



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

FIFTH SECTION

CASE OF DOROKHOV v. RUSSIA

(Application no. 66802/01)

JUDGMENT

STRASBOURG

14 February 2008

FINAL

14/05/2008

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

In the case of Dorokhov v. Russia,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Anatoli Kovler,
Javier Borrego Borrego,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 66802/01) 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 Gennadiy Valentinovich Dorokhov (“the applicant”), on 21 July 2000.

2. The applicant, who had been granted legal aid, was represented by Ms L.I. Alekseyeva, a lawyer practising in London. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the conditions of detention in the remand prison where he had been placed pending investigation and trial had amounted to inhuman and degrading treatment. He further complained that he had had no fair hearing of his case, since the court had refused to call certain witnesses.

4. By a decision of 30 June 2005, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and lives in Moscow.

A. Criminal investigation and detention

7. The applicant used to work as a public prosecutor. In 1998 the police charged him with blackmail and abuse of office. They alleged that the applicant had extorted several cars from the managers of a car repair shop, threatening to harass their business with criminal investigations. Thus, according to the prosecution, in 1997 the applicant was given a car in exchange for the discontinuation of the investigation into the allegedly illegal activities of the shop. Some time later he received from them another car of the same model. In 1998 he was given a new car which was more expensive than the previous one. The prosecution also accused the applicant of illegal possession of firearms, namely a gas handgun found at his place during the search.

8. On 2 October 1998, the police arrested the applicant and detained him in remand prison IZ-48/1, Matrosskaya Tishina, in Moscow. On admission to the prison, the applicant was put in cell no. 210. The rest of the time he spent in four other cells, namely cells nos. 212, 260, 739 and 740.

1. Cell 212

9. On 8 February 1999, the applicant was put into cell no. 212. The parties' descriptions of this cell differ.

10. According to the applicant, the environment in this cell was so poor that he developed a skin rash.

11. According to the Government, that cell measured 18.8 square metres and had six bunk beds. The cell had cold running water, a sink, and a toilet partitioned off from the rest of the cell. The prisoners' food met quality standards established by regulations. There was no infection in the cell. The prisoners had an hour's daily exercise. Once a week they had a bath and received fresh bedding.

2. Cell 260

12. On 11 February 1999, the applicant was moved to cell no. 260. The parties' descriptions of this cell differ too.

13. According to the applicant, this cell measured about 30 square metres and housed between eighteen and twenty-nine prisoners at different times (or twenty-five on average). Because the cell was overcrowded,

during most of the seven months he was there the applicant had to share his bunk bed with other prisoners. But even on those few occasions when he had the bed to himself, he could not sleep because the lights and TV were always on, the ventilation was always off, and the prisoners talked day and night. Metal shutters covered both windows, keeping fresh air out. The toilet was not partitioned off from the rest of the cell and was in front of the guards' peephole.

14. According to the Government, that cell measured 38.9 square metres and had eighteen bunk beds. The cell had cold running water, a sink, and a toilet partitioned off from the rest of the cell. The prisoners' food met statutory standards of quality. There was no infection in the cell. The prisoners had an hour's daily exercise. Once a week they had a bath and received fresh bedding.

15. Following the admissibility decision the applicant produced a written statement by Mr M., who had been detained in cell no. 260 between September 1997 and December 1999. He confirmed the applicant's account of the conditions of detention there, namely that periodically the cell held up to twenty-nine people.

3. Cells 739 and 740

16. On 19 May 1999, the applicant was moved to cell no. 739, then to cell no. 740. These were hospital cells, and the applicant was put there while being treated for a broken leg.

17. According to the Government, the area of the cells was 21.6 square metres and 24.5 square metres correspondingly. The first cell was equipped with four bunk beds and the second one had eight.

18. According to the applicant, even though the prison administration knew that he was a former prosecutor, he had to share these cells with ordinary criminals. With a broken leg, the applicant would have been helpless had the criminals wished to attack him in revenge.

