



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

THIRD SECTION

CASE OF TIMERGALIYEV v. RUSSIA

(Application no. 40631/02)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Timergaliyev v. Russia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Anatoly Kovler,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 40631/02) 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 Firdavis Favizovich Timergaliyev (“the applicant”), on 5 September 2002.

2. The applicant, who has been granted legal aid, was represented before the Court by Ms K. Moskalenko and Ms O. Preobrazhenskaya, lawyers at the International Protection Centre in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated by the police and that the criminal proceedings against him had been unfair.

4. On 17 December 2004 the Court decided to communicate the complaints concerning the alleged ill-treatment and unfair trial to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1968. He is currently serving a prison sentence in the Sverdlovskiy Region.

A. The applicant's arrest and alleged ill-treatment

7. Late on the night of 11 May 2001 the applicant was arrested by the police at the scene of a crime on suspicion of having set fire to his mother's flat. His mother died in the fire and another person, M., received serious injuries. The applicant was taken to the police department of the village of Dinas in the Sverdlovskiy Region.

8. According to the applicant, while he was at the police department one of the policemen kicked him twice in the chest.

9. On 12 May 2001 the applicant was examined by a doctor, who noted a bruise on his head. The applicant stated that he had also complained of pain in the chest but that his chest had not been examined.

10. After the examination the applicant was transferred to the police department of the town of Pervouralsk. According to the applicant, while he was at the police department he was kicked in the legs, kidneys, chest and ribs by two policemen.

11. On the same day the applicant was questioned by the investigator. He denied involvement in the arson attack and stated that he had been attacked by three strangers who had assaulted him and set fire to the flat. He was subsequently put in a cell in the temporary detention unit of Pervouralsk.

12. On 15 May 2001 Mr L. was appointed as legal aid counsel for the applicant. The applicant asked the investigator and Mr L. to arrange a medical examination. The investigator refused his request.

13. On 16 May 2001 the applicant was escorted to detention facility no. 1 in Yekaterinburg. However, he was not admitted to the detention facility because he did not have a medical certificate. He was brought back to Pervouralsk.

14. On 18 May 2001 he was again escorted to detention facility no. 1 in Yekaterinburg, where – for the second time – he was refused admittance without a medical certificate. On his return to Pervouralsk, he was examined by a doctor, who noted a bruise on his chest. On the same day a chest X-ray was performed. On 18 November 2004 all the X-ray photographs revealing no injuries, including the X-ray photograph of the applicant's chest, were destroyed by the medical staff of Hospital No. 1. A certificate issued by the

chief physician of Pervouralsk Hospital No. 1 on 16 February 2005 confirmed that the X-ray had revealed no injury to the applicant's chest.

15. On 21 May 2001 the applicant was admitted to detention facility no. 1 in Yekaterinburg, where he was examined by a doctor. The doctor noted two bruises on the applicant's forehead and a bruise on his chest. When asked by the doctor about the origin of the bruises, the applicant replied that they had been received outside detention facility no. 1. He signed a statement that he had no complaints and that there was no need for an investigation.

B. Investigation of the alleged ill-treatment

16. On 27 June 2001 the applicant complained to the prosecutor, alleging ill-treatment.

17. On 2 July 2001 the Pervouralsk town prosecutor refused to open criminal proceedings. Having reviewed the reports on the applicant's arrest and questioning, he found that the applicant's head had already been injured when the police arrived at the crime scene. The applicant had himself stated to the investigator that he had been assaulted by strangers before the arrest, which provided sufficient explanation for his injuries. There was no evidence that he had been ill-treated by the police.

18. Following communication of the application, an internal inquiry was conducted in January 2005. On 26 January 2005 the head of the Criminal Investigations Unit of the Sverdlovskiy Regional Department of Internal Affairs found that the applicant had himself affirmed that he had been beaten by strangers prior to the arrest. The strangers had been identified and questioned. They were the applicant's neighbours, who had come running to put out the fire in his flat. They had tried to rescue the applicant's mother from the burning flat, but the applicant had attempted to stop them and subsequently attacked them with an axe. They had had to use force to disarm him. A fight had followed, in the course of which the applicant had been injured. Those facts had been taken into account by the prosecutor, who had refused to open criminal proceedings, finding that the allegations of ill-treatment by the police had been unsubstantiated.

C. The applicant's trial

19. On an unspecified date the case was referred for trial to the Sverdlovskiy Regional Court, where Mr R. was appointed as legal aid counsel for the applicant.

