CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42551/98
by Oleg SVINARENKOV
against Estonia

The European Court of Human Rights (First Section) sitting on 15 February 2000 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *judges*,

and Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 10 January 1997 by Oleg Svinarenkov against Estonia and registered on 3 August 1998 under file no. 42551/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 15 March 1999 and the observations in reply submitted by the applicant on 5 May 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Estonian citizen, born in 1966 and currently serving a prison sentence in Estonia.

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

A. Particular circumstances of the case

On 17 April 1995 criminal proceedings were instituted against the applicant on the suspicion of his having committed a murder on the previous day. On 18 April 1995 the applicant was taken into custody. On 20 April 1995 he was formally charged with deliberate homicide and unlawful possession of a firearm. On the same day the Tartu City Court (*Tartu Linnakohus*), having regard to the nature of the crime committed, the danger of his absconding and the fact that the weapon used in the crime had not been found, ordered the applicant's remand in custody until 26 April 1995. On 24 April 1995 the applicant's defence lawyer lodged an appeal against the order with the Tartu Court of Appeal (*Tartu Ringkonnakohus*) which dismissed it on 8 May 1995. The applicant's detention on remand was subsequently extended until 30 June 1995.

On 24 April 1995, apparently on the investigator's order, the authorities seized from the applicant's apartment, and in his absence, three passports and two other items. The applicant claims that the authorities also seized other objects which were not entered in the official records. He further claims that the authorities conducted an undocumented search at his work place.

Upon conclusion of the preliminary investigation the applicant and his defence lawyer were presented with the contents of the case file on 9-16 June 1995.

On 22 June 1995 the Tartu public prosecutor approved the summary of charges against the applicant and transferred the case for examination to the Tartu City Court where it was registered on the same day. On 10 July 1995 the City Court held a preliminary hearing in which it considered that due to its case load it was not possible to begin the applicant's trial immediately, and extended the applicant's detention until 30 September 1995.

On 26 October 1995 the City Court held another preliminary hearing in which it committed the applicant for trial and set its date for 11-17 January 1996. It prolonged the applicant's detention accordingly.

On 4 December 1995 the applicant complained to the City Court that it had violated procedural time-limits under Articles 184 and 204 of the Criminal Procedure Code concerning the start of the trial. He also complained that the authorisation for his detention was renewed only 27 days after the prior authorisation had expired on 30 September 1995.

The formal indictment was served on the applicant on 5 December 1995 and his trial commenced on 11 January 1996. As the applicant considered that his witness TN, who testified before the City Court and was questioned by the parties on the same day, had been subjected to undue influence by unknown persons, he requested the City Court on 17 January 1996 to hear promptly his witnesses NL and VL. The City Court postponed the

session until 1 April 1996. The applicant's witness NL appeared before the City Court on 2 April 1996 where she gave evidence and was questioned by the parties. Her husband VL was also summoned but was not heard. The Government submit that VL failed to appear in the hearing while the applicant argues that the City Court refused to hear VL who was therefore denied entry into the court building. On the same day the defence lawyer requested the confrontation of two witnesses TN and IL both of whom had been previously heard by the City Court. The request was turned down as the City Court considered that it possessed sufficient evidence in the case.

On 1 April 1996 the applicant complained to the City Court that the authorities' actions in his apartment on 24 April 1995 were unlawful as they had in fact performed a search which required the public prosecutor's authorisation and that the seizure of objects took place without his presence. The applicant alleges that he also complained to the public prosecutor.

By judgment of the Tartu City Court 17 April 1996 the applicant was found guilty of the charges against him and sentenced to 9 years' imprisonment.

On 22 April 1996 the applicant complained to the judge of the City Court about having had inadequate time to read through the minutes of the court sessions and to comment on them. He also pointed to the alleged violation of the procedural rules concerning the time-limits in examining his case.

On 25 April 1996 the applicant lodged an appeal against the City Court judgment disputing the assessment of evidence for his conviction. He further complained about the refusal of the City Court to allow the confrontation of the two witnesses and stated that the City Court had not addressed multiple violations of procedural norms during the pre-trial investigation. In particular, the applicant submitted that it made no mention of his complaint of 1 April 1996 regarding the search of his apartment and workplace and the seizure of his personal effects. In a hearing on 6 June 1996 before the Tartu Court of Appeal (*Tartu Ringkonnakohus*) the applicant also referred specifically to the interrogation of Russian-speaking witnesses without an interpreter and to falsified additions to the records of witness testimonies.