19. According to the Government, the applicant was detained separately from ordinary criminals.

20. On 7 June 1999, the applicant was returned to cell no. 260, where he stayed until his removal from the prison on 4 February 2000.

B. Trial

21. On 31 March 1999, on termination of the investigation the applicant and his lawyer were given access to the materials of the case file. On an unspecified date later the prosecution submitted the case file with the bill of indictment to the Zamoskvoretskiy District Court of Moscow for trial. The applicant was accused of having received three cars from the managers of the car repair shop as a bribe. The applicant was also accused of illegal possession of firearms.

22. On 9 June 1999, referring to Article 223 of the Code of Criminal Procedure the applicant requested the District Court to summon two additional witnesses, Ms V. and Ms G. In his words, those witnesses worked in the prosecutor's office at the material time; they had seen him pay for the first of the allegedly extorted three cars and therefore could arguably provide evidence for his acquittal. He indicated in his request that in the course of the pre-trial investigation he had asked for those people to be questioned but it had been refused.

23. The request of 9 June 1999 was received by the administration of the detention facility the next day. However, it is unclear when they posted it.

24. On 18 June 1999 the judge of the District Court examined the materials of the case file in camera and found the case ready for trial. The parties disagree as to whether the applicant's request under Article 223 to call Ms V. and Ms G. had reached the court by that date: according to the applicant, it must have reached the court well before 18 June 1999; according to the Government, the request reached the court only on 23 June 1999, so the judge was unable to examine it.

25. At the first hearing preceding the examination of the case on the merits the court asked the applicant whether he wished to call additional witnesses. The parties disagree as to whether the applicant used this opportunity to call Ms V. and Ms G.: according to the Government, he did not; according to the applicant, he did. From the transcript of the hearing provided by the applicant, it appears that the first hearing took place on 28 October 1999. The applicant asked the District Court to examine his request lodged earlier under Article 223 of the CCrP. The District Court replied that that motion had been received after the assignment of the case for trial. However, the District Court noted that it would be examined later, at the preliminary hearing stage.

26. The applicant agreed that he was a client of the car repair shop and knew its managers. He also confirmed that he had bought several cars from them. However, in his words, those cars were sold to him and were not given as a bribe, as the prosecution suggested. He indicated that in mid-July 1997 Ms V. had seen him paying for the car; he had paid Mr Sh., who acted as an intermediary between the applicant and the car repair shop. The applicant also testified that Ms G. had been present at the time when he had handed money to Mr Sh., and that later the applicant had told her about the deal. In his words, he gave money to Mr Sh. in a closed envelope and did not specify what was in it, since Mr Sh. knew that it was money for the car. Later in the course of the trial the applicant referred on three occasions to the episode of July 1997 where Ms V. and Ms G. had been present.

27. The court made several attempts to secure the attendance of Mr Sh. at the trial. However, Mr Sh. was absent from his address and according to his mother his whereabouts were unknown. The court decided to proceed

with the case in his absence and read out the testimonies of that witness given during the face-to-face confrontation with the applicant.

28. At the trial several witnesses were heard. The court heard Mr B-r., Mr S., Mr G. and Mr A., who worked at the shop at the material time and had contacts with the accused. They stated that the applicant had threatened them with criminal prosecution and that they had bribed him with the cars. They had also given him cash, to be transferred to other law-enforcement agencies for their “protection”. The court also heard Mr B-k., who had bought the third car in Germany for the applicant. In his words, he had received the money for that car from Mr A., the managers of the car repair shop. Ms P., who had worked in the prosecutor’s office at the material time, testified at the trial that the applicant had asked her to suspend the investigation into the activities of the shop. Some time later the applicant had asked her to help the shop to obtain several licences necessary for their professional activities.

29. The court further examined written statements from several witnesses obtained by the police during the preliminary investigation. It also examined material evidence and documents seized by the prosecution authorities which related to the applicant’s professional activities.

30. Finally, the court examined wiretapping records made secretly by the Federal Security Service in the applicant’s office. The court noted that the wiretapping had been authorised by the Moscow City Court at the request of the Federal Security Service and therefore was admissible evidence. In the court’s opinion, the records of his telephone conversations corroborated the testimonies of witnesses heard at the trial and those questioned by the investigative authorities.

