CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 64056/00
by Oleg Konstantinovich VOLKOV
against Russia

The European Court of Human Rights (Second Section), sitting on 8 March 2005 as a Chamber composed of:

Mr J.-P. COSTA, President,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mr A. KOVLER,
Mrs A. MULARONI, judges,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 28 November 2000,

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 Oleg Konstantinovich Volkov, is a Russian national, who was born in 1969 and lives in Irtyshskiy, a town in the Omsk Region. He is represented before the Court by Mr V. M. Kafarov, a lawyer practising in Moscow. The respondent Government are represented by Mr P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

1. Criminal proceedings against the applicant

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

On 16 April 1999 the police arrested and detained the applicant because they suspected that he had shot clients at a roadside café with whom he had quarrelled. In the course of the investigation, the police charged the applicant with another offence. They suspected that in 1993 he had shot visitors to his office whom he had mistaken for blackmailers.

After the investigation, the police submitted the case for trial to the Omsk Regional Court.

The trial began on 17 November 1999 but, before the hearing, the court excluded the public from the courtroom. Once the hearing had begun, the applicant's lawyer protested. However, the widow of one of the applicant's purported victims, G., requested *in camera* proceedings because she had been frightened by threats from the applicant's friends. The applicant stated that he saw no reason to hold the hearing in private. The public prosecutor supported G.'s request because, in his opinion, the victims and witnesses were under pressure and felt uncomfortable about testifying in public. The court deliberated on the spot and decided to continue the hearing *in camera* to "ensure a comprehensive and objective examination of the case and to avoid any possibility of pressure on the victims and witnesses".

On 26 November 1999 the court found the applicant guilty of murder and of in□icting grievous bodily harm, and sentenced him to 17 years' imprisonment.

On 5 January 2000 the applicant appealed to the Supreme Court. His lawyer argued, *inter alia*, that hearing the case in private had been unlawful for a number of reasons. First, under the Code of Criminal Procedure the intimidation of witnesses did not justify hearings in private. Secondly, the court failed to specify any concrete instance of intimidation. Thirdly, only bailiffs could effectively ensure the witnesses' security.

On 7 June 2000 the Supreme Court rejected the appeal. The appeal judgment disregarded the complaint about the private hearing.

2. Circumstances of the applicant's detention

(a) The applicant's health

In February 1999, shortly before his arrest, the applicant had an operation on his hand. Once detained, his lawyer requested the public prosecutor to release the applicant because his hand required urgent intensive postoperative treatment, unavailable in the prison. On 8 June 1999 the prison authorities informed the lawyer that a prison doctor had found the applicant's condition stable and that the applicant could await a further operation until after the trial.

(b) Assault on the applicant

According to the applicant, on 2 July 1999 he was taken from the prison to an investigator's office to confront a victim, M. During the confrontation the applicant sat on a chair, his hands cuffed. M. took advantage of the applicant's restraint to beat him. The investigator failed to intercede.

B. Relevant domestic law

At the time of the applicant's trial, criminal proceedings were primarily governed by the Code of Criminal Procedure 1960 (the "CCRP"). Section 18 of the CCRP established the principle that all hearings should be public. Hearings in private were possible only in cases which involved State secrets, which concerned sex crimes, where the defendant was under sixteen years of age and where publicity could damage the participants' private life.

Apart from the CCRP, criminal proceedings were governed by the Basic Law on Criminal Procedure of the USSR of 12 June 1990 which remained in force at the time of the applicant's trial. Pursuant to section 12 of the Basic Law, hearings in private were also possible to ensure the security of the victims and witnesses.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that the hearing of 17 November 1999 had been held in private. He submitted that the absence of the public had dispirited him and, as a result, had prejudiced his defence.

2. The applicant next complained that by detaining him, a seriously ill person, the authorities had subjected him to torture and inhuman treatment, prohibited by Article 3 of the Convention. He also complained that the police had failed to defend him when M. had assaulted him.

3. The applicant further complained under Article 6 § 1 of the Convention that the domestic courts had taken too long to examine his appeal. He submitted that the courts had been prejudiced, and that their findings had been unreliable.

4. The applicant complained under Article 6 § 3 (b) of the Convention that, since the prison doctors had failed to treat his hand properly, he could not write and, as a result, he could not prepare for the trial.

5. Lastly, the applicant complained under Article 6 § 3 (d) of the Convention that the trial court had not given him enough time to interrogate witnesses.

THE LAW

1. The applicant complained under Article 6 § 1 of the Convention that his trial had not been public. Insofar as relevant, Article 6 § 1 reads as follows:

> "In the determination of ... of any criminal charge against him, everyone is entitled to a ... public hearing ... by [a] ... tribunal...."

A. The parties' arguments

In the Government's opinion, this complaint was manifestly ill-founded. First, the Basic Law on Criminal Procedure of the USSR expressly permitted private hearings in the interest of participants' security. Secondly, the Omsk Regional Court had excluded the public from the hearing in order to protect G. from undue pressure. The court indeed took this decision without asking the other victims' opinion. However, under the law the court was not obliged to seek such an opinion, and, in any event, the other victims did not object to the hearing in private.

The applicant insisted that the exclusion of the public was not necessary. First, the court had excluded the public even before G. had announced her fears. These fears were hypothetical as she had not substantiated them. The court failed to question her in order to establish any specific facts of intimidation. Secondly, the court's reasons were as vague and speculative as G.'s fears. Thirdly, the court did not state expressly that the exclusion of the public was intended to protect G. This is only the Government's favourable interpretation of the court's decision. Fourthly, there was no evidence to suggest that the victims and witnesses were intimidated. On the contrary, it was they who had attacked the applicant.

B. The Court's assessment

The public character of proceedings under Article 6 § 1 of the Convention protects litigants against an administration of justice in secret, without public scrutiny. It is also a means of maintaining public confidence in the courts. Publicity renders the administration of justice visible and thus helps achieve the aim of Article 6 § 1, namely a fair trial. A fair trial is a fundamental principle of any democratic society, within the meaning of the Convention (see *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, § 21).

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant next complained under Articles 3 and 6 of the Convention about the treatment he received in the prison and about the alleged, general unfairness of his trial.

However, in the light of all the material in its possession, and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that these complaints are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint that his trial was not public;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P. COSTA
President