



Courts' refusal to hear prisoner's cellmates in proceedings against him for breaking prison rules was unjustified

In today's **Chamber judgment**¹ in the case of [Kartvelishvili v. Georgia](#) (application no. 17716/08) 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 case concerned a penknife found during a search of Mr Kartvelishvili's cell while he was serving a nine-year sentence for murder. He was convicted of infringing prison regulations and sentenced to a further three years in prison essentially on the basis of statements by prison officers who had carried out the search. The courts refused Mr Kartvelishvili's requests to have his cellmates, who were present during the search, called as witnesses in the proceedings.

The Court found in particular that Mr Kartvelishvili had made a perfectly reasonable challenge to what was actually only an assumption that he had been in possession of an illicit object in prison. However, the courts had refused to even consider the relevance of his cellmates' testimony mainly because they considered them to be untrustworthy. The Court considered that justification inadequate, all the more so given the inconsistencies in the prison officers' statements and other evidence used to convict him. The proceedings had therefore as a whole been unfair.

Principal facts

The applicant, Giorgi Kartvelishvili, is a Georgian national who was born in 1978 and lives in Tbilisi.

Mr Kartvelishvili was convicted in October 2000 of murder and sentenced to nine years' imprisonment.

While serving his sentence, he was also convicted of possessing a penknife, which was prohibited under prison regulations, and sentenced to a further three years in prison. Mr Kartvelishvili's conviction was based on statements by prison officers who said that they had found the penknife in his bed when searching his cell, a video-recording of the search and a written record of the search and seizure of the knife.

Before the domestic courts he challenged the search and the assumption that the knife was necessarily his, suggesting that it could have been planted. In order to clarify the matter, he requested that the courts hear his cellmates who had been witnesses to the search.

However, the courts refused to examine the men, whom they considered to be untrustworthy as they had criminal convictions, and on appeal increased his sentence to four years.

The Supreme Court ultimately rejected his appeal on points of law as inadmissible in February 2008.

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.

Complaints, procedure and composition of the Court

Relying in particular on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Kartvelishvili complained that the courts had refused to examine witnesses on his behalf, namely his cellmates, under the same conditions as those called against him, the prison officers.

The application was lodged with the European Court of Human Rights on 3 April 2008.

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

André **Potocki** (France), *President*,
Yonko **Grozev** (Bulgaria),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

The Court considered that Mr Kartvelishvili’s request to have his cellmates examined before the domestic courts had been a perfectly reasonable attempt to challenge the assumption that he had been in the possession of an illicit object in his prison cell.

That was particularly so given the inconsistencies in the proceedings as a whole. First, the prison officers who had carried out the search of Mr Kartvelishvili’s cell had given different accounts as to how the penknife had been discovered, stating that it had been found between the mattress and the blanket, between the mattress and the sheet or that it had simply fallen onto the floor when they had removed the mattress from the bed. Similarly, there had been a contradiction between the video recording, which when viewed did not clearly show whether the knife had fallen from the mattress, and the written report, which stated that it had been found “under the mattress on a bed”. Even the public prosecutor himself had conceded during the trial that the video recording had not clearly established whether the penknife had been found in Mr Kartvelishvili’s bed.

Despite those inconsistencies, the courts refused to hear Mr Kartvelishvili’s cellmates because they were untrustworthy, grounds which the Court considered inadequate. Indeed, such a justification was a negation of a criminal court’s duty to conduct a trial free from any preconceived idea of the accused’s guilt and, in the event of doubt, to always decide in that person’s favour.

Mr Kartvelishvili had thus been stripped of the only opportunity to challenge effectively the backbone of the accusation put forward against him.

The remaining evidence, the video-recording and the written record of the search and seizure, had not provided additional, stand-alone direct evidence to conclusively prove Mr Kartvelishvili’s guilt.

The domestic courts’ refusal to examine witnesses for the defence, without any regard to the potential relevance of their testimony, had therefore rendered the trial as a whole unfair, in violation of Article 6 §§ 1 and 3 (d).

[Just satisfaction \(Article 41\)](#)

The Court held that Georgia was to pay Mr Kartvelishvili 2,500 euros (EUR) in respect of pecuniary damage, and EUR 300 in respect of costs and expenses.

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.