31. The examination of evidence was followed by pleadings by both parties. The applicant pleaded not guilty.

32. On 15 November 1999, the court convicted the applicant as charged and sentenced him to seven years’ imprisonment.

33. After the trial, on 20 December 1999, the applicant asked the court to correct record of the hearing, because his request to call Ms V. and Ms G. had been omitted from the transcript of the first day of the hearing (28 October 1999). On 17 January 2000 the court refused to change the record, on the ground that it was true as it was.

34. The applicant appealed. In the points of appeal he indicated that on 28 November 1998 he had requested the District Court to call witnesses Ms V. and Ms G., who could have confirmed that the applicant had paid for the cars. However, in the applicant’s words the court had ignored that request.

35. On 1 March 2000, the Moscow City Court upheld the conviction on appeal, without, however, examining the applicant’s argument about witnesses Ms V. and Ms G.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. Under Article 21 of the Detention Act of 1995, all detainees' correspondence should go through the administration of the remand prison. Letters addressed to the courts should be posted by the administration within one day of their receipt from the detainee.

37. At the time of the relevant events the Code of Criminal Procedure of 1960 ("the old CCrP") was in force. Under Article 46 of that code the accused had the right to lodge procedural requests with the trial court.

38. Under Article 221 of the old CCrP, after having received the case file from the prosecution with the bill of indictment, the judge, sitting in camera and without the parties, should decide whether or not the case is ready for trial. Under Articles 222 and 223 the judge should also examine written requests lodged by the defence. If the case is ready for trial the judge fixes the date for the preliminary hearing and draws up a list of witnesses to be called. This stage of the proceedings is called "assignment of the case to trial".

39. The trial commences with a preliminary hearing. Under Article 276 of the old CCrP, the judge should ask the parties whether they wish to call additional witnesses. If such a request is made, the court should hear the parties on that matter and give decision in the form of a ruling, which should be reasoned. The court may also call new witnesses of its own motion.

40. In 1975 the Supreme Court of the Russian Soviet Federative Socialist Republic in a plenary session adopted Ruling no. 5, in which it directed the lower courts as follows:

"Requests received after the case has been assigned to trial but before the trial has begun, should be examined at the preliminary hearing. However, in order to secure their prompt examination the presiding judge may make certain preparatory arrangements beforehand (requests for information, references, and so on)."

The rulings of the Supreme Court adopted in plenary sessions had the force of law. Ruling no. 5, as amended later, was in force at the time of relevant events.

41. After the preliminary hearing the court passes to the stage of "judicial investigation" (*sudebnoye sledstviye*, Chapter 23 of the old CCrP). This is the part of the trial when the court and the parties examine the evidence, hear and question witnesses, experts and so on. Once the "judicial investigation" is over, the court asks the parties whether they want to supplement the "judicial investigation" with any new elements of proof (Article 294 of the Code). At this moment the defence may ask again for new witnesses to be called.

42. Following the "judicial investigation" the trial passes to the stage of pleadings. The accused person has the right to pronounce a speech called "the last word". If in this "last word" he informs the court of important new

elements of the case, the court should reopen the “judicial investigation” (Article 297 of the Code).

43. Article 264 regulates the keeping of a trial record in the first instance court. It does not require a verbatim record of the trial to be kept, but “a detailed record of the submissions”. In practice, if a verbatim record exists, it is not attached to the official trial record. A party to the proceedings may challenge before the presiding judge the accuracy of the official record within three days of receiving a copy of it.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

44. The applicant complained under Article 3 of the Convention that the conditions in the remand prison had been inhuman. Article 3 reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties’ submissions

45. The Government submitted, referring to their description of the cells, that the prison conditions were satisfactory. The prison was indeed overcrowded, but no worse than any other Russian prison in those years. Moreover, the authorities had had no intention of making him suffer. According to the Government, it was impossible to establish how many people had been detained with the applicant at the relevant time, since the official records had been destroyed in 2004 following the expiration of their storage period.

