



No violation of right to a fair trial in woman's terrorism conviction

The case of [Murtazaliyeva v. Russia](#) (application no 36658/05) concerned the applicant's being found guilty of terrorism charges and her complaint that the trial had not been fair because she had not been able properly to view a police video surveillance tape in court and that the courts had refused to call three witnesses in her defence.

In today's **Grand Chamber** judgment¹ in the case the European Court of Human Rights held unanimously, that there had been **no violation of Article 6 §§ 1 and 3 (b) (right to a fair trial / preparation of defence)** of the European Convention on Human Rights, as regards the applicant allegedly being unable to view a videotape during her trial.

The Court found that it was not clear in what way it had not been possible for the applicant to see the video, but that in any event that had not hindered a fair trial: her goal had been to check the accuracy of the transcripts of the tape, which had been possible by listening to the audio recording.

It also held, by a majority of 15 votes to 2, that there had been **no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial / examination of witnesses)** of the European Convention as regards the domestic courts' refusal to call two attesting witnesses to testify during the trial.

After revising its case-law principles on the calling and examining of defence witnesses, the Court found in particular that the defence had not made it clear why those two witnesses' testimony would strengthen her case, the domestic courts had given sufficient reasons for their decisions, and the lack of their statements in court had not undermined the overall fairness of the proceedings.

Lastly, the Court, by a majority, declared a complaint under **Article 6 §§ 1 and 3 (d)** about the courts' failure to call another witness, a police officer, to testify at the trial **inadmissible as being ill-founded**. The Court found that the applicant had effectively waived her right to examine him.

Principal facts

The applicant, Zara Khasanovna Murtazaliyeva, is a Russian national who was born in 1983 and lives in Paris (France).

In February 2004 Ms Murtazaliyeva moved into a flat with the help of A., an acquaintance who was a police officer and also an ethnic Chechen. The flat, which she shared with two other women, was in a dormitory block which belonged to the police and was equipped with concealed video and audio devices. She was placed under police surveillance on the basis of a court order because she was suspected of having connections with the Chechen insurgency movement.

In March of the same year the police stopped her in the street for an identity check and took her to a police station. Her bag was searched and two packages were found which were identified as containing explosives. Two attesting witnesses, B. and K., were present at the search. She was arrested and a criminal investigation opened. She denied the charges.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Her flat was searched and evidence was seized which allegedly showed that she had been planning a terrorist attack on a shopping centre. A transcript of videotapes recorded at the flat showed her proselytising to her two flat mates about Islam and discussing her hatred of Russians.

In January 2005 she was convicted of preparing an explosion, inciting others – her two flat mates – to commit terrorism, and of carrying explosives. She was sentenced to nine years' imprisonment.

The conviction was based on the statements of prosecution witnesses, including her flat mates, in open court, material (a note with extremist content and photographs) seized from the applicant, forensic examination reports, and transcripts of police surveillance videotapes recorded at her flat.

She appealed against the conviction. She argued, among other things, that owing to technical reasons she had not been able to point out inaccuracies between the transcripts and the recordings of conversations on the videotapes. She also complained about the refusal of two of her requests to summon witnesses: the first, to examine A., who had made a pre-trial statement that he had established a relationship with her at the order of his superiors; and the second, to examine the two attesting witnesses, B. and K., who had been present during the police's search of her bag.

In March 2005, the Supreme Court upheld her conviction, reducing the sentence to eight and a half years. It notably held that no objections had been lodged with the trial court about the quality of the videotapes or the way they had been shown; that A. had not been able to testify in court because he was on a work-related mission, but that his pre-trial statement had been read out with the consent of the defence; and that the presence of the two attesting witnesses had not been necessary as Ms Murtazaliyeva had said that the explosives had been planted in her bag before their arrival.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 September 2005.

Ms Murtazaliyeva alleged that the fairness of the proceedings against her had been undermined as she had not been able to see or effectively examine the surveillance videotapes shown during the trial as she had not been able to see the screen in the courtroom. She had also not been allowed to question in court the police officer, A., whose actions, in her opinion, could be considered as police incitement, and that she had not been able to call and examine the two attesting witnesses, who could have clarified her allegations concerning the planting of the explosives in her bag.

She relied on Article 6 §§ 1 and 3 (b) and (d) (right to a fair trial / right to adequate time and facilities for preparation of defence / right to obtain attendance and examination of witnesses) of the European Convention on Human Rights.

In a [Chamber judgment](#) of 9 May 2017, the Court held, unanimously, that there had been no violation of Article 6 §§ 1 and 3 (b) as she had not been placed at a serious disadvantage in relation to the prosecution with respect to the viewing and examination of the surveillance videotapes.

The Chamber further held, by four votes to three, that the trial court's refusal to call A. for the defence had not affected the overall fairness of the trial and there had therefore been no violation of Article 6 §§ 1 and 3 (d).

The Chamber lastly held, by five votes to two, that there had been no violation of Article 6 §§ 1 and 3 (d) owing to the absence of the two attesting witnesses.

