



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

FIRST SECTION

CASE OF KRIVOSHAPKIN v. RUSSIA

(Application no. 42224/02)

JUDGMENT

STRASBOURG

27 January 2011

FINAL

27/04/2011

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

In the case of Krivoshapkin v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 42224/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Yevgeniy Viktorovich Krivoshapkin (“the applicant”), on 24 October 2002.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had not had a trial by an impartial tribunal because his trial had been held in the absence of a prosecutor and that he could not examine witnesses in open court.

4. On 19 June 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Volgograd.

6. On 21 October 1999 he was arrested on suspicion of having committed several robberies.

7. On 10 November 1999 the case against him and three other accused was submitted for trial to the Svetloyarskiy District Court of Volgograd.

8. On 13 March 2000 the District Court convicted the applicant of theft and several counts of aggravated robbery. On 15 August 2000 the Volgograd Regional Court quashed his conviction on appeal and remitted the case for a fresh examination.

9. A new conviction was handed down on 23 March 2001. It was upheld on appeal on 9 October 2001 but was set aside on 7 December 2001 by the Presidium of the Volgograd Regional Court by way of supervisory review proceedings. The case was then sent for a new trial to the Krasnoarmeyskiy District Court of the Volgograd Region.

10. On 21 May 2002 the District Court, composed of judge S., as president, and two lay assessors, held the first hearing. The applicant and two of his co-defendants appeared before the court. At the beginning of the hearing, it was found that all victims and certain witnesses had failed to appear. Messrs. P. and R., victims in the case, did not appear because they lived far from Volgograd. The summons which had been sent to Mr M.Kh., a victim, had not been delivered as he had moved house. Mr M.M., also a victim in the case, was on a business trip and could not attend. Mr V., the fifth victim, and the witnesses defaulted for various reasons. The prosecutor did not appear either. Though all defendants protested against the continuation of the hearing in the absence of the prosecutor, the victims and the witnesses, the court decided to proceed with the trial. The presiding judge read out the bill of indictment and questioned the defendants who all protested their innocence.

11. On the following day, 22 May 2002, the fifth victim and several witnesses appeared in court. The prosecutor was not present. The presiding judge again questioned the defendants, examined the victim and witnesses and studied documents in the file. The applicant asked the court to summon and examine attesting witnesses who had been present when the victims, in particular Messrs. M.Kh. and M.M., had identified him on a photograph. The court refused. It then decided to read out the written depositions to the investigative authorities by defaulting witnesses and by Messrs. R., M.Kh., M.M. and P. The last three were direct eyewitnesses of the applicant's actions. The defendants and counsel unsuccessfully objected to doing so and insisted that all the victims and witnesses should be examined in open court. After the written depositions had been read out, the applicant expressed doubts as to the credibility of some of them.

12. On 23 May 2002 the trial court continued reading out of the depositions by the defaulting witnesses and then proceeded to hear the final pleadings for the defence. The defendants and counsel objected to the concluding of the judicial inquiry but their objection was dismissed.

13. By a judgment of the same date, the District Court convicted the applicant of theft and several counts of aggravated robbery and sentenced

him to nine years' imprisonment in a high-security colony. The judgment was based to a significant extent on the written depositions by victims and the report on the identification of the applicant from a photograph by Messrs. M.Kh. and M.M. The court found that the statements made by the four defaulted victims during the pre-trial investigation "confirmed the guilt of all the defendants". As to the testimonies by the fifth victim and by the appeared witnesses, they concerned circumstances unrelated to the authorship of the incriminated offences, the defendants' alibi and their alleged ill-treatment by the police.

14. The applicant lodged an appeal. He submitted in particular that the trial court in the prosecutor's absence had assumed the prosecutorial function. He also complained that the court had not examined the victims and witnesses whose testimonies had been of significant importance for the determination of his case.