46. Further, in the Government’s submissions, the applicant had always been provided with an individual sleeping place and necessary bedding: a mattress, a blanket, a pillow, two bed sheets and a pillowcase. The Government also provided written statements by prison guards. They confirmed that at the relevant time cells nos. 212, 260, 739 and 740 had contained “former officials [of law enforcement agencies]”.

47. Finally, in recent years conditions in the prison had improved significantly. Thus, in 2004 the number of detainees in the remand prison where the applicant had been detained was 2.2 times lower than in 1998.

48. The applicant insisted, referring to his description of the cells, that the prison conditions had been unsatisfactory. His case was not unique: the Court knew from other cases that conditions in Russian prisons were very

poor. The authorities had intended to make him suffer because they had deliberately placed him in a cell with ordinary criminals. Furthermore, the recent improvements in general prison conditions were of no consequence for his case.

B. The Court's assessment

49. An outline of the Court's case-law under Article 3 of the Convention concerning the conditions of detention can be found in a number of judgments concerning Russia (see, in particular, *Kalashnikov v. Russia*, no. 47095/99, §§ 95 et seq., ECHR 2002-VI, and *Mayzit v. Russia* no. 63378/00, §§ 34 et seq., 20 January 2005), and the Court does not consider it necessary to repeat it here.

50. As to the complaint that the applicant had been placed in a cell with hostile cellmates, the parties disagreed about the facts. However, in the Court's view, there is no need to resolve this disagreement. Even if the cellmates did hold something against the applicant, there is no evidence that they actually mistreated him in any way. Their potential aggression never materialised, and the mere fear of ill-treatment in the circumstances of the case does not seem to be real enough to raise an issue under Article 3.

51. As to the physical conditions of detention, the parties' accounts also differ in many respects. The Court will consequently start with an issue that lends itself to more or less precise quantification, namely that of the overcrowding of the cells where the applicant had been detained, in particular, in cell no. 260.

52. The Court emphasises that it cannot but welcome the efforts of the domestic authorities aimed at the improvement of the conditions of detention in Russian prisons by reducing the overall number of detainees (see paragraph 47 above). However, the Court's task within the present case is to examine the applicant's personal situation as it was at the relevant time. The Court notes that the applicant stayed in remand prison IZ 48/1 between 2 October 1998 and 4 February 2000. Therefore, the Government's argument that the number of detainees in 2004 was significantly lower than in 1998 is irrelevant.

53. The Government admitted that the cells where the applicant had been detained had been overcrowded. The Government's assertion that the applicant had been assigned an "individual sleeping place" does not contradict this fact – the same sleeping place could have well been assigned to another detainee or detainees. The Government were unable to provide any figures as to the exact number of detainees there since the relevant records had been destroyed. At the same time they did not claim that the applicant's account in respect of the number of detainees was untrue.

54. The Court recalls its findings in *Mayzit v. Russia*, cited above, § 40, where it held as follows:

“From similar cases (see *Kalashnikov v. Russia*, cited above) the Court is aware that overcrowding in pre-trial detention facilities is a general problem in Russia (ibid., § 93). In these circumstances the Court does not find it of crucial importance to determine the exact number of inmates in the cells during the periods concerned. The material available suggests that at any given time there would be less than two square metres of space per inmate. Thus, in the Court’s view the cells were overcrowded, something which in itself raises an issue under Article 3 of the Convention.”

55. The Court further noted that for nine months the applicant in that case had been confined to his cell with very limited space for himself. It transpires from the judgment that the severe and prolonged overcrowding of the cell was sufficient for the Court to find a violation of Article 3 of the Convention (ibid., §§ 41 and 42).

56. By contrast, in other cases no violation of Article 3 was found, as the restricted space for sleeping was compensated for by the freedom of movement enjoyed by the detainees during the daytime (see *Valašinas*, cited above, §§ 103 and 107, and *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004).

