



No fair trial if steps not taken to compensate for lack of possibility to test the credibility of direct witnesses

In today's Chamber judgment¹ in the case of [T.K. v. Lithuania](#) (application no. 14000/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights.

It further held, by a majority, that there had been:

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

The case concerned the applicant's glasses being taken away from him for several months during criminal proceedings against him and his being prevented from examining key witnesses, particularly his former partner.

The Court found that the length of time he had been left without spectacles, and the authorities' attitude, despite repeated requests to have them returned, had amounted to degrading treatment.

It also ruled that the fact that the domestic courts were unable to locate the former partner, who had maintained certain links with the State authorities, as a witness was not sufficient in itself to satisfy the requirements of Article 6 § 3 (d). In order to ensure the defence's rights under that provision, it had to examine whether that restriction had been counterbalanced. As this was not the case, the applicant's right to a fair hearing had been violated.

Principal facts

The applicant, Mr T.K., is a Lithuanian national who was born in 1971 and is currently serving a prison sentence in Vilnius (Lithuania).

He lived with a woman called V.K. They raised two boys, born in 2002 and 2004.

In November 2012 the Kaunas Regional Court convicted him of sexual assault and of possession of pornographic material depicting a child. It sentenced him to eleven years in prison as it was convinced that he had sexually abused his two sons. The trial and appellate courts did not permit the applicant to cross-examine the boys, the alleged victims, for fear of traumatising them.

The applicant argued that the boys, whose pre-trial testimony of sexual assault in 2009 was key evidence against him, had been swayed by their mother, V.K., who had later hidden from the authorities. The appellate court eventually held that the case could be decided without V.K. because every possible measure had been taken to locate her and her testimony was not important for the case. The courts also refused his request to call other witnesses, such as the psychologist who had examined the boys and to whom they had described the sexual assault.

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.

The applicant's appeal was rejected by the Court of Appeal, and the Supreme Court refused to examine his appeal on points of law.

During his arrest on 23 November 2011 the applicant's spectacles were taken from him. They were not returned to him until 20 April 2012.

Complaints, procedure and composition of the Court

He raised a complaint that the fact that his spectacles were taken from him during his arrest constituted a breach of Article 3 (prohibition of inhuman or degrading treatment).

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr K. also complained that he had not had a fair trial as he had not been able to properly examine certain witnesses.

The application was lodged with the European Court of Human Rights on 29 February 2012.

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

Ganna Yudkivska (Ukraine), *President*,
Vincent A. De Gaetano (Malta),
Paulo Pinto de Albuquerque (Portugal),
Faris Vehabović (Bosnia and Herzegovina),
Egidijus Kūris (Lithuania),
Georges Ravarani (Luxembourg),
Péter Paczolay (Hungary)

and also Andrea Tamietti, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court considered that Mr K.'s request for the return of his spectacles, which he had mentioned in a letter to the authorities in November 2011, warranted appropriate action by them as soon as they had taken notice of it. Mr K. had been active, even repeating his request, but no action had been taken. Hence, the Court found that the treatment complained of was imputable to the authorities rather to any delay caused by the applicant. It concluded that Mr K. had been subjected to degrading treatment owing to the degree of suffering involved in the case, its duration and the authorities' lack of concern about his requests for the spectacles to be returned.

Article 6 §§ 1 and 3 (d)

The Court stated that witnesses should as a general rule give evidence during a trial and that all reasonable efforts should be made to secure their attendance.

It considered that there was good reason for the rejection of Mr K.'s request for the examination at the trial of the two boys, the alleged victims, for the purpose of protecting them. However, the Court found that V.K. should have been brought to the court for cross-examination and that the authorities should have been more resourceful in trying to find her.

Furthermore, no sufficient factors to counterbalance that disadvantage had been present since the domestic court had essentially dismissed all of Mr K.'s other requests, such as summoning the experts who had questioned the children before the trial or for the obtaining of materials from a 2010 criminal case against him, which only had found negligible health impairment to the boys and V.K. and that he had tried to influence her to change her testimony.

The Court appreciated that organising criminal proceedings in such a way as to protect the interests of very young victims, in particular in cases involving sexual offences, was a consideration to be taken into account for the purposes of Article 6. Nevertheless, no fair and proper assessment of the reliability of the boys' pre-trial testimony had been possible for Mr K., who had thus suffered such limitations on his defence rights that the proceedings were not compliant with the requirement of a fair trial. The Court therefore held by six votes to one that there had been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

Just satisfaction (Article 41)

The Court held that Lithuania was to pay the applicant 13,000 euros in respect of non-pecuniary damage, but rejected the claim for costs and expenses because they had not been substantiated by supporting documents. It further found it inappropriate to compensate Mr K. for his alleged pecuniary losses as no causal link had been established between the violation found and the alleged impact on his property rights.

Separate opinion

Judge De Gaetano expressed a dissenting opinion. This opinion is annexed to the judgment.

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.