



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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 62390/00  
by Sergejs DMITRIJEVS  
against Latvia

The European Court of Human Rights (Third Section), sitting on 23 May 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 11 July 2000,

Having regard to the partial decision of 7 November 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Sergejs Dmitrijevs, is a “non-citizen” of Latvia, who was born in 1960 and lived in Valmiera (Latvia). Sentenced to fifteen years’ imprisonment, he is serving his service in Jelgava Prison. The Latvian Government (“the Government”) are represented by their Agent, Ms I. Reine.

### A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

From 1992 to 1995 a number of killings, attempted killings and burglaries were committed in the Riga district by a four-person organised gang.

On 11 May 1995, two individuals assaulted M.G., a well-known Riga businessman, for the purpose of stealing his car. After following the victim and meticulously tracking his movements around the city, the criminals lay in wait for M.G.'s car near a house which he visited regularly. Once the car had stopped in front of the house, one of the assailants, wearing a cap, gloves and sunglasses, ran towards the vehicle, opened the door and pointed a pistol at the victim, ordering him to get out. M.G. also pulled a pistol from his pocket, at which point the assailant fired seven times, killing him immediately. A few seconds later, having noticed the victim's adult daughter D.G. approaching the scene, the killer fled on foot.

During the pre-trial investigation, D.G. was questioned three times: on 11, 17 and 25 May 1995.

On 14 July 1995 the applicant was arrested by police officers from the anti-crime unit as a suspect in the above-mentioned crime and placed in police custody.

During the period in police custody, the applicant was questioned by the police on several occasions. During those interviews, which took place without a lawyer, the applicant admitted that he had participated in six incidents of theft and hold-up as a member of the gang of robbers. He also confessed that he had been responsible for killing M.G.

On 10 August 1995 the applicant was placed under investigation on a charge of aggravated murder and banditry. In the meantime, three other individuals suspected of belonging to the same gang were charged with burglary, robbery and murder. They thus became the applicant's co-defendants.

During questioning in August 1995, the applicant informed the prosecution service that all the confessions he had previously made were false, as they had been forced out of him by police officers from the anti-crime unit while he had been held in police custody. In the presence of his counsel, the applicant alleged that a specific police officer, whom he named, had threatened him and had offered him money and a reduction in his sentence in return for a confession; this statement was recorded in the minutes of the interview. In consequence, the applicant asked the prosecution service not to take into consideration the content of the preceding interviews and to acquit him.

On 9 April 1997 the prosecution service submitted a final bill of indictment (*apsūdzības raksts*) against the applicant and his co-defendants.

The applicant was charged with aggravated murder and banditry; the second charge included six hold-ups. With particular regard to M.G.'s murder, the prosecution service considered that the applicant's guilt was sufficiently proven by the co-existence of inferences arising from the following evidence:

– the statements by the victim's adult daughter, who was questioned during the pre-trial investigation on 11, 17 and 25 May 1995 and confirmed that she had seen her father's killer leaving the crime scene. On 11 May 1995 she gave the following description of the criminal:

“...A twenty to twenty-five- year old man, dark hair, wearing a dark cap and sunglasses covering his eyes, he was wearing gloves. I do not remember his clothes. He resembled the pop-singer “Titomir”. ...”

On 17 May 1995 D.G. gave the following description of the criminal:

“...He could be thirty-year old, his height 170-175 cm, he was wearing dark clothes, a cap and sunglasses. ... I think his hair was not long ...”

– a statement by two motorcyclists who had passed the crime scene a few seconds after the killing; those two witnesses claimed that they had followed a man who was running away for about a hundred metres; his physical characteristics corresponded to those of the applicant;

– a statement by a person who had seen a man resembling the applicant running towards the crime scene a minute or two before the sound of gunfire;

– the cap and sunglasses found hanging on the branches of a bush near the site of the killing, which resembled those worn by the killer;

– statements made by the applicant himself during the initial interview and the scene-of-crime reconstruction to the effect that, after fleeing the scene of the crime, he had removed the cap and sunglasses and had thrown them towards a bush while running; the location indicated by the applicant corresponded to the exact spot where the two objects had been found;

– the results of biological analysis of hair and traces of sweat taken from the cap and glasses and of osmological tests, confirming that it was highly probable that those two items had been worn by the applicant;

– the applicant's initial statements, which were concurring and corresponded to the results of other investigative measures, particularly the scene-of-crime reconstruction, carried out on-site on 25 July 1995;

– statements by an anonymous witness, referred to in the case file by the pseudonym “Oleg”, alleging that he had met the applicant on the evening of the killing and that the latter had admitted to him that he had killed M.G.

