see *Quaranta v. Switzerland*, 24 May 1991, §§ 32-36, Series A no. 205; see also *Zdravko Stanev*, cited above, § 38).

90. In the present case the applicant faced twelve years' imprisonment. Nevertheless, the legal issues were not of particular complexity – the applicant had consistently stated facts which, in substance, did not deviate from those given by the witnesses (see, in particular, paragraphs 8, 10 and 33 above). No other questions of law which could only be settled by a legal professional were raised (on the contrary, see the case of *Artico v. Italy*, no. 6694/74, 13 May 1980, § 34).

91. The Court further observes that the first-instance court provided sufficient safeguards allowing the applicant to conduct his own defence. The applicant was on several occasions given the opportunity to call and examine witnesses against him (see paragraphs 31 and 32 above), and to call witnesses in his defence (see paragraph 33 above). Even though the applicant did not make use of some of his defence rights, especially in relation to asking witnesses questions, the case-file shows that he had explicitly waived these rights (see paragraph 31 above).

92. Furthermore, the Daugavpils Court adjourned court hearings during its adjudication, allowing the applicant time to make applications, give statements at court (see paragraph 33 above) and prepare for court arguments (see paragraph 35 above). With regard to the applicant's motives, the charge in question was clarified (see paragraph 36 above).

93. In the light of the above, the Court considers that the applicant was provided with an effective right to defend himself in person before the trial court.

(b) Proceedings before the appellate courts

94. The absence of legal assistance can be cured in appellate proceedings, provided that the applicant in question could have benefitted from legal assistance and there are no limits on the scope of the review which may be carried out by the appellate court (see *Quaranta*, cited above, § 37).

95. The Court observes that the applicant benefitted from free legal assistance of two different court-appointed lawyers at the appeal stage (see paragraphs 41-43, above), and he did not raise any complaints with a proper basis concerning the quality of the defence in the appellate court, either before the domestic courts or this Court.

96. As to the competence of the Latgale Regional Court, which acted as an appellate court in the applicant's criminal case, the Court observes that it had no limitations on its scope of review, and the applicant could have obtained re-examination of the evidence or, for example, cross-examination of the witnesses who had testified against him during the trial (see paragraph 57 above), provided that he had made such an application in his appeal.

97. On the question of the applicant's right to prepare his appeal with assistance of a lawyer, the Court notes that the applicant submitted his appeal against the first-instance judgment before his legal aid lawyer was assigned (see paragraph 40 above). Nevertheless, the applicant does not allege that there were any fair trial guarantees which the appellate proceedings failed to provide. The Riga Regional Court gave him time, allowing him to prepare for the hearing (see paragraph 42 above), and provided him with an opportunity to exercise his procedural rights (see paragraph 43 above).

98. With regard to the appellate court's refusal to grant some of the applicant's applications concerning summoning all the witnesses to attend court again (ibid.), the Court reiterates that Article 6 does not require the attendance and examination of every witness: a defendant must support his request by explaining why it is important for the witnesses concerned to be heard, and their evidence must be necessary for the establishment of the truth (see *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). The applicant did not show what contribution the presence of all the witnesses at the appellate court could have made, or indicate what questions the defence would ask the witnesses. This was especially important in these particular circumstances because, as evidenced by the domestic court's findings, there were no discrepancies in the testimonies of the witnesses (see paragraph 44 above).

99. With regard to legal assistance with filing an appeal on points of law, the Court notes that there is no information that the applicant ever requested legal aid assistance for that purpose.

(c) Conclusion

100. The Court finds that, in the light of the proceedings as a whole, the applicant's right under Article 6 §§ 1 and 3 (c) of the Convention to defend himself in person or through legal assistance was not restricted in a manner capable of undermining the overall fairness of the criminal proceedings.

101. Accordingly, there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Dismisses* the Government's objection under Article 34 of the Convention and Rule 47 of the Rules of Court;

2. Declares the application admissible;

3. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention;

Done in English, and notified in writing on 6 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President