20. The applicant stated that on 21 November 2001 he had asked the court to provide him with a hearing aid and arrange a meeting with counsel. No response had been received. The Government claimed that no such requests had been made.

21. On 5 December 2001 the Sverdlovskiy Regional Court, in one hearing, found the applicant guilty of aggravated murder, causing bodily harm and intentional destruction of another's property and sentenced him – taking account of his previous criminal record – to eighteen years' imprisonment in a high-security colony.

22. On 19 December 2001 the applicant lodged an appeal, challenging statements by witnesses and the accuracy of their transcription in the trial record. He advanced the defence of irresistible impulse and asked the court to adopt a different legal characterisation of the imputed offence. He also asked to be given an opportunity to be present at the appeal hearing. On 14 January 2002 he lodged annex no. 1 to his grounds of appeal, concerning the interpretation of the facts.

23. On 26 February 2002 the Supreme Court of the Russian Federation held, in an interim decision, that the applicant should be present at the hearing.

24. On 5 April 2002 the applicant asked the Supreme Court to appoint legal aid counsel for him.

25. On 22 April 2002 the applicant submitted annex no. 2 to his grounds of appeal, in which he complained of procedural shortcomings of the trial, including ineffective representation by counsel L. and R., who had never backed his requests and applications. He further complained that the trial court had refused to provide him with a hearing aid and that counsel R. had failed to support his request to that effect. He also submitted that he had been ill-treated on the day of the arrest and alleged that the investigator had withdrawn the medical certificate of 21 May 2001 and his X-ray photograph from the case file. Finally, he asked the Supreme Court to inform lawyers from Moscow bar association no. 10, the International Protection Centre and the Human Rights Centre Memorial of the date of the appeal hearing.

26. On 29 April 2002 the applicant lodged annex no. 3 to his grounds of appeal, in which he asked, in particular, for legal representation before the appeal court, indicating that he had no legal training and was “half deaf”.

27. On 13 May 2002 the Supreme Court sent telegrams to Pervouralsk bar association no. 1, Moscow Bar Association no. 10, the International Protection Centre and the Human Rights Centre Memorial, informing them that the appeal hearing in the applicant's case would be held on 27 May 2002 at 10 a.m. The telegrams indicated that attendance was not mandatory.

28. On 27 May 2002 the Supreme Court of the Russian Federation held the appeal hearing and upheld the judgment of 5 December 2001. The applicant was present but not represented. The appeal judgment was silent on the issue of providing the applicant with a hearing aid. As regards the applicant's right to a defence, the judgment read as follows:

“It can be seen from the case materials that [the applicant] was represented by Counsel Mr L. during the pre-trial investigation and Counsel Mr R. during the trial. He did not refuse the services of these counsel. There are no reasons to believe that

they defended his interests improperly, nor do the grounds of appeal indicate any such reasons.”

29. On 29 May 2002 the applicant complained to the Presidium of the Supreme Court of the Russian Federation about, in particular, the appeal court's refusal to provide him with legal representation. On 9 August 2002 Judge Galiullin responded that there were no grounds on which to institute supervisory review proceedings in respect of the judgments in his case.

30. A certificate of 6 June 2003 issued by a doctor of the medical unit of facility no. I-299 indicates that the applicant suffers from chronic bilateral sensorineural hearing impairment.

II. RELEVANT DOMESTIC LAW

31. The RSFSR Code of Criminal Procedure (in force until 1 July 2002) establishes that the investigator or the court shall provide the suspect or the accused with legal aid counsel at his request. In cases where counsel chosen by the accused is not available for a long period of time, the investigator or the court may suggest that the accused choose another counsel or, alternatively, appoint another counsel for the accused (Article 48).

32. Counsel must imperatively be appointed by the investigator or the court if, in particular, the accused is mute, deaf or blind or if he cannot defend himself on account of a physical or mental impairment (Article 49).

33. The Supreme Court notifies participants in criminal proceedings of the dates of appeal hearings at their request. The non-appearance by participants who have been notified of the date of the appeal hearing does not preclude the examination of the case (Article 336).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

34. The Government maintained that Ms Moskalenko and Ms Preobrazhenskaya were not duly authorised to submit observations on the applicant's behalf. They claimed that the applicant's signature on the power of attorney had been forged by Ms Moskalenko and Ms Preobrazhenskaya. They produced copies of documents from the criminal case file. In their opinion, the applicant's signatures on those documents were visibly different from the signature on the power of attorney. Moreover, the power of attorney was not valid because it had not been certified by the director of the detention facility where the applicant was

held, as required by Article 53 of the Code of Civil Procedure. Such certification was the only means of confirming the authenticity of the applicant's signature.