15. On 23 July 2002 the Volgograd Regional Court held an open hearing. The prosecutor did not participate. The Regional Court dismissed the applicant's appeal and upheld his conviction and sentence in their entirety. It endorsed in a summary fashion the findings of the District Court and made no comment in respect of the applicant's complaints about the prosecutor's absence from the trial and the alleged failure of the trial court to examine the key witnesses.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Law on the participation of the prosecutor in a trial

1. RSFSR Code of Criminal Procedure of 1960 in force until 1 July 2002

16. During the preparation of a case for an examination a judge had to decide whether a state prosecutor should participate in the trial. If the judge found that the prosecutor's participation was necessary, his decision was binding on the prosecutor. If the latter informed the court, when submitting the case for trial, of his wish to sustain the charges in the court, the judge could not hold otherwise (Article 228).

17. If the prosecutor failed to appear, the court, after having heard participants present at the hearing, decided whether it was possible to examine the case in his absence or whether the hearing should be adjourned (Articles 251 and 277).

18. At the trial, the prosecutor accused a defendant on behalf of the State, participated in the examination of evidence and gave conclusions and submissions, in particular in respect of law and punishment to be applied to

the defendant. If the prosecutor was convinced that materials of the judicial investigation no longer supported charges levelled against the defendant, he had to drop the charges (Article 248).

2. Code of Criminal Procedure of 2001 in force since 1 July 2002

19. The state prosecutor's participation is mandatory in all trials in public prosecution cases (Article 246).

3. Case-law of the Constitutional Court of the Russian Federation

20. In its decision of 20 April 1999 the Constitutional Court held that a criminal trial was based on the principles of adversarial proceedings and equality of the parties, which meant first of all strict separation of the judicial function and the prosecution function which were to be carried out by different actors. The adversarial nature of criminal trials implied that the institution of criminal prosecution, the formulation of a charge and its sustaining before the court, were insured by competent bodies and officials, as well as victims. Imposing on the court the obligation to substitute, in one or another form, for those bodies and persons' prosecution activity, was incompatible with principle of the separation of powers and with the role of the court as an administrator of justice.

B. Law on the examination of witnesses at trial

1. RSFSR Code of Criminal Procedure of 1960 in force until 1 July 2002

21. Reading out of earlier statements made by a victim, or a witness, was permitted if they did not appear before the court owing to reasons that made their attendance impossible (Articles 286 and 287).

2. Code of Criminal Procedure of 2001 in force since 1 July 2002

22. Reading out of earlier statements made by a victim, or a witness, is permitted if the parties give their consent to it and if (1) there are substantial discrepancies between the earlier statement and the later statement before the court or (2) the victim or the witness has not appeared before the court (Article 281 § 1).

23. The court may, without seeking the consent of the parties, read out earlier statements by the defaulted victim, or the witness, in case of (1) the death, (2) the serious illness, (3) the refusal to appear by the victim or the witness if they are citizens of other States or (4) the natural disaster or other *force majeure* circumstances (Article 281 § 2).

C. Law on measures aimed at the ensuring of the attendance of witnesses and victims

1. The 1993 Minsk Convention

24. The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (signed in Minsk on 22 January 1993 and amended on 28 March 1997, “the 1993 Minsk Convention”), to which both Russia and Armenia are parties, provides that a witness and a victim who are subjects of one Contracting Party can be summoned, for the purpose of their examination, by a “body of justice” of another Contracting Party. The witness and the victim are entitled to reimbursement of travelling, and certain other, costs and expenses incurred in connection with their participation in the criminal proceedings (Section 9).

2. RSFSR Code of Criminal Procedure of 1960 in force until 1 July 2002

25. If a witness or a victim did not obey a summons to appear without a valid reason, they could be brought to the courtroom under escort. A witness could be fined, in addition (Articles 73 and 75).

26. A witness and a victim were entitled to reimbursement of costs and expenses incurred in connection with their participation in the criminal proceedings (Article 106).

3. Code of Criminal Procedure of 2001 in force since 1 July 2002

27. If a witness or a victim does not obey a summons to appear without a valid reason, they may be brought to a courtroom under escort (Article 113).

28. A witness and a victim are entitled to reimbursement of costs and expenses incurred in connection with their participation in the criminal proceedings (Article 131).

29. A witness, or a victim, who live abroad, with their consent, may be summoned for the participation in criminal proceedings conducted in the territory of the Russian Federation (Article 456 § 1).