On the same day the applicant requested a new expert opinion on the cartridge cases. The Court of Appeal granted the request and adjourned its examination of the applicant's case pending the outcome of the expert opinion.

On 23 September 1996 the applicant complained to the Court of Appeal about the discovery of changes in several case file documents, e.g. the crime scene record, which were introduced after the termination of the preliminary investigation without his knowledge. According to his lawyer, the changes were probably made after the judgment of the City Court.

By judgment of 25 September 1996 the Court of Appeal confirmed the judgment of the first instance court holding it lawful, well-founded and sufficiently motivated. As regards the applicant's complaint of 23 September 1996, the Court held that the alleged changes in the case file documents would not have influenced the City Court's judgment as they were introduced only subsequently.

On 7 October 1996 the applicant lodged an appeal in cassation to the Supreme Court (*Riigikohus*) in which he questioned the evaluation of evidence and pointed again to the allegedly unlawful search and seizure and other violations of procedural norms during the pre-trial investigation, including the interrogation of witnesses without an interpreter and the falsification of witness testimonies. He stated that he had received no reaction from either the City Court or the Court of Appeal to his complaints. He further complained about the introduction of later changes in the file documents and the failure of the Court of Appeal to fully address this issue.

On 27 November 1996 the Supreme Court refused the applicant leave to appeal against the Court of Appeal judgment. On 16 April 1997 it allowed, however, the applicant's appeal for correction of court errors. By judgment of 6 May 1997 the Supreme Court dismissed his application holding the judgments of the Tartu City Court and the Court of Appeal lawful and not subject to annulment. It agreed with the analysis of the evidence and the conclusions reached in these judgments and did not find any substantial violations of the criminal procedure law which would have hindered the thorough, complete and objective investigation of the case or prevented the courts from rendering a lawful and substantiated judgment.

B. Relevant domestic law

According to Article 182 of the Code of Criminal Procedure the court must take a decision to try the accused who is in custody within 5 days from the arrival of the case file in the court. Its Article 204 provides that the trial must start no later than 20 days from the taking of that decision.

Under Article 77^1 of the Code of Criminal Procedure and Article 68 of the Code of Criminal Court Appeal and Cassation Procedure a special appeal on the decisions concerning pre-trial detention and its prolongation can be submitted within five days to a higher court.

Pursuant to Article 120 § 1 of the Code of Criminal Procedure supervision over the following of laws by the organs of preliminary investigation is carried out by the public prosecutor. According to its Articles 182 and 183 complaints regarding the activities of the police investigator are submitted to the public prosecutor whose decisions and actions concerning the complaints can be appealed to the higher level public prosecutor.

Article 4 § 1(1) of the Code of Administrative Court Procedure provides that the Administrative Court is competent to deal with appeals against the organs of the executive State power or the legal acts or action by one of its officials.

Article 139 of the Code of Criminal Procedure stipulates that if an investigator has sufficient reason to believe that in a certain room, location or in a person's possession there might be items of significance to a criminal case he may conduct a search to find them. A search may be conducted on the basis of a decision of an investigator and only upon the authorisation of the public prosecutor or his deputy. If an investigator knows the exact location of an item which is of significance to a criminal case, he may conduct the seizure of that item. A seizure is carried out on the basis of a decision of an investigator.

Under Article 140 of the Code of Criminal Procedure an investigator, in performing a search and a seizure, can take away only those items and documents which are relevant to a criminal case. Each seized item and document must be entered in a protocol indicating their exact amount, format, weight and individual characteristics.

Article 141 of the Code of Criminal Procedure provides that a search and a seizure is conducted in the presence of the person concerned or his adult family member or, if this is not possible, in the presence of a local government representative.

COMPLAINTS

1. The applicant complains under Article 5 § 3 of the Convention that he was not brought to trial within a reasonable time.

2. The applicant complains under Article 5 § 4 of the Convention that from 30 September 1995 until 26 October 1995 he was kept in detention unlawfully.