35. The applicant confirmed the authenticity of his signature on the power of attorney and maintained that he had authorised Ms Moskalenko and Ms Preobrazhenskaya to represent his interests before the Court. He claimed that the signatures on the documents produced by the Government had been forged.

36. As regards the Government's suspicion that the power of attorney had been forged by the applicant's representatives, the Court presumes that both parties to the proceedings – the applicant and the Government alike – act in good faith; a claim seeking to rebut this presumption should be supported by sufficient evidence (see *Khudobin v. Russia*, no. 59696/00, § 74, ECHR 2006-... (extracts)). The applicant confirmed the authenticity of his signature on the power of attorney, which, in the Court's opinion, is sufficient to dispel the suspicion of forgery. In any event, the Government did not produce convincing evidence that the application or any submissions on the applicant's behalf had been lodged fraudulently or without the applicant's knowledge. Therefore, the Court is not persuaded that the divergence between the applicant's signatures is sufficient, by itself, to cast doubt on the authenticity of his signature on the power of attorney. The Court is therefore satisfied of the applicant's intention to be represented by Ms Moskalenko and Ms Preobrazhenskaya.

37. In so far as the Government claimed that the applicant's form of authority should have been certified by the head of the detention facility where he was held, the Court reiterates that it has on many occasions rejected a similar argument by the Government, emphasising that “pursuant to Rule 45 of the Rules of Court, a written authority is valid for the purposes of proceedings before the Court. Neither the Convention nor the Rules of the Court require any form of certification of that document” (see *Khudobin v. Russia*, no. 59696/00, § 73, ECHR 2006-... (extracts); *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; and *Isayeva and Others v. Russia* (dec.), nos. 57947/00, 57948/00 and 57949/00, 19 December 2002).

38. The Court is satisfied that Ms Moskalenko and Ms Preobrazhenskaya were duly authorised to represent the applicant. The Government's objection on this point must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained, under Articles 2 and 3 of the Convention, that he had been ill-treated by the police. Since the applicant's life does not appear to be, or to have been, imperilled, the Court considers that Article 2

is inapplicable in the present case. It will examine the complaint from the standpoint of Article 3 of the Convention, which provides as follows:

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

40. The Government submitted that the applicant had never been beaten by the police. He had received injuries in the fight with his neighbours prior to the arrest.

41. The applicant submitted that he had been beaten by the police after the arrest. The medical certificate of 12 May 2001 had only noted the injury to the head, while the medical certificate of 18 May 2001 had also described a bruise on his chest. In the applicant's opinion, this proved that the bruise on the chest had been received after the arrest.

42. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has adopted the standard of proof “beyond reasonable doubt”, but has added that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

43. Turning to the particular circumstances of the case, the Court observes that prior to his arrest the applicant had been involved in a fight with his neighbours. The neighbours testified that the applicant had been injured in the fight. The medical certificates described a head injury and a bruise to the applicant's chest. The applicant conceded that the head injury had been received prior to the arrest. Referring to the fact that the bruise on his chest had not been recorded in his medical record until several days after the arrest, he affirmed that that bruise had been caused by his ill-treatment at the police station. The Court is not persuaded by this argument. It transpires from the applicant's submissions that he complained of pain in the chest within a few hours of his arrest (see paragraph 9 above). It is therefore probable that the bruise was also received during the fight prior to the arrest. The Court cannot establish beyond reasonable doubt that it was received after the arrest.

44. Finally, the Court observes that the authorities investigated the applicant's allegations of ill-treatment, regrettably only after communication of the application, and provided an explanation for his injuries (see paragraphs 17 and 18 above). There is no reason to believe that that investigation did not meet the requirements of Article 3, given that the

applicant never complained before the domestic authorities or the Court that it had been ineffective or otherwise inadequate.

45. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 § 3 (c)

46. The applicant complained, under Article 6 of the Convention, that he had not been provided with a hearing aid, that State-appointed counsel L. and R. had been ineffective and that he had had no legal assistance at the appeal hearing. The relevant parts of Article 6 read as follows:

“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

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

B. Merits

1. The parties' submissions

48. The applicant submitted that, owing to his hearing impairment, his ability to hear and follow the proceedings had been significantly reduced. During the trial and in his grounds of appeal he had asked the domestic courts to provide him with a hearing aid, to no avail. He further submitted that State-appointed counsel L. and R. had remained passive during the investigation and trial. They had not backed his applications to the court and had not supported his requests for a hearing aid. He had not been provided

with legal assistance for an appeal hearing. In his grounds of appeal he had asked the court to adopt a different legal characterisation of the imputed offence. It was a legally complex argument and he had had difficulty in expanding on it, being hard of hearing and unassisted.

49. The Government claimed that the applicant had never asked the trial court to provide him with a hearing aid. Nor had he refused the assistance of counsel L. and R. Counsel R. had been active during the trial, had put questions to the witnesses and had participated in the oral pleadings. The applicant had not explained why that assistance had been ineffective. The appeal court had informed the lawyers named by the applicant of the date and time of the appeal hearing. The appeal court had not been responsible for their failure to appear. In accordance with Article 336 of the Code of Criminal Procedure, the non-appearance of participants who had been notified of the date of the appeal hearing did not preclude the examination of the case (see paragraph 33 above).

2. *The Court's assessment*

50. The Court states at the outset that a person charged with a criminal offence should, as a general principle based on the notion of a fair trial, be entitled to be present at the first-instance trial hearing. However, the attendance of the defendant in person does not necessarily take on the same significance for the appeal hearing. Indeed, even where an appellate court has full jurisdiction to review the case on questions of both fact and law, Article 6 does not always entail a right to be present in person. Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the appellant (see *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 15, §§ 31-32; *Belziuk v. Poland*, judgment of 25 March 1998, *Reports* 1998-II, p. 570, § 37; *Pobornikoff v. Austria*, no. 28501/95, § 24, 3 October 2000; and *Kucera v. Austria*, no. 40072/98, § 25, 3 October 2002).

51. The right of an accused under Article 6 to effective participation in his or her criminal trial generally includes not only the right to be present, but also to hear and follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained, in particular, in sub-paragraph (c) of paragraph 3 of Article 6 – “to defend himself in person” (see, among others, *Barberà, Messegué and Jabardo v. Spain*, judgment of 6 December 1988, Series A no. 146, pp. 33-34, § 78; *Stanford v. the United Kingdom*, judgment of 23 February 1994, Series A no. 282-A, pp. 10-11, § 26; and *S.C. v. the United Kingdom*, no. 60958/00, § 28, ECHR 2004-IV). “Effective participation” in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for

him or her, including the significance of any penalty which may be imposed. The defendant should be able, *inter alia*, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence (see, for example, *Stanford*, cited above, p. 11, § 30; *V. v. the United Kingdom* [GC], no. 24888/94, §§ 85, 89, 90, ECHR 1999-IX; and *S.C. v. the United Kingdom*, cited above, § 29). The circumstances of a case may require the Contracting States to take positive measures in order to enable the applicant to participate effectively in the proceedings (see *Liebreich v. Germany* (dec.), no. 30443/03, 8 January 2008).

52. As regards, more particularly, situations where the accused's hearing is impaired, the Commission found that that could not as such be allowed to block the prosecution or lead to the conclusion that an accused with such a handicap could not have a fair trial (see *Roos v. Sweden*, no. 19598/92, Commission decision of 6 April 1994). In the *Roos* case the Commission noted that the applicant had had a hearing aid and had been represented, and concluded that he had been able to hear and follow the proceedings.

53. In the case of *Stanford v. the United Kingdom* the Court found no violation arising from the fact that the accused could not hear some of the evidence given at trial due to poor acoustics in the courtroom, in view of the fact that his counsel, who could hear everything that was said and was able to take his client's instructions at all times, chose for tactical reasons not to bring the accused's hearing difficulties to the attention of the trial judge at any stage throughout the six-day hearing (see *Stanford*, cited above, §§ 24-32).

54. In a recent decision, in the case of *Liebreich v. Germany* (cited above), the Court declared inadmissible the applicant's complaint that he had been unable to participate effectively in the appeal hearing because he was under the effect of antidepressant medication. The Court took into account that the applicant had been represented by a lawyer whom he could freely consult during the proceedings and that prior to the hearing the German court had obtained information from the doctor treating the applicant on the issue of whether he was fit to plead. The Court also reviewed the record of the hearing and concluded that the applicant had participated effectively in the proceedings.