D. Law on powers of the appeal court

30. Following the examination of an appeal, the appeal court may decide (1) to dismiss the appeal and uphold the judgment, (2) to quash the judgment and terminate the criminal proceedings, (3) to quash the judgment and remit the case for a new trial, or (4) to amend the judgment (Article 378 of the Code of Criminal Procedure of 2001).

31. A judgment may be quashed or amended on appeal if there is an inconsistency between conclusions reached by the trial court in the judgment and facts established by that court. Violation of procedural law and wrongful application of criminal law, as well as unfairness of the judgment, also constitute grounds for reversing or changing the judgment (Article 379 of the Code).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE PROSECUTOR'S ABSENCE FROM THE TRIAL

32. The applicant complained that he had not obtained a hearing by an “impartial tribunal” because the Krasnoarmeyskiy District Court of the Volgograd Region had held his trial in the absence of a public prosecutor. He relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

A. The parties' submissions

33. The Government noted that under the RSFSR Code of Criminal Procedure the public prosecutor's participation in the examination of criminal cases had not been compulsory, except for in jury trials. A trial court had been at all times to adjudicate a case before it impartially and objectively.

34. They further stated that in the present case, the bill of indictment had been prepared by the prosecutor's office where its position as regards the merits of the case had been well-articulated. The District Court had decided to hold the trial in the prosecutor's absence and that decision had fully complied with domestic law on criminal procedure then in force.

35. The applicant maintained his complaint.

B. The Court's assessment

A. Admissibility

36. The Court notes that this complaint is not manifestly ill-founded

within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring this complaint inadmissible have been established. It must therefore be declared admissible.

B. Merits

(a) General principles

37. The Court reiterates that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused (see *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 27). To that end, Article 6 requires a tribunal falling within its scope to be impartial. In order to establish whether a tribunal can be considered “impartial”, two aspects must be taken into account.

38. First, the tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is presumed unless there is evidence to the contrary (see *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, p. 25, § 58).

39. Secondly, the tribunal must also be impartial from an objective viewpoint, meaning that it must offer sufficient guarantees to exclude any legitimate doubt in this respect. Under the objective test, it must be determined whether, quite apart from the judges' personal conduct, there are ascertainable facts which may raise doubts as to their impartiality. In this respect even appearances may be of a certain importance. When deciding whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important. But what is decisive is whether the fear can be held to be objectively justified (see, for example, *Gautrin and Others v. France*, judgment of 20 May 1998, *Reports* 1998-III, § 58; and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 121, ECHR 2005-XIII).

40. Finally, the Court reiterates that the possibility certainly exists that a higher or the highest court might, in some circumstances, make reparation for defects that took place in the first-instance proceedings (see *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, § 33).

(b) Application of the above principles to the instant case

41. The applicant did not raise a question regarding the judge's personal conduct. The Court therefore will focus its examination on the concept of objective impartiality. In particular, it will consider whether the applicant's doubts as to the impartiality of the trial court may be said to have been objectively justified on account of the prosecutor's absence from the trial.

42. In so doing, the Court will have regard to the findings in its recent judgment in *Ozerov v. Russia* (no. 64962/01, 18 May 2010) in which it stated:

“50. ...in relation to Article 6 § 1 and in the context of Article 5 § 3 of the Convention, [the Court] has found doubts as to impartiality to be objectively justified where there is some confusion between the functions of prosecutor and judge (see, with regard to Article 6 § 1, *mutatis mutandis*, *Daktaras v. Lithuania*, no. 42095/98, §§ 35-38, ECHR 2000-X, and, regarding Article 5 § 3, *Brincat v. Italy*, judgment of 26 November 1992, Series A no. 249-A, pp. 11-12, §§ 20-22; *Huber v. Switzerland*, judgment of 23 October 1990, Series A no. 188, pp. 17-18, §§ 41-43 ; and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, pp. 3298-99, §§ 146-50). It has reached the same conclusion under Article 6 § 1 in the case of *Kyprianou* concerning contempt of court, in which the decision to prosecute was taken and a summary trial was conducted by the same judges as those sitting in the proceedings at which the contempt occurred (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 127, ECHR 2005-XIII).

