

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

THIRD SECTION

**CASE OF GADZHIYEV v. RUSSIA**

*(Application no. 705/16)*

JUDGMENT

STRASBOURG

27 October 2022

*This judgment is final but it may be subject to editorial revision.*

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**In the case of Gadzhiyev v. Russia,**

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

Darian Pavli*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 6 October 2022,

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

# PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 14 December 2015.

2. The applicant was represented by Mr M. Fomin, a lawyer practising in Moscow.

3. The Russian Government ("the Government") were given notice of the application.

# THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the unfair trial in view of restrictions on the right to examine witnesses.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (D) OF THE CONVENTION

6. The applicant complained of the unfair trial in view of restrictions on the right to examine witnesses. He relied on Article 6 §§ 1 and 3 (d) of the Convention, which reads, in so far as relevant as follows:

> "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 ...
>
> ...
>
> (d) to examine or have examined witnesses against him ..."

7. The general principles to be applied in cases where a prosecution witness did not attend the trial and his statements previously made by him were admitted as evidence are well-established in the Court's case law (see *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 100-31, ECHR 2015). In *Schatschaschwili*, the Court found a violation on account of the authorities' failure to provide the applicant with an opportunity to have the two key prosecution witnesses examined at any stage of the proceedings (ibid., §§ 161-65).

8. Turning to the circumstances of the present case and having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Even leaving open the question as to whether there were good reasons for the key witness's non-attendance, it considers that the fact that the applicant was not provided with an opportunity to cross-examine that witness weighs heavily in the balance in the examination of the overall fairness of the criminal proceedings against him. The Court also takes into account that there is nothing in the materials in its possession to suggest that there was any effort on the part of the national judicial authorities to make use of any counterbalancing measures to compensate for the difficulties experienced by the applicant on account of the admission of the witness's untested statement as evidence.

9. These complaints are therefore admissible and disclose a breach of Article 6 §§ 1 and 3 (d) of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. 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."

11. Regard being had to the documents in its possession and to its case-law (see, in particular, *Zadumov v. Russia,* no. 2257/12, § 81, 12 December 2017), the Court considers that the finding of a violation constitutes a sufficient just satisfaction in the present case.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 6 §§ 1 and 3 (d) of the Convention concerning the unfair trial in view of restrictions on the right to examine witnesses;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction.

Done in English, and notified in writing on 27 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| Viktoriya Maradudina | Darian Pavli |
| Acting Deputy Registrar | President |

# APPENDIX

## Application raising complaints under Article 6 §§ 1 and 3 (d) of the Convention (unfair trial in view of restrictions on the right to examine witnesses)

| **Application no.**<br>**Date of introduction** | **Applicant's name**<br>**Year of birth** | **Representative's name and location** | **Final domestic decision**<br><br>**Charges convicted of** | **Witness absent from trial (indicated by initials)**<br><br>**Summary of the nature of the witness evidence** | **Reasons for absence** | **Steps taken to compensate for the witnesses' absence** |
|---|---|---|---|---|---|---|
| 705/16<br>14/12/2015 | **Zakarya Makhachevich GADZHIYEV**<br>1975 | Mikhail Anatolyevich Fomin<br>Moscow | Moscow City Court<br><br>23/06/2015<br><br>infliction of minor injuries and extortion (in respect of the events of 13/03/2013) | Ye.<br><br>prosecution eyewitness, sole and decisive, carrying significant weight, he was the only eyewitness who claimed to have seen the applicant at the crime scene and who identified him as one of the perpetrators during the pre-trial investigation | The witness could not be located;<br>He was summoned several times, his whereabouts remained unknown, it was established that the witness had sold his flat where he allegedly was registered even earlier, before he participated in the pre-trial investigative activities | None |