3. a) The applicant complains under Article 6 § 1 of the Convention that he did not have a fair trial in that he was convicted on conflicting and insufficient evidence.

b) The applicant complains under Article 6 § 1 of the Convention that the courts were not impartial in examining his case.

c) The applicant complains under Article 6 § 2 of the Convention of a violation of his right to be presumed innocent until his conviction.

d) The applicant complains under Article 6 § 3(b) that he did not have enough time and adequate possibilities for the preparation of his defence in that he could not participate in the pre-trial investigative activities concerning on-site inspections, searches and seizures as well as designation of experts, that the results of the investigative measures were presented to him with delay and that during the court proceedings he was not familiarised in time with the file documents, e.g. the hearing records.

e) The applicant complains under Article 6 § 3 (d) of the Convention that the first instance court did not grant his requests to hear his witnesses and to conduct their confrontation. In particular, he complains that the City Court refused on 17 January 1995 without proper motivation to hear his witnesses NL and VL who could confirm his alibi and that on 2 April 1995 the City Court refused to hear VL. He also complains about the rejection of his request to conduct the confrontation of witnesses TN and IL on the same day. He further complains that despite his request the City Court took no measures to find and question a person with whom the murder victim had had tense relations. Moreover, the City Court refused to identify and search for additional eyewitnesses of the crime who were mentioned in the testimonies of two eyewitnesses.

4. The applicant complains under Article 8 of the Convention of a violation of his right to respect for his private life and his home. He submits that the authorities carried out without his presence an unauthorised search of his apartment and of his workplace, that they seized in the process objects of no relevance to the criminal proceedings, that the objects have

not been returned to him and that the activities of the authorities caused him material damage. He argues that the actions of the authorities violated Articles 139, 140 and 141 of the Code of Criminal Procedure.

5. Finally, the applicant complains under Article 13 of the Convention about the lack of an effective remedy in that his complaints during the criminal proceedings were not addressed by the courts.

PROCEDURE

The application was introduced with the European Commission of Human Rights on 10 January 1997 and registered on 3 August 1998.

On 21 October 1998 the Commission decided to invite the respondent Government to submit written observations on the admissibility and merits of the application.

The Government's written observations were submitted on 15 March 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 5 May 1999, also after an extension of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention that he was not brought to trial within a reasonable time.

Article 5 § 3 of the Convention reads in so far as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article ... shall be entitled to trial within a reasonable time ..."

The Government submit that the complaint is barred on the grounds of *ratione temporis* or is reduced to 24 hours as the Convention entered into force with respect to Estonia on 16 April 1996 and the judgment of the Tartu City Court is dated 17 April 1996. Alternatively, it is argued that in a murder case of considerable complexity a delay of 9 months from the applicant's arrest on 18 April 1995, and of 2½ months from the decision to try him on 26 October 1995 to the opening of the trial on 11 January 1996 is in full conformity with the requirements of Article 5 § 3 of the Convention and that a delay of 3 months from the opening of the trial to the rendering of the judgment at first instance is equally in full conformity. It is also pointed out that the period of pre-trial detention was subsumed by the prison sentence imposed on the applicant.

In addition, it is contended that the applicant has failed to exhaust domestic remedies as he has not raised his complaint in the proceedings before the Court of Appeal and the Supreme Court.

The applicant submits that the Tartu City Court gravely violated the time-limits stipulated in Articles 184 and 204 of the Code of Criminal Procedure. He argues that in the period between the conclusion of the preliminary investigation and the start of the trial no further measures concerning his case were taken by the authorities. He further contends that his lengthy pre-trial detention served as a reason for his conviction. As regards the issue of non-exhaustion, the applicant points to his complaints to the City Court of 4 December 1995 and 22 April 1996 and submits that he and his defence lawyer also raised the issue orally before the Court of Appeal and the Supreme Court. However, the judgments of the courts contained no reaction to his complaint.

The Court observes that in the present case the period to be taken into consideration ended on 17 April 1996 when the Tartu City Court delivered its judgment. However, according to the generally recognised principles of international law, the Convention is binding on the Contracting States only in respect of facts occurring after its entry into force. Estonia ratified the Convention and accepted the right of individual petition on 16 April 1996. The Court's jurisdiction *ratione temporis* thus covers only the period of 1 day. Even taking account of the state of proceedings existing on the critical date, the Court finds that there is no appearance of a violation of the reasonable time requirement within the meaning of Article 5 § 3 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant complains under Article 5 § 4 of the Convention that from 30 September 1995 until 26 October 1995 he was kept in detention unlawfully.