57. In the present case the Court observes that the applicant spent about ten months in cell no. 260. He claimed that within that period the cell, measuring thirty square metres, contained twenty-five people on average. The applicant’s account was confirmed by his former cell-mate Mr M. In the absence of any official data as to the number of detainees, the Court accepts the applicant’s account and concludes that the cell was severely overcrowded (less than two square metres of space per inmate).

58. The Court further notes that such a long period of detention in cramped conditions must have caused him serious physical discomfort and mental suffering. The one-hour exercise periods were not sufficient to attenuate the negative effects of the overcrowding in the cells. Furthermore, such overcrowding precluded any privacy in everyday life, which is in itself a very traumatising experience. It is true that the authorities had not intended to humiliate the applicant or make him suffer. However, that does not remove the situation complained of from the scope of Article 3 of the Convention (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

59. In sum, the above factors are sufficient to conclude that, as regards cell no. 260, the applicant was detained in degrading conditions, in breach of Article 3. Since the issue of severe and prolonged overcrowding of the cell in itself warrants a finding of a violation of Article 3, the Court will not go any further and explore other aspects of the conditions of detention in detention facility no. IZ-48/1.

60. The Court therefore finds that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant’s detention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

61. The applicant complained under Article 6 § 3 (d) of the Convention that the court had not questioned crucial witnesses on his behalf. Article 6 § 3, as far as relevant, reads as follows:

“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

62. The Government argued that the applicant’s rights had not been interfered with for the following reasons. First, requests to call witnesses were usually examined at preparatory hearings. But the court had been unable to examine the applicant’s request because it had been received after the preparatory hearing, namely on 23 June 1999. Second, since the applicant had not repeated the request at the main hearing, the court had had no reason to call Ms V. and Ms G.

63. The applicant insisted on his complaint for the following reasons. First, for a careful reader of the prosecution file the necessity of calling Ms V. and Ms G. was self-evident. Second, the request must have reached the court well before the preparatory hearing, because the prison administration usually dispatched prisoners’ mail within one day. Third, even if the request had reached the court late, the court should have answered it as soon as it came. Fourth, the applicant had repeated the request in the main hearing, in his last plea, and in his appeal.

B. The Court’s assessment

1. General principles

64. The Court points out that the guarantees of paragraph 3 (d) of Article 6 are specific aspects of the right to a fair trial set forth in paragraph 1 of this Article, cited above. Consequently, the Court will consider the complaint concerning the failure to call witnesses Ms V. and Ms G. at the hearing under the two provisions taken together (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, p. 10, § 25).

65. The Court further reiterates that the right to call witnesses for the defence is not absolute and can be limited in the interests of the proper administration of justice. As a general rule, it is for the national courts to

assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. More specifically, Article 6 § 3 (d) leaves it primarily to them to assess whether it is appropriate to call witnesses; it does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as it is indicated by the words "under the same conditions", is full equality of arms in the matter (see, for example, *Vidal v. Belgium*, judgment of 25 March 1992, Series A no. 235-B, pp. 32-33, § 33). In respect of witnesses on behalf of the accused, only exceptional circumstances could lead the Court to conclude that a refusal to hear such witnesses violated Article 6 of the Convention (see *Bricmont v. Belgium*, judgment of 7 July 1989, Series A no. 158, § 89).

66. Finally, the Court reiterates that its task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken and examined at the trial, were fair (see *Asch*, cited above, p. 10, § 26).

2. Application of those principles in the present case

67. The first point of controversy is whether or not the applicant made his request to call witnesses in an appropriate manner. The Court notes in this respect that on 9 June 1999 the applicant asked the court to summon two witnesses: Ms V. and Ms G. That request was lodged through the administration of the remand prison, as provided by the Detention Act 1995. The applicant's letter was dispatched by the prison administration or should have been dispatched (see paragraph 36 above) on 10 June 1999. However, according to the Government, the letter reached the court only on 23 June 2003, which was almost a week after the case had been assigned to trial and the necessary arrangements had been made.