55. The opposite conclusion was reached in the case of *Cuscani v. the United Kingdom*, where the applicant could not follow the proceedings on account of his poor command of English. The Court criticised the English courts for their implicit reliance on counsel's statement that the applicant's command of English was adequate to understand the proceedings. It held that the onus was on the trial judge to reassure himself that the absence of an interpreter would not prejudice the applicant's full involvement in the proceedings and found a violation in view of the judge's failure to make his own assessment of the applicant's need for interpretation facilities (see

Cuscani v. the United Kingdom, no. 32771/96, §§ 38-40, 24 September 2002).

56. Turning to the circumstances of the present case, the Court observes that the applicant is hard of hearing. He submitted a medical certificate indicating that he suffers from chronic bilateral hearing impairment (see paragraph 30 above). The Court is therefore persuaded that the applicant's ability to hear and follow the proceedings was reduced. The Government do not contest this fact.

57. It is disputed between the parties whether the applicant brought his hearing difficulties to the attention of the trial judge. The Court deplors the fact that neither party has substantiated its allegations by producing a copy of the petition for a hearing aid or a copy of the trial record. Accordingly, the Court finds itself unable to verify whether the applicant took steps to make his hearing difficulties known. The failure to submit a copy of the trial record also prevents the Court from assessing whether the applicant alerted the trial court to the alleged ineffectiveness of his counsel.

58. The Court further notes that the applicant submitted a copy of his grounds of appeal in which he complained that his hearing was impaired and asked for a hearing aid. The Court is therefore satisfied that the appeal court was put on clear notice that the applicant had hearing problems. It is also to be noted that the applicant was convicted at the first level of jurisdiction of aggravated murder and sentenced to eighteen years' imprisonment. The applicant's submissions before the appeal court covered both points of fact and points of law. The applicant contested his conviction, sought recharacterisation of the criminal offence relying on the defence of irresistible impulse and pleaded for a reduction in sentence. His personal and full involvement in the appeal proceedings was therefore a matter of crucial importance for him. In such circumstances the appeal court was bound out of fairness to take additional steps, before examining the case, to reassure itself that the applicant's hearing impairment would not prejudice his effective participation in the appeal hearing (compare *Cuscani*, cited above, § 38, and *Vaudelle v. France*, no. 35683/97, § 59, ECHR 2001-I). However, the appeal court did not consider taking any steps to ensure that the applicant could follow the proceedings before it. It proceeded with the hearing without requesting a medical opinion as to whether the applicant's impairment allowed him to hear the proceedings or considering the possibility of making arrangements for the provision of a hearing aid.

59. The Court also attaches weight to the fact that the applicant was unrepresented before the appeal court. The present case is therefore different from the cases of *Roos*, *Stanford* and *Liebreich* (cited above in paragraphs 52 to 54) where the fact that the applicants were assisted by counsel whom they could freely consult during the proceedings led the Court to find no violation of Article 6 §§ 1 and 3 (c). It is true that the appeal court could not be held responsible for the omission of the

applicant's lawyers, who had been properly notified of the date and time of the appeal hearing. However, the ultimate guardian of the fairness of the proceedings was the judge, who, when confronted with the lawyers' failure to appear, was required under domestic law to appoint counsel for an accused who was incapable of defending himself on account of a physical impairment (see paragraph 32 above). The Court reiterates that under Article 6 § 3 (c) of the Convention the accused is entitled to have a lawyer assigned by the court of its own motion "when the interests of justice so require" (see *Vaudelle*, cited above, § 59, and *Padalov v. Bulgaria*, no. 54784/00, §§ 54 and 55, 10 August 2006). Given that the applicant's hearing impairment undermined his ability to participate effectively in the proceedings, the interests of justice demanded that in order to receive a fair hearing the applicant should have had the benefit of legal representation during the proceedings before the appeal court.

60. Having regard to the above considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c).

IV. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

61. Lastly, the applicant complained under Article 6 of the Convention that the trial court had committed various breaches of the criminal procedure which had resulted in his unjust conviction.

62. It is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among other authorities, *Čekić and Others v. Croatia* (dec.), no. 15085/02, 9 October 2003). The Court has examined the complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that those complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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.”

64. 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 complaint concerning the failure to provide the applicant with a hearing aid, ineffectiveness of the counsel during the trial and the failure to appoint counsel for the appeal hearing admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) of the Convention on account of the failure to provide the applicant with a hearing aid and the failure to appoint counsel for the appeal hearing.

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

Santiago Quesada
Registrar

Josep Casadevall
President