Article 5 § 4 of the Convention provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if his detention is not lawful."

The Government submit that the complaint is outside the Court's competence *ratione temporis* as the period in question predates the entry into force of the Convention with respect to Estonia on 16 April 1996. In any event, the applicant has failed to exhaust available domestic remedies. If the applicant considered that the period concerned was not covered by the City Court order of 10 July 1995 he could have submitted a special appeal based on Article 68 (1) of the Code of Criminal Court Appeal and Cassation Procedure or have raised the matter in the ordinary appeal against the City Court judgment. The applicant has availed himself of neither of these remedies.

The applicant argues that he has exhausted all domestic remedies. He submitted his complaint to the Tartu City Court as well as to the public prosecutor and also raised the matter in the proceedings before the Court of Appeal and the Supreme Court after ratification of the Convention by Estonia.

The Court considers that it is not required to decide whether or not the applicant's complaint discloses any appearance of a violation of the Convention. It observes that the facts complained of relate to a period prior to 16 April 1996, which is the date of the entry into force of the Convention with respect to Estonia. It follows that this part of the application is outside the competence *ratione temporis* of the Court and is incompatible with the provisions of the Convention within the meaning of Article 35 § 3.

3. The applicant complains that in numerous respects he did not have a fair trial. He invokes in this regard Article 6 §§ 1-3 (b) and (d) of the Convention which read in so far as relevant:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an impartial tribunal ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> b) to have adequate time and facilities for the preparation of his defence;
>
> 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. Under Article 6 § 1 of the Convention the applicant complains that he was convicted on conflicting and insufficient evidence.

The Government submit that the judgment of the City Court of 17 April 1996 lists in detail the various evidence on which the applicant's conviction and sentence were based. This evaluation of evidence was upheld by the courts of appeal in full accordance with the provisions of domestic law and the Convention. The complaint is therefore manifestly ill-founded.

The applicant submits that the criminal proceedings against him were not fair due to numerous violations by the domestic authorities of domestic law as well as of the provisions of the Convention, a lack of reaction from the courts to his complaints and the reliance on inadequate evidence for his conviction.

The Court first recalls that its task is not to examine whether the applicant was guilty or innocent of the offences of which he was convicted. According to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its 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. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, for example the Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45 and 46, and the

Garcia Ruiz v. Spain judgment of 21 January 1999, § 28, to be published in *Reports of Judgments and Decisions* 1999). It is true that the applicant has submitted a number of complaints as to the fairness of the proceedings (see below). In this respect the Court recalls that its task is to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair (see, for example, the Mantovanelli v. France judgment of 18 March 1997, *Reports* 1997-II, pp. 436–37, § 34, and the Bernard v. France judgment of 23 April 1998, *Reports* 1998-II, p. 879, § 37).

However, in so far as the applicant complains that he was convicted on conflicting and insufficient evidence the Court finds that these allegations do not disclose an appearance of a lack of fairness of the impugned proceedings within the meaning of Article 6 of the Convention.

b) The applicant complains under Article 6 § 1 of the Convention that the courts were not impartial in examining his case.

The Government contend that the applicant does not elaborate, or even try to substantiate any allegation why he considers the courts to be lacking in impartiality. Nor does he indicate any behaviour on the part of the judges which may justify his accusations. In any event, he has not brought his allegations forward during the trial itself. The complaint should therefore be rejected for non-exhaustion of domestic remedies and moreover as being manifestly ill-founded.

The applicant argues that impartiality of the courts is evidenced by the falsification of the case file material and by the pressure to render a convicting verdict following his lengthy and unlawful pre-trial detention. He contends that all domestic remedies with respect to these issues have been exhausted.

The Court recalls that the existence of impartiality for the purposes of Article 6 § 1 must be determined by a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also by an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, among other authorities, the Castillo Algar v. Spain judgment of 28 October 1998, *Reports* 1998-VIII, p. 3116, § 43). As regards the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary. Under the objective test, it must be determined whether, irrespective of the judge's personal conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. In this respect even appearances may be of a certain importance. Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. In deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the accused is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (ibidem, §§ 44 and 45).

