

## CASE SUMMARY

<b>Case Title:</b>	<i>Pishchalnikov v. Russia</i>
<b>Court:</b>	ECHR
<b>Date of decision:</b>	September 24, 2009
<b>Articles:</b>	Violation of art 6 (fair trial)
<b>Key finding:</b>	Lack of legal assistance to the applicant at the initial stages of police questioning can irretrievably affected his defense rights
<b>Keywords:</b>	Access to Lawyer, Fair trial

### Facts

In December 1998 the applicant was arrested on suspicion of aggravated robbery. He was interrogated - both on the day of his arrest and immediately on the following day - in the absence of a lawyer, although he had clearly indicated a defence counsel he wanted to represent him. During these interrogations the applicant confessed to having taken part in the activities of a criminal group which included a murder, kidnapping, hijacking and unlawful possession of weapons. During the subsequent interrogations the applicant refused legal assistance; he was advised by a legal aid lawyer on a few occasions after that. The investigation was completed in January 2000, yet the first hearing was only held at the end of May 2001. The applicant was convicted in January 2002 of several crimes, including aggravated murder, torture, kidnapping, theft and robbery. Relying on Article 6, the applicant complained that: a) he had not been legally represented at crucial stages in the proceedings; b) the lawyer provided to him had not assisted him effectively; c) the proceedings against him had lasted for too long.

### Decision

The Court first noted that, as soon as arrested, the applicant had asked sufficiently clearly for a specific lawyer to represent him. [at 73] The authorities had not contacted that lawyer neither had they offered free legal assistance to the applicant. Instead they had interrogated him intensely in the first few days after his arrest, in the absence of a lawyer, in an effort to generate the evidence aiding the prosecution's case.[at 74] Subsequently, the confessions he had made had been decisive for his conviction. [at 90]

In addition, the Court was not convinced that the applicant had fully realized the consequences of waiving his right to be legally represented. While the evidence collected suggested that he had systematically refused counsel, it had been unexplainable that during purely formal procedural investigative steps the applicant had always been assisted by legal aid counsel, while he had usually refused legal assistance when he had to answer the investigators' questions. [at 82] Furthermore, after the applicant had been assisted by legal aid counsel on a mandatory basis and had been interrogated in counsel's presence, he had denied his confession statements made to the investigators during the first two days after his arrest. [at 88]

Consequently, the Court found that the lack of legal assistance to the applicant at the initial stages of police questioning had affected irreversibly his defense rights and undermined the possibility of him receiving a fair trial. There had therefore been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1.[ at 91]

**Remedies**

EUR 5,500 (five thousand five hundred euros) of non-pecuniary damage

**Link to Case**

<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=32902332&skin=hudoc-en&action=request>

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