After forwarding the investigation file to the defendants, the prosecution service sent the case to the Riga Regional Court, the court of first instance in the case.

The Riga Regional Court began examining the merits of the case on 20 October 1997. The applicant pleaded not guilty at the hearing, and repeated his allegation that the confessions had been forced from him by a police officer who promised money and a reduced sentence in exchange for an admission of guilt. After questioning the police officer named by the applicant and several of his colleagues and hierarchical superiors, the court found that that officer had questioned the applicant on only one occasion and that he was not part of the investigation team responsible for the case. As he had not been present at the crime-scene reconstruction on 25 July 1995, he could not therefore have guided the applicant's actions or helped him to falsify the results of that investigatory measure. Accordingly, the court dismissed the applicant's allegations in this connection. At the hearing, the Regional Court questioned the witnesses and examined all the other evidence submitted by the public prosecution service.

On 3 December 1997 a neurologist issued a medical certificate, prohibiting D.G. to participate in court hearings and proceedings because of the state of her health.

With regard to M.G.'s killing in particular, the court summoned and questioned several witnesses, but not, however, the victim's daughter. Her statements, made during the preliminary investigation of the case, were submitted and read out at the trial on 5 January 1998, in accordance with Article 285 of the Criminal Procedure Code.

In a judgment delivered on 15 May 1998, the Regional Court convicted the applicant of aggravated murder and banditry; with regard to M.G.'s killing, the court established the applicant's guilt on the basis of the coexistence of inferences arising from the afore-mentioned evidence established by the prosecution service. Under Article 99 of the Criminal Code in force at the material time, the applicant was sentenced to death.

The applicant himself and his legal counsel appealed against the judgment of 15 May 1998 to the Criminal Division of the Supreme Court. In their respective memorials, they reiterated the applicant's argument that the confessions had been forced from him by a police officer who had offered him a trade-off, and challenged the manner in which the evidence had been assessed by the Regional Court.

On 5 June 1998 a Latvian weekly newspaper published an interview with a forensic expert, a director of the Centre of Ballistic Examinations. In a part of the interview he said the following:

“... When leaving a gun next to a dead body, a killer “gives” it [the gun] to the police. And all ends break – where is the gun from, who is the owner of the gun – go and find it. But if a killer takes TT [a type of gun] with himself – one can find it in a search. If one will try so sell a gun to someone else – then the gun will move from hand to hand and will appear in the police together with its present owner, but it is not the link to the real killer. ...”

These statements were followed by the illustration of the two examples:

“...The well-known murder of the Vice-President of “Interpegro” M[...] G[...] was detected exactly because the guns used in committing the murder M[...] G[...] were found in searching the persons arrested in the course of a completely different case. The killers of V[...] L[...] did it more professionally. All around, including Riga, requests were sent out about bullets used in the murder. No tracks...”

The applicant submitted this article to the Criminal Division, without requesting to summon the expert for examination.

In a judgment of 21 June 1998 the Criminal Division dismissed the applicant’s arguments. After re-examining all the evidence available to it, the Division confirmed the validity of the Regional Court’s findings. Furthermore, like the first-instance court, the Division dismissed the applicant’s request that M.G.’s daughter be summoned and questioned in court. The Division dismissed the allegation that the confessions had been obtained through extortion; having watched the video recording of the scene-of-crime reconstruction, which took place on 25 July 1995, it found that the applicant’s actions in demonstrating what had happened were authentic and very precise and that any attempt to manipulate or rig the event would have been impossible. However, the Division quashed the applicant’s conviction on the charge of banditry; this charge was reclassified as armed robbery with violence. Equally, the Division noted that as Protocol No. 6 to the Convention had entered into force with regard to Latvia on 17 May 1999, the death penalty could no longer be implemented. Accordingly, the Division commuted the death sentence to fifteen years’ imprisonment, unsuspended.