In the present case the applicant's claim of a lack of impartiality of the court appears to stem from the fact of his conviction following his pre-trial detention and the alleged tampering with the case file. However, the applicant has furnished no proof of an existence of prejudice or bias on the part of individual judges. Nor has it been established that the impartiality of the judges was undermined by certain objective circumstances, such as the

length of the applicant's pre-trial detention. Leaving aside the questions concerning the Court's competence *ratione temporis* and exhaustion of domestic remedies, the Court finds that in the present circumstances the applicant's complaint is in any event unsubstantiated.

c. The applicant complains under Article 6 § 2 of the Convention of a violation of his right to be presumed innocent until his conviction.

The Government submit that in so far as this complaint relates to the pre-trial investigation it is inadmissible on the grounds of *ratione temporis*. At any rate, the applicant has in no way substantiated how the presumption of innocence might have been violated in the proceedings against him. It is submitted that at no time during the preliminary investigation or the trial itself did the police, the prosecutor or the court act contrary to Article 6 § 2 of the Convention. There is nothing in the file to indicate that the court had any preconceived ideas as to the applicant's guilt, that the burden of proof did not rest squarely with the prosecution and that any doubt would not duly benefit the applicant. The applicant's complaint is therefore in any event manifestly ill-founded.

The applicant maintains that as from his arrest he was considered guilty at all stages of the preliminary investigation and the court proceedings, no other versions of the murder were examined and all doubts were interpreted to the benefit of the prosecution.

The Court first recalls that the presumption of innocence guaranteed by Article 6 § 2 requires, *inter alia*, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused (see the Barberà, Messegué and Jabardo v. Spain judgment of 6 September 1988, Series A no. 146, p. 33, § 77). It further recalls that the presumption of innocence will be violated if, without the accused's having previously been proved guilty according to law, a judicial decision concerning him reflects an opinion that he is guilty. This may be so even in the absence of any formal finding; it suffices that there is some reasoning suggesting that the court regards the accused as guilty (see the Minelli v. Switzerland judgment of 25 March 1983, Series A no. 62, p. 18, § 37).

In the present case, even assuming that it is competent *ratione temporis* to examine this complaint, the Court finds no indication of any judicial opinion or preconceived ideas on the part of the trial court which would have suggested that it regarded the applicant as guilty of the offences with which he had been charged prior to the rendering of its judgment.

d. The applicant complains under Article 6 § 3(b) that he did not have enough time and adequate possibilities for the preparation of his defence in that he could not participate in the pre-trial investigative activities concerning on-site inspections, searches and seizures as well as designation of experts, that the results of the investigative measures were presented to him with delay and that during the court proceedings he was not familiarised in time with the file documents, e.g. the hearing records.

The Government submit first that the complaint relates mainly to the facts which occurred in 1995, i.e. prior to the entry into force of the Convention with respect to Estonia.

It is further submitted that the complaint relating to his alleged inability to prepare his defence adequately was never raised during the trial itself. At no time did he or his lawyer ask for an adjournment of the trial or of a hearing. Nor was the issue raised during the proceedings before the Court of Appeal and the Supreme Court. The applicant has therefore failed to exhaust domestic remedies.

In any event, the applicant's complaint is manifestly ill-founded. It is observed that the applicant was informed of the charges against him on 20 April 1995 and that his lawyer was so informed on 24 April 1995. On 9 June 1995 the formal record of the investigation of the case was presented to, and signed by, the applicant after it had been translated into Russian. Between 9 and 16 June 1995 the applicant and his lawyer, assisted by an interpreter, consulted the file in its entirety. The formal indictment was served on the applicant on 5 December 1995 and from that date on the applicant and his lawyer had full access to the case file as it was to be presented to the City Court on 11 January 1996. The records do not indicate that during these five weeks the applicant himself ever requested such access, although this possibility was open to him. Moreover, he had full access to the case file in the interval between the hearings in January and April 1996.

It is submitted that, for the assessment of the situation, not only the applicant's position, but also the facilities for his defence lawyer should be taken into consideration. In particular, under its case law the Convention does not entitle an accused to have access to the case file if he is represented by a lawyer. As regards the time factor, it is contended that there was ample time for the preparation of the defence.

The applicant maintains that he has raised his complaint throughout the proceedings and has exhausted all available domestic remedies.