51. In the case of *Thorgeir Thorgeirson v. Iceland*, which, similarly to the present case, raised the issue of the prosecutor's absence from a trial, the Court found no violation of Article 6 § 1, having established that such fears of a lack of impartiality as the applicant may have had on account of the prosecutor's absence from sittings at which the first-instance court was not called upon to conduct any investigation into the merits of a case and did not assume any functions which might have been fulfilled by the prosecution had it been present, were not objectively justified (see *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, pp. 2224, §§ 46-54).

52. The present case differs from *Thorgeir Thorgeirson* in that the prosecutor was absent from the entire trial before the first-instance court. When transferring the case for trial to Savelovskiy District Court the Moscow prosecutor's office had requested that the case be examined with the participation of a prosecutor. The judge had ordered that the trial be held with the participation of a public prosecutor. There is no information in the case file as to whether the prosecutor had been informed of the hearing and what the reasons for his non-attendance were. Yet, the District Court decided to hold the trial in the prosecutor's absence. The Court notes that the Constitutional Court of Russia had by that time, albeit in relation to different provisions of the Code of Criminal Procedure, held that the institution of criminal prosecution, the formulation of a charge and sustaining the charge before the court were functions inherent for the prosecution which, if performed by a court in one or another form, would have violated the court's role, which is to administer justice independently and impartially, as required by Article 120 § 1 of the Constitution, as well as Article 6 of the Convention...”

43. In the case of *Ozerov* the Court found a violation of Article 6 § 1 on account of the prosecutor's absence from the entire trial. It observed that the trial court had changed the body of evidence which had then been put as a basis for the applicant's conviction. In particular, the trial court had taken new incriminating evidence of its own motion and had removed certain evidence submitted by the prosecutor's office. The Court concluded that by examining the case in such manner and convicting the applicant, the trial court had confused the roles of prosecutor and judge and had accordingly

given the grounds for legitimate doubts as to its impartiality (see *Ozerov*, cited above, §§ 53-54).

44. In the present case, the prosecutor also did not appear during the entire proceedings before the first-instance court. The applicant objected to the trial being opened and concluded in the prosecutor's absence, but to no avail. The court read out the bill of indictment and proceeded to examine the evidence submitted by the prosecution. It questioned the defendants and witnesses who attended the hearing. Furthermore, it refused the applicant's request to summon and hear witnesses on his behalf, in particular the persons who had been present at the procedure when the victims had identified him on the photograph. Whilst the applicant pleaded not guilty, the trial court found his guilt established on the basis of the evidence examined in this manner. In these circumstances, the Court cannot but accept that the trial court did not preserve the guarantees of the adversary nature of the criminal proceedings (see paragraph 20 above) and confused the functions of prosecutor and judge: it took up the prosecution case, tried the issues, determined the applicant's guilt and imposed the sanction. Accordingly, the Court finds that the applicant's doubts as to the impartiality of the trial court may be said to have been objectively justified.

45. As to the further proceedings, even assuming that the appeal court had the power to quash the judgment on the ground that the trial court had not been impartial, it did not do so and upheld the conviction and the sentence in their entirety. Moreover, it did not make any separate comment in its judgment in reply to the applicant's complaint concerning the prosecutor's absence from the trial. The Court also notes that the appeal proceedings took place in July 2002, that is when a new Code of Criminal Procedure was already in force. According to the new Code, the prosecutor's participation was mandatory for the examination of all criminal cases of public prosecution (see paragraph 19 above). However, the examination of the applicant's appeal was held in the prosecutor's absence. It can be concluded that the appeal court did not remedy the shortcoming at issue.

46. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3 OF THE CONVENTION ON ACCOUNT OF THE ABSENCE OF AN OPPORTUNITY TO CHALLENGE WITNESSES IN OPEN COURT

47. The applicant complained that he had not been afforded an effective opportunity to examine four witnesses at the trial. He also contended that the reading out of their incriminating statements to the investigative authorities and their admission in evidence had been unlawful. He relied on Article 6 of the Convention, which, in its relevant parts, reads as follows:

“1. In the determination of...any criminal charge against him, everyone is entitled to a fair ... hearing...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him...”