As the applicant’s defence counsel had chosen not to represent the applicant in subsequent proceedings, the latter drew up an appeal on points of law himself and submitted it to the Senate of the Supreme Court. In his memorial, the applicant complained primarily of errors in assessment of the facts which he alleged had been made by the lower courts. He also submitted that the presiding judge in the Criminal Division had interrupted him several times during his statement, that the appeal judges had refused to grant all of his procedural requests and that the rights of the defence had been seriously infringed. Equally, the applicant complained about the Division’s refusal to summon and question in court the forensic expert who had informed the press that he was in possession of the murder weapon, and also M.G.’s daughter. The applicant stressed that cross-examination of this second witness would have enabled the defence to focus on the visual difference between the portraits of the criminal and of the applicant, and thus to show that the killer had been someone else.

By an order of 9 December 1999, served on the applicant on 12 January 2000, the Senate declared inadmissible the applicant’s appeal on points of law as lacking legal grounds. According to the order, the Riga Regional Court and the Criminal Division had carried out a full and very detailed

examination of all the evidence available to them. Equally, the decisions by the trial and appeal courts had been fully reasoned in terms of fact and law. As to the establishment of the factual circumstances in the case, the Senate pointed out that that question did not fall within the jurisdiction of the Supreme Court, which dealt with appeals on points of law. Finally, the Senate considered the applicant's various allegations of procedural violations to be unfounded.

### **B. Relevant domestic law**

According to Article 87 of the Criminal Procedure Code, a transcript report of the court proceedings includes, *inter alia*, the information about case-related applications and petitions.

The relevant part of Article 88 provides that within the period of three days after signing a transcript report of the court proceedings, the defence counsel and accused may submit remarks there on its accuracy. The remarks shall be considered and accordingly added to the transcript report.

In accordance with Article 243 § 3, the parties enjoy rights in terms of summoning and questioning witnesses during the trial.

The defence is entitled to cross-examine the victims and witnesses on the same conditions as the prosecution service (Articles 281 and 282). If one of the parties requests that a new witness be summoned or any new evidence be submitted to the court, it must explain to the court the reasons for such a request and, in particular, what it intends to prove through this new evidence. Dismissal of such a request does not prevent the party from resubmitting it during the examination of the case (Article 275 §§ 1 and 2).

Where a witness or a victim submits good reasons for failure to attend the trial, the statements made by them during the preliminary investigation of the case are read out to the court (Article 285 § 1).

The defendant may also be cross-examined by his or her co-defendants and their lawyers (Article 278 § 2).

Article 449 states that examination of a judgment by the cassation court is permissible only if it is based on a violation of the criminal law or substantial violation of the Criminal Procedure law.

## **COMPLAINT**

Relying on Article 6 § 3 (d) of the Convention, the applicant criticised the refusal by the first and second instance courts to summon for examination M.G.'s daughter D.G., who had seen her father's killer and had alleged that there was a strong resemblance between the photofit of the suspect and the applicant's photograph. In his opinion, had it been possible

to cross-examine this witness the defence could have emphasised the visual differences between the two images and thus shown that the killer was someone else. Equally, the applicant complained about the refusal of the Criminal Division of the Supreme Court to summon and question the forensic expert who had allegedly informed the press that he was in possession of the murder weapon.

## THE LAW

### A. The parties' submissions

The Government state that during the pre-trial investigation the witness D.G. was questioned three times: on 11, 17 and 25 May 1995. Furthermore, on 3 December 1997 the neurologist M. Dz. issued a medical certificate for the witness D.G., prohibiting her to participate in the court hearings and proceedings because of the state of her health. The Government point out that all statements of the witness D.G., given during the pre-trial investigation, were read out in the first instance court hearing on 5 January 1998, in accordance with Article 285 of the Criminal Procedure Code. The Government emphasize that the D.G.'s witness statements were not the sole or even decisive evidence for the applicant's conviction. In establishing the applicant's guilt, the first-instance court relied on the applicant's confession to the murder, on the incriminating statements made by a co-accused and twelve witnesses, and on four expert opinions.