The Court does not consider it necessary to examine the questions concerning its competence *ratione temporis* and exhaustion of domestic remedies as the applicant's complaint is in any event unsubstantiated. It notes that the applicant had as from 24 April 1995 at his disposal a defence counsel with whom he could freely communicate. It further observes that as from 9 June 1995 the applicant was fully introduced to the results of the preliminary investigation and that he was granted unrestricted access to the case-file as from 5 December 1995, i.e. approximately 5 weeks before the commencement of the trial. Moreover, the Court finds no evidence that in the subsequent stages of the proceedings the applicant was in any way hampered in preparing and submitting his arguments.

In these circumstances, the Court finds that the applicant had adequate facilities and time for the preparation of his defence.

e. The applicant complains under Article 6 § 3 (d) of the Convention that the first instance court did not grant his requests to hear his witnesses and to arrange their confrontation. In particular, he complains that the City Court refused on 17 January 1995 without proper motivation to hear his witnesses NL and VL who could confirm his alibi and that on 2 April 1995 the City Court refused to hear VL. He also complains about the rejection of his request to conduct the confrontation of witnesses TN and IL on the same day. He further complains that despite his request the City Court took no measures to find and question a person with whom the murder victim had had tense relations. Moreover, the City Court refused to identify and search for additional eyewitnesses of the crime who were mentioned in the testimonies of two eyewitnesses.

The Government first submit that the matters referred to by the applicant relate to a period prior to the entry into force of the Convention with respect to Estonia on 16 April 1996. They further argue that the applicant has not exhausted domestic remedies as he only complained about the refused confrontation of the two witnesses before the Court of Appeal and did not raise his complaint before the Supreme Court. As regards the applicant's allegation concerning the interrogation of Russian-speaking witnesses without an interpreter it is contended that the applicant should have complained about the activities of the investigator to the public prosecutor according to Article 182 of the Code of Criminal Procedure. The allegation is, however, contradicted by the fact that interpretation was provided whenever needed.

It is contended that, in any event, the applicant's complaint is manifestly ill-founded. It is submitted that neither the right of the accused to cross-examine witnesses nor his right to call witnesses is absolute. Furthermore, the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. It is recalled that during 8 days of hearings the City Court heard a number of witnesses and experts from the prosecution as well as from the defence and that they were interrogated and cross-examined by the parties. In the appeal proceedings the applicant was granted a new expert opinion on the cartridge cases. He was thus given all necessary facilities for presenting his evidence.

The applicant argues that he has raised the question concerning the weight of the witness statements before the Court of Appeal and the Supreme Court. He further argues that, as regards the actions of the investigator concerning the falsification of the testimony of the Russian-speaking witnesses and their interrogation without an interpreter, he could not follow the complaint procedure for the pre-trial proceedings as he only found out about the investigator's actions in a City Court hearing. He raised this question at all subsequent stages of the proceedings but received no reaction from the courts. It is further contended that the expert appraisal was carried out by methods other than suggested which made it impossible to arrive at any kind of concrete conclusions. The matter was raised in all subsequent proceedings but the courts failed to address it.

The applicant maintains that he has exhausted all domestic remedies with respect to these issues and that he was deprived of the possibility of providing his own evidence as regards both the calling and questioning of witnesses and other means of defence.

As before, the Court does not find it necessary to consider the questions concerning the Court's competence *ratione temporis* or exhaustion of domestic remedies because even assuming that the complaint fulfils these requirements it is inadmissible for the following reasons.

The Court recalls that, 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 is indicated by the words "under the same conditions", is a full equality of arms in the matter (see, for example, the Vidal v. Belgium judgment of 25 March 1992, Series A no. 235-B, p. 14, § 33).

In the present case, the Court notes that the trial court refused to allow the applicant a confrontation of witnesses TN and IL on the grounds that it already had sufficient evidence in the case. Moreover, the two witnesses had already been individually heard. It further notes that witness NL, whom the applicant initially requested to be heard on 17 January 1995 testified before the trial court on 2 April 1995. As regards the failure to accede to the applicant's request to identify, locate and hear additional witnesses who could allegedly further confirm his innocence the Court finds no indication that the trial court acted arbitrarily or otherwise exceeded its margin of appreciation in this respect.

Thus, the Court finds that the above circumstances do not disclose a lack of respect for the equality of arms principle or an infringement of the rights of the defence.