68. The Government may be understood as claiming that the belated receipt of the request absolved the court from the duty to examine it. However, the Court notes that under Russian law the applicant had no other choice but to dispatch his request through the prison administration (see § 36). In such circumstances it was for the prison administration to ensure that it was delivered within a reasonable time. Given that the remand prison and the court were situated in the same city, the two weeks' delivery time seems to be unusually long. It raises certain doubts as to when the request of 9 June 1999 was posted by the prison administration.

69. Be that as it may, there is no need to speculate on this matter. The Court observes that Ruling no. 5 of 1975 by the Supreme Court clearly required the judge to examine the applicant's request at the preliminary hearing, even if it was received after the assignment of the case to trial. The Government did not explain why the court had failed to do so.

70. The applicant further alleged that during the trial he had repeated his request to call Ms V. and Ms G. The trial record did not contain any reference to such a request. However, the Court notes that at the first hearing the presiding judge clearly stated that he would return to the

requests lodged under Article 223 later, which could have been reasonably interpreted as relating to the applicant's request to call Ms V. and Ms G. Further, in the course of the trial the applicant's lawyer drew the court's attention to those two witnesses. Finally, the court of appeal remained silent about the reasons why the first-instance court had not summoned Ms G. and Ms V. If it was just for a simple omission or laxity on the part of the applicant, who had not made himself sufficiently clear, the court of appeal could have easily have said so. In such circumstances the Court concludes that the defence employed all lawful means at their disposal to obtain the attendance of the two witnesses.

71. The Court thus concludes that the applicant made a reasonable effort to obtain the attendance of witnesses in his defence. The Government's objection should therefore be dismissed. The next question to answer is whether the trial court, by not securing their attendance, breached the applicant's right under Article 6 § 3 (d).

72. The Court notes that, according to the prosecution, in 1997 the applicant had received the first car as a bribe. The applicant claimed that he had bought it and that Ms V. and Ms G. had seen him pay for it. In his request of 9 June 1999 the applicant explained what Ms V. and Ms G. would say and indicated their whereabouts. Therefore, the request to call witnesses was sufficiently reasoned, relevant to the subject matter of the accusation and could arguably have led to the applicant's acquittal (see, in this respect, *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V, and *Guilloury v. France*, no. 62236/00, § 64, 22 June 2006). In other words, it was not a clearly vexatious request to which the court was not supposed to answer.

73. The Court further notes that the applicant's offer to produce evidence was implicitly rejected by the trial court, without any reasons having been given. Moreover, the court of appeal did not address the applicant's argument concerning the refusal of the lower court to call witnesses. The Court further notes that the applicant asked the first instance court to rectify the hearing record by putting on it his request to call Ms V. and Ms G. However, that request was rejected (see paragraph 33 above).

74. The Court reiterates that the applicant's request was clearly relevant to the subject matter of the accusation. However, as was confirmed by the defence in the course of the trial, neither Ms V. nor Ms G. had seen him paying money for the car to Mr Sh. In his words, he handed Mr Sh. a closed envelope and did not say what was inside. Only afterwards did he mention to Ms G. that he had paid money for the car to Mr Sh. In sum, the probative value of the testimony of Ms G. and Ms V. was very low. On the contrary, the arguments in favour of the applicant's guilt were quite weighty. Several people testified at the trial that they had bribed him with the car. Therefore, even if Ms G. and Ms V. had been called and heard, their testimony would most likely not have led to the applicant's acquittal. The Court reiterates in

this respect that, although the silence of the trial court and the court of appeal in that respect is regrettable, regard must be had to the proceedings as a whole. In *Vidal*, cited above, the applicant's conviction rested mostly on the materials of the case file and the testimonies of the co-defendants (§ 34). In the present case, on the contrary, the conviction was supported by a solid evidentiary base, in particular by the testimonies of several independent witnesses given at the trial. In view of that it is possible to distinguish the present case from *Vidal*, cited above.