The applicant maintains that the witness statements of D.G. were corroborating the position of the defence and her additional examination at the court hearings could have supplied the information in his favour. The applicant alleges the invalidity of the medical certificate issued by the neurologist M.Dz. since no diagnosis was indicated in the certificate.

The Government state that neither the applicant, nor his defence counsel in the appeal and its supplements requested the appeal court to summon for examination the forensic expert. The Government stress that the applicant has not even requested the appeal court to join the interview at issue to his case-file. The Government also draw the Court's attention to the fact that the applicant has not submitted any remarks to the transcript report of the appeal court hearing, although he had this possibility according to Article 88 of the Criminal Procedure Code. He thereby agreed with the recorded course of the hearing. The Government point out that it was only in the cassation complaint that the applicant requested the summoning for examination of the expert for the first time. According to Article 449 of the Criminal Procedure Code, the competence of the cassation court is limited

to review errors either of Criminal Law or Criminal Procedure Code committed by a lower instance courts. The Government state that, in any event, nothing said by the expert in the interview suggested that he possessed the guns at issue or that he had seen them.

The applicant contends that the appeal court was obliged to examine the facts stated in the interview of the expert when his counsel submitted it to the court. The applicant also maintains that he and his counsel requested the appeal court to summon for examination the expert. The applicant further asserts that the Government misrepresented the interview.

### **B. The Court's assessment**

a) As to the applicant's complaint about the refusal of the first and second instance courts to summon for examination D.G., the Court reiterates that the admissibility of evidence is primarily governed by the rules of domestic law, and that, as a rule, it is for the national courts to assess the evidence before them. The task of the Court is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair. All evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected. As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he was making his statements or at a later stage of the proceedings. However, Article 6 does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a witness (see *S.N. v. Sweden*, no. 34209/96, § 44, ECHR 2002-V). As to the notion of witness, the Court considers that, although D.G. did not testify at a court hearing, she should, for the purposes of Article 6 § 3 (d) of the Convention, be regarded as a witness – a term to be given an autonomous interpretation – because her statements, as recorded by the police, were used in evidence by the Riga Regional Court (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, p. 10, § 25). The Court notes that, in the present case, the court of first instance took into consideration the medical certificate, issued by the neurologist, prohibiting D.G.'s participation in court hearings and proceedings due to the state of her health. Having regard to all materials used in evidence against the applicant, including his own statements made before the police, in particular as they were confirmed by the scene-of-crime reconstruction, the Court holds that the applicant's conviction cannot be said to have been based to any decisive

extent on the statements given by D.G. to the police (see *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, Reports 1997-III, p. 713, § 63, and *Verdam v. the Netherlands* (dec.), no. 35253/97, 31 August 1999). Even if D.G. was to appear at the court hearings, the Court does not see how her statements, which, according to the case-file, were imprecise and contradictory, could have changed the outcome of the case. Finding no indication that grossly unfair or arbitrary conclusions were drawn, and recalling that the admissibility and assessment of evidence are matters that fall to be decided primarily at the domestic level, the Court is satisfied that the criminal proceedings at issue, taken as a whole, were fair within the meaning of Article 6 of the Convention (see *Jan C.R.R. Scheper v. the Netherlands* (dec.), no. 39209/02, 5 April 2005). It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

b) As to the applicant's complaint that the forensic expert was not summoned at his request, the Court notes that according to the case-file materials neither the applicant nor his counsel expressly requested the appeal court to summon the expert for examination. Even considering that the applicant thought that the mere fact that he submitted the interview to the court sufficed to put the court under an obligation to summon the expert, the Court is of the opinion that the applicant's legal counsel should have submitted the request properly. Even if the expert had appeared in the court proceedings, the Court does not see, based on the general nature of the interview, that it could have corroborated the position of the defence. It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Vincent BERGER  
Registrar

Boštjan M. ZUPANČIČ  
President