Summing up, the Court notes that the applicant had the benefit of adversarial proceedings. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. The factual and legal reasons for the first-instance and appellate courts' decisions were set out at length. It recalls that the guarantees in paragraphs 2 and 3 of Article 6 of the Convention are specific aspects of the right to a fair trial set forth in paragraph 1. The Court has considered the particular aspects invoked by the applicant and has found that these did not assume such importance as to constitute a decisive factor in the general appraisal of the trial. In addition, an examination of the conformity of the trial as a whole with the rules laid down in Article 6 of the Convention has not disclosed any appearance of a violation of this provision either.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

4. The applicant complains under Article 8 of the Convention of a violation of his right to respect for his private life and his home. He submits that the authorities carried out in his absence an unauthorised search of his apartment and of his workplace, that they seized in the process objects of no relevance to the criminal proceedings, that the objects have not been returned to him and that the activities of the authorities caused him material damage. He argues that the actions of the authorities violated Articles 139, 140 and 141 of the Code of Criminal Procedure.

Article 8 of the Convention provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government submit that the seizure of objects in the applicant's apartment took place on 24 April 1995, i.e. prior to the entry into force of the Convention with respect to Estonia on 16 April 1996. The objects seized served the criminal investigation against the applicant. The fact that they remained in the physical possession of the prosecuting

authorities during the trial and the appeal proceedings, i.e. after 16 April 1996, cannot result in the Court having competence to deal with events which fall outside its jurisdiction *ratione temporis* and "create" retroactively a violation of Article 8 when at the crucial date that Article was not yet applicable.

In any event, the applicant has failed to exhaust the remedies available under Estonian law. The seizure of objects in the applicant's apartment was conducted under Article 139 §§ 4-5 and Article 141 § 1 of the Code of Criminal Procedure. According to its Articles 182 and 183 complaints regarding the activities of the police investigator can be submitted to the public prosecutor whose decisions and actions concerning the complaints can be appealed to the higher level public prosecutor. A further appeal is available to the administrative courts. The applicant has filed no such appeals. A complaint to the City Court could not be entertained for lack of jurisdiction. Furthermore, it is stressed that there is no indication in the applicant's case file of his alleged complaint of 1 April 1996 concerning the search and the seizure. In addition, according to the case file there was no search in his apartment or in his workplace.

The applicant submits that he has brought his complaint before the respective courts at all stages of the proceedings. He has also complained to the public prosecutor. Although the authorities' unlawful actions took place prior to 16 April 1996, all the court judgments were rendered after that date. However, they contain no reaction to his complaints. It is further contended that if the courts lacked jurisdiction to deal with his complaint they should have forwarded it to the competent organ.

The Court observes that the facts underlying the applicant's complaint relate to a period prior to the date of the entry into force of the Convention with respect to Estonia on 16 April 1996. It follows that this part of the application is outside the competence *ratione temporis* of the Court and is incompatible with the provisions of the Convention within the meaning of Article 35 § 3.

5. Finally, the applicant complains under Article 13 of the Convention about the lack of an effective remedy in that his complaints during the criminal proceedings were not addressed by the courts.

Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government submit that it appears from the file that the applicant invokes Article 13 in respect of the alleged violations of Articles 6 and 8 of the Convention. It is contended that the applicant's claim under Article 8 is not arguable as it is barred on the grounds of *ratione temporis* and for non-exhaustion of domestic remedies. The applicant's complaint in conjunction with Article 6 is similarly not arguable as his claims under that Article are inadmissible *ratione temporis* or for non-exhaustion of domestic remedies or as being manifestly ill-founded.

The applicant submits that he lacked an effective remedy in respect of all his complaints indicated in his application, i.e. Article 5 §§ 3-4, Article 6 §§ 1-2, § 3(b) and (d) and Article 8 of the Convention. He has raised these complaints throughout the domestic proceedings but none of the court judgments contains any reaction to them. All the judgements were handed down after the entry into force of the Convention with respect to Estonia.

The Court recalls that Article 13 applies only in respect of grievances under the Convention which are arguable (see, for example, the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

In the present case the Court has found the applicant's complaints under Article 5 § 4 and Article 8 of the Convention to be incompatible *ratione temporis* with the provisions of the Convention. His complaint under Article 5 § 3 has not raised a *prima facie* issue under the Convention. It considers that therefore the applicant does not have an arguable claim to be a victim of the alleged violation of his rights under the above Articles.

Moreover as the Court has already examined the applicant's complaints under Article 6 of the Convention, there is no need for the matter to be considered in the context of Article 13 which has less stringent requirements.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President