A. The parties' submissions

48. According to the Government's submissions, the District Court took all possible measures in order to secure the appearance at the trial of witnesses and victims. In particular, it sent summonses and sought the cooperation of relevant law-enforcement bodies and officials. As a result of those measures, it was established that certain witnesses could not appear due to illnesses. As to the victims in the case, Mr R. had been unable to travel to attend the hearings owing to financial difficulties. Mr P. lived in Armenia. Mr M.Kh. had left his previous place of residence and, finally, Mr M.M. had gone on a business trip for an unknown period. In such circumstances, the trial court made a lawful decision to read out their written depositions made during the pre-trial investigation and the appeal court then approved that decision.

49. The Government further pointed out that in addition to those written statements, the trial court had used the testimonies of the appeared witnesses, documents and physical evidence for the applicant's conviction. They finally stated that the court proceedings could not be adjourned because otherwise it would have led to a violation of the applicant's “right to a trial within a reasonable time”.

50. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

51. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring this complaint inadmissible have been established. It must therefore be declared admissible.

2. Merits

(a) General principles

52. The Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports* 1997-III, and *Doorson v. the Netherlands*, 26 March 1996, § 67, *Reports of Judgments and Decisions* 1996-II; see also *Babkin v. Russia* (dec.), no. 14899/04, 8 January 2009).

53. The Court further reiterates that all the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. As a general rule, paragraphs 1 and 3 (d) of Article 6 require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage (see *Van Mechelen and Others v. the Netherlands*, cited above, § 51, and *Lüdi v. Switzerland*, 15 June 1992, § 49, Series A no. 238). There are exceptions to this principle but they must not infringe the rights of the defence. In the event that the impossibility of examining of witnesses or having them examined is due to the fact that they are absent or otherwise missing, the authorities must make a reasonable effort to secure their presence (see *Bonev v. Bulgaria*, no. 60018/00, § 43, 8 June 2006).

54. However, in certain circumstances it may prove necessary to refer to statements made during the investigative stage. If the defendant has been given an adequate and proper opportunity to challenge these statements, their admission in evidence will not in itself contravene Article 6 §§ 1 and 3 (d) of the Convention (see, for instance, *Belevitskiy v. Russia*, no. 72967/01, § 117, 1 March 2007).

55. The Court reiterates, finally, that the conviction must not rest solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial (see *Artner v. Austria*, 28 August 1992, § 22, Series A no. 242-A; *Delta v. France*, 19 December 1990, § 37, Series A no. 191-A; *Isgrò v. Italy*, judgment of 19 February 1991, Series A no. 194-A, p. 13, § 35 *in fine*; and *Solakov v. the former Yugoslav Republic of Macedonia*, no. 47023/99, § 57 *in fine*, ECHR 2001-X).

(b) Application of those principles in the present case

56. Messrs. R., M.Kh., M.M., and P., the victims, in this case should for the purposes of Article 6 § 3 (d) be regarded as “witnesses”, a term to be given an autonomous interpretation (see *Asch*, judgment of 26 April 1991, Series A no. 203, p. 10, § 25), because their written depositions made during the pre-trial investigation were read out in court and used as evidence against the applicant.

57. It is without doubt that in the present case the trial court based the applicant's conviction to a significant extent on the testimonies of Messrs. P., M.M. and M.Kh. They were direct eyewitnesses of the actions incriminated to the applicant and could establish the authorship of the offences. Moreover, as it follows from the submitted materials, it was Messrs. M.M. and M.Kh. who, in the course of the investigative proceedings, had conclusively identified the applicant as a person who had robbed them.

58. The Government in their submissions shortly stated that the applicant's conviction had rested on numerous pieces of evidence, such as the testimonies of the other witnesses, documents and physical evidence. However, bearing in mind that the applicant and his co-defendants insisted on their innocence and that the other evidence was of a circumstantial character, the Court cannot accept this argument (see paragraph 13 above *in fine*).

59. The Government further asserted that the trial court made all reasonable efforts to secure the presence of the defaulting witnesses but in vain.

