



Absence of crucial witness meant Russian manslaughter conviction was unfair, but trial testimony laws were robust enough

In today's Chamber judgment¹ in the case of [Zadumov v. Russia](#) (application no. 2257/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights.

The applicant, Roman Zadumov, complained that he had been found guilty of manslaughter after a decisive witness statement was read out in court but the witness herself did not appear at the trial.

The Court found that the domestic court had not done all it could to make sure the witness appeared at the trial. It noted she had had mental health issues, but had been due to be released from hospital during the hearings. There had therefore been no justification for her absence. That failure had been critical as her evidence had been decisive in Mr Zadumov's conviction.

Despite its finding of a violation, the Court did not consider that the issue of witnesses being absent from trials was a systemic or structural problem and held that the legislation at the time had had sufficient guarantees. It therefore saw no need to indicate any possible general measures on that issue to the Russian authorities. The Court also made no award in respect of non-pecuniary damage as Mr Zadumov could seek to have the proceedings reopened.

Principal facts

The applicant, Roman Vladimirovich Zadumov, is a Russian national who was born in 1980 and lives in Bezhetsk (Russia).

Mr Zadumov and another man were accused of attacking another person, Mr X., in October 2010 and beating him to death. A woman who had invited them to Mr X.'s apartment, Ms K., witnessed the events. Later the same month, while undergoing treatment for alcohol-induced psychosis and epileptic seizures, she was questioned by an investigator. She stated that she had seen Mr Zadumov and the other man attacking Mr X. until he died. Mr Zadumov later admitted to being in the flat but denied any part in the attack. The other man involved in the attack confessed to manslaughter committed together with Mr Zadumov.

Mr Zadumov was tried during the course of 2011. The court summoned Ms K. several times but she failed to appear at the trial. At the request of Mr Zadumov's lawyer, the court also examined Ms K.'s medical records. They showed that she had suffered from alcohol abuse and hallucinations, however, a police investigator testified at the trial that Ms K. had been rational and coherent when questioned about the attack in October 2010. The court was informed in February 2011 that Ms K. was due to be released from a clinic the following month, but the court allowed her testimony to be read out at the trial, despite objections by the defence. Mr Zadumov's lawyer stated that her testimony could not be relied on because of the state of her mental health and that in any event reading it out in court violated Mr Zadumov's defence rights.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In April 2011 Mr Zadumov and the other man were sentenced respectively to ten and eight years in jail for manslaughter. The judgment was upheld on appeal. Both the first-instance and appeal court treated Ms K.'s testimony as decisive evidence and accepted her statements as reliable.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Zadumov complained that he had been unable to examine a prosecution witness.

The application was lodged with the European Court of Human Rights on 2 December 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Branko Lubarda (Serbia),
Luis López Guerra (Spain),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Jolien Schukking (the Netherlands),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 6 §§ 1 and 3 (d)

The Court examined the domestic proceedings to see, among other things, whether the trial court had had good reason to allow Ms K.'s pre-trial statements as evidence without ensuring her presence in court, and whether her evidence had been decisive for Mr Zadumov's conviction.

It noted that Ms K. had indeed been treated for alcohol dependency in a clinic during the trial and that she had had documented mental health issues. However, the trial court knew that she was going to leave the clinic in March 2011 but made no effort to have her attend the hearings, which continued into April. There was nothing in the case file to show why the trial court had decided that it was impossible or impractical to examine Ms K. after her release.

Such circumstances meant that while Ms K.'s inpatient treatment was sufficient justification for reading out her pre-trial statements at the end of February 2011, that was no longer the case after her release. There had thus been no good reason for her absence from the trial and for reading out her pre-trial statements as evidence.

Furthermore, while the domestic courts had had a range of evidence before them, they had chosen to build the conviction around that testimony, which they had used to resolve the difference between Mr Zadumov's denial and the other assailant's confession. Although the domestic courts had not formally considered Ms K.'s testimony to be decisive, in the Court's opinion it had been.

Lastly, the Court examined whether there had been counterbalancing factors, capable of remedying the handicap faced by the defence. It noted that at the time of the events Russian legislation provided robust guarantees to protect an accused's right to examine prosecution witnesses, but that for a trial to be fair the domestic courts had a duty to consider the specific circumstances of a case. That might have required them, as guardians of the rights of the European Convention, to take individualised and tailored measures aimed at compensating for the handicap created by a witness's absence from court. In this case, the court, which had known of Ms K.'s medical issues, had taken steps to ensure her presence at the trial, such as summonses and the use of bailiffs, although it had

inexplicably ceased those efforts in February 2011. It had relied on other incriminating evidence for the conviction and allowed Mr Zadumov to give his own version of the events. However, the Court concluded that those procedural arrangements, which might otherwise have been sufficient, were incapable of remedying the defence's difficulties given the unexplained decision of the courts to forgo measures ensuring Ms K.'s attendance.

When judged as a whole, the trial had not been fair and had therefore breached the guarantees of Article 6 §§ 1 and 3 (d).

Article 46

The Court noted that it had over 250 pending applications raising an issue of absent witnesses similar to that in Mr Zadumov's case. However, it observed that those applications had accumulated over the space of more than ten years and that the number as such did not show there was a systemic or a structural problem. Despite its finding of a violation in the case, the Court maintained that the Russian legislative framework as a whole at the time of the events in question had provided robust procedural guarantees on the right of an accused to examine prosecution witnesses and that reading out of an absent witness's statement was only possible as an exception. Legislative amendments in 2016 appeared to have strengthened defence rights.

The Court found that there was no need to indicate any general measures to Russia for cases such as Mr Zadumov's, in addition to those already undertaken by the authorities. At the same time the Court had no reason to doubt that the judgment in the case would benefit from general measures aimed at awareness raising and capacity building for the national authorities in the manner already set out in Recommendations of the Committee of Ministers of the Council of Europe.

Just satisfaction (Article 41)

The Court noted that under its case-law the most appropriate form of redress for a violation of the right to a fair trial was the reopening of proceedings, should it be requested, as that was capable of providing full restitution, as required under Article 41. The payment of monetary awards under Article 41 was designed to make reparation only for such consequences of a violation that could not be remedied otherwise. Since Russian legislation provided for such a possibility if Mr Zadumov wished it, it considered that the finding of a violation was sufficient just satisfaction.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.