75. The Court concludes that the implicit refusal of the domestic courts to call witnesses for the defence, in the particular circumstances of the case, did not affect the overall fairness of the trial. Therefore, there has been no violation of Article 6 § 3 (d) taken in conjunction with Article 6 § 1.

III. 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. Under Article 41 the applicant claimed 500,000 United States dollars. In his words, he needed that money to compensate his material losses, including legal costs, to carry out a public campaign for the restoration of his good name, and to cover expenses for medical treatment for himself and the members of his family.

78. The Government maintained that the applicant's claims under Article 41 were unsubstantiated and unreasonable. As to the non-pecuniary damage allegedly sustained by him, the Government noted that only two of his complaints had been declared admissible. Further, the applicant had not substantiated his claims in so far as they related to any “material loss” allegedly sustained by him.

79. The Court notes that the amount claimed by the applicant apparently included both pecuniary and non-pecuniary damage and his costs and expenses. As regards the pecuniary damage allegedly caused, the applicant did not specify what material losses he had suffered as a result of the poor conditions of his detention. The same applies to his legal costs: he did not indicate what they comprised. The Court also observes that the applicant received legal aid, which is supposed to cover at least some of his expenses related to his representation. In sum, the Court concludes that the applicant's claim in respect of pecuniary damage and legal costs is not set out in sufficient detail and should be dismissed.

80. As to the non-pecuniary damage, it is unclear what part of the amount claimed is supposed to cover it. However, given the nature of the violations found in the present case, the Court admits that the applicant must

have suffered as a result of the conditions of his detention, both mentally and physically. In sum, on an equitable basis the Court awards the applicant 7,000 euros, under the head of non-pecuniary damages, plus any tax that may be chargeable on this amount.

81. The Court considers it appropriate that the default interest 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

1. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of conditions of the applicant's detention;
2. *Holds* by five votes to two that there has been no violation of Article 6 § 3 (d) taken in conjunction with Article 6 § 1 of the Convention on account of the failure of the court to call witnesses for the defence;
3. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Lorenzen and Tsatsa-Nikolovska is annexed to this judgment.

P.L.
C.W.

JOINT PARTLY DISSENTING OPINION OF JUDGES LORENZEN AND TSATSA-NIKOLOVSKA

While we agree with the majority that there has been a violation of Article 3 of the Convention, we are not able to find that there has been no violation of Article 6 § 3 (d) taken in conjunction with 6 § 1 of the Convention.

According to Article 6 § 3 (d) everyone has a right “... to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”. It has been the Court’s constant case-law that this article does not grant an unlimited right to have witnesses heard and that it is primarily for national courts to assess whether witnesses requested by the defence to be heard are relevant to the case. Only in exceptional circumstances would a refusal to hear such witnesses violate Article 6, cf. paragraph 65 of the judgment. However, in our opinion the article implies that when a request by the defence to hear witnesses is not accepted, the national court should – unless the witnesses are clearly irrelevant – give a reasoned decision why it is not appropriate to call them.

In the present case the applicant at the investigation stage requested to hear two witnesses and gave reasons why he considered them important. However, the request only reached the trial judge after the case was found ready for trial – either because the prison authorities forwarded it belatedly or because of a clerical error in the District Court. The parties disagree as to what the applicant answered to a question of the trial court whether he wanted to call additional witnesses, but it appears from the transcript of the hearing on 28 October 1999 that the court knew about his earlier request and noted that it would be examined later, at the preliminary hearing stage. However, it does not appear that the District Court took any decision in that respect. Nor did the appeal court examine his complaint that his request was left unanswered by the District Court.

The majority considers that the applicant’s request was “clearly relevant” and that the silence of the national courts in that respect is “regrettable”. We can of course agree to that, but not to the majority’s approach that in such circumstances it is for the Court to assume the role of the national courts and assess what would have been the possible importance of statements from those witnesses had they been called. In our opinion the total failure of the national courts to examine and give a reasoned decision to a request to have relevant witnesses heard is not compatible with the requirements of Article 6 § 3 (d) taken in conjunction with Article 6 § 1 of the Convention. Accordingly there has been a violation of those articles.