60. While the Court understands difficulties encountered by the authorities in terms of resources, it does not consider that calling at the trial Mr P. who lived in a neighbouring country, reimbursing travelling costs and expenses to Mr R., tracking down of Mr M.Kh. and awaiting Mr M.M.'s return from his travel would have constituted an insuperable obstacle (see, for example, *Artner*, cited above, p. 10, § 21, where the Austrian police was instructed by the trial court to make every effort to find a missing witness; or *Berisha v. the Netherlands* (dec.), no. 42965/98, 4 May 2000, where the Dutch authorities tried to call a witness residing in the Slovak Republic through the Slovak authorities; and *Haas v. Germany* (dec.), no. 73047/01, 17 November 2005, where the German authorities made considerable efforts to secure the attendance of a witness serving a prison sentence in Lebanon).

61. According to the relevant provisions of international and domestic law, a witness who lived in another country could be summoned for questioning (see paragraphs 24 to 26 above). Nothing in the submitted documents indicates however that the trial court ever considered the possibility to summon Mr P. to come from Armenia. As regards Messrs. R., M.M. and M.Kh., citizens and residents of the Russian Federation, the respondent Government failed to show that every appropriate measure had

been taken in order to bring them before the trial court. It can be concluded therefore that the domestic authorities chose to eschew any efforts to secure the attendance of those witnesses. As a result, Messrs. P, R., M.M. and M.Kh. never appeared to testify in open court in the presence of the applicant and counsel.

62. The Court is further unable to accept the Government's argument that time-consuming efforts aimed at ensuring the attendance of the missing witnesses could, or should, be abandoned for the sake of a speedy determination of criminal charges. It is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of the Convention, including those enshrined in the procedural obligation of Article 6.

63. It does not appear from the file – nor has it been argued by the Government – that the applicant had an opportunity to cross-examine Messrs. P, R., M.M. and M.Kh. at any other stage of the criminal proceedings.

64. Finally, the Court notes that, though the applicant had explicitly complained to the appeal court about his inability to confront witnesses at the trial, it did not comment on this issue in its judgement (see paragraph 15 above). It follows that the appeal proceedings failed to remedy the defect in question.

65. Having regard the foregoing, the Court concludes that there has been a violation of Article 6 §§ 1 and 3 (d) and of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

66. Lastly, the applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads:

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

A. The parties' submissions

67. According to the Government, the present complaint should be examined in relation to two periods. The first period lasted from 21 October 1999, when the applicant was arrested, until 9 October 2001, when he was convicted in the final instance. The second period lasted from 7 December 2001, when his conviction was quashed by way of the supervisory review proceedings, until 23 July 2002, when he was again convicted in the final instance. The length of the first round of the proceedings had been

approximately two years and that of the second round approximately eight months. The Government asserted that there had been no significant delays in the examination of the applicant's criminal case. Therefore, the domestic judicial authorities had complied with the "reasonable time" requirement set out in Article 6 § 1 of the Convention.

68. The applicant maintained his complaint.

B. The Court's assessment

69. The Court observes that the criminal proceedings against the applicant started on 21 October 1999 and the final decision in his case was handed down on 23 July 2002, that is approximately two years and nine months. This period spanned the investigation stage and the judicial proceedings, where the courts reviewed the applicant's case three times with his conviction having been quashed on appeal and then by way of supervisory review proceedings. The period from 9 October to 7 December 2001 should be excluded from the overall length as the case was being examined on application for supervisory review and was not pending. Accordingly, the period to be taken into consideration amounted to approximately two years and seven months.

70. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

71. The present case was admittedly complex. It concerned at least four defendants who had been involved in several crimes against five persons.

72. The applicant does not appear to have caused any delays.

73. As regards the conduct of the domestic authorities, the Court notes that they demonstrated sufficient diligence in handling the proceedings. The hearings were held regularly and any adjournments attributable to the court were relatively short. It also takes into account the fact that the domestic courts examined the merits of the case in three rounds at two levels of jurisdiction.

74. Making an overall assessment of the complexity of the case, the conduct of the parties and the total length of the proceedings, the Court considers that the latter did not go beyond what may be considered reasonable in this particular case.

75. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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.”

77. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the prosecutor's absence from the trial and the inability to confront witnesses in open court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the prosecutor's absence from the trial;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the absence of a proper and adequate opportunity to challenge statements of Messrs. P., M.M., M.Kh. and R. to the investigative authorities;

Done in English, and notified in writing on 27 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President