Ms Murtazaliyeva requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 18 September 2017 the panel of the Grand Chamber accepted that request. A [hearing](#) was held on 14 February 2018.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido Raimondi (Italy), *President*,
Angelika Nußberger (Germany),
Linos-Alexandre Sicilianos (Greece),
Ganna Yudkivska (Ukraine),
Robert Spano (Iceland),
Paulo Pinto de Albuquerque (Portugal),
André Potocki (France),
Valeriu Grițco (the Republic of Moldova),
Faris Vehabović (Bosnia and Herzegovina),
Dmitry Dedov (Russia),
Iulia Antoanella Motoc (Romania),
Carlo Ranzoni (Liechtenstein),
Armen Harutyunyan (Armenia),
Georges Ravarani (Luxembourg),
Marko Bošnjak (Slovenia),
Tim Eicke (the United Kingdom),
Péter Paczolay (Hungary),

and also Lawrence Early, *Jurisconsult*.

Decision of the Court

Article 6 §§ 1 and 3 (b)

The Court saw no reason to depart from the Chamber's conclusion about Ms Murtazaliyeva's complaint over the alleged difficulty in viewing the surveillance videotape during her trial.

It noted that only one tape had been played, that the defence had requested the viewing and that it had not asked for other tapes to be shown. The applicant had not explained, either to the domestic courts or in Strasbourg, how it had been difficult for her to view the tape. The defence had made no complaints about the quality of the audio track, which was sufficient to check the accuracy of the transcript, which is what the defence had wished to achieve by having the tape played in court.

The applicant had submitted that the Court should draw inferences from the Government's inability to produce a plan of the court and the arrangements for viewing the tape. However, the Court held that such a lack of information was not enough to provide grounds for an inference of unfairness.

The Court was satisfied that Ms Murtazaliyeva had been able to participate effectively in viewing the videotape in a way which had satisfied her needs during the trial, which was to check the accuracy of the transcript of the recording by comparing it with the audio track. There had therefore been no violation of Article 6 §§ 1 and 3 (b) of the Convention.

Article 6 §§ 1 and 3 (d) as regards the witness A.

The Court, by a majority, found this complaint manifestly ill-founded, upholding the Government's preliminary objection that Ms Murtazaliyeva had waived her right to examine the witness.

The Court noted that on the last day of examining the evidence the defence had not opposed a prosecution motion to read A.'s evidence out as he had not been available to appear in person. It had subsequently not objected to resting its case without hearing A. and had not repeated its request for him to be summoned, even though it had had the right to do so.

Furthermore, the applicant had been assisted by two professional lawyers, who must have been aware of the consequences of agreeing to have A.'s testimony read out, which was that he would

not be summoned and that his pre-trial statements would be taken into account by the court. The defence had had the possibility to renew its request to summon A. before closing the examination of the evidence and during the appeal process, but had not done so. There had never been any question about the competence of the lawyers.

The Court held that she had waived her right to examine the witness, a waiver that was attended by the minimum safeguards commensurate with its importance. There was no reason to doubt that the waiver had been a knowing and intelligent relinquishment of a right and that the consequence of her conduct had been reasonably foreseeable, with the assistance of her two lawyers.

[Article 6 §§ 1 and 3 \(d\) as regards the witnesses B. and K.](#)

The Court found that the defence had argued that the attesting witnesses could give statements going beyond the way the search had been carried out and they could thus be regarded as witnesses “on behalf” of the applicant within the meaning of the Convention.

It went on to revise and clarify its case-law principles on requesting the examination of defence witnesses, which were previously set out in [Perna v. Italy](#). Those principles required an examination of whether an applicant had provided substantiation for a request to call a particular witness, and whether the refusal of a court to call that witness had undermined the overall fairness of the proceedings.

The Court noted that its cases had also consistently examined the manner in which a domestic court had decided on a request to call a witness, meaning a third element had to be considered, which was whether domestic courts had considered the relevance of the testimony in question and had provided sufficient reasons for their decision not to examine a particular witness at trial. The Court thus formulated a new three-pronged test for future cases and provided guidance on how to apply it.

In Ms Murtazaliyeva’s case, the defence had failed to provide factual or legal arguments or say concretely how the two witnesses would help her case. On the second element of the test, the Court noted that the trial court had not given reasons for dismissing the defence motion to call the witnesses, however, the Supreme Court had done so, in appropriate and commensurate terms.

Lastly, it found that the refusal to call B. and K. as witnesses had not undermined the overall fairness of the trial as Ms Murtazaliyeva’s conviction had been based on a large body of evidence and her defence team had been able to confront prosecution witnesses and present her account of events.

The Court therefore found, by 15 votes to two, that there had been no violation of Article 6 §§ 1 and 3 (d) as regards the witnesses B. and K.

Separate opinions

Judges Bošnjak and Pinto de Albuquerque expressed dissenting opinions which are annexed to the judgment.

The judgment is available in English and French.

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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.