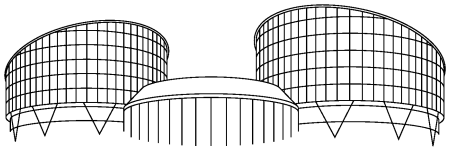

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GVINIASHVILI v. RUSSIA

(Application no. 44292/09)

JUDGMENT

STRASBOURG

22 November 2016

This judgment is final but it may be subject to editorial revision.

In the case of Gviniashvili v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 3 November 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44292/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Vladimirovich Gviniashvili ("the applicant"), on 17 July 2009.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the authorities had failed to put forward sufficient reasons to justify his remand in custody, and that the proceedings concerning the extension of his detention had been unfair.

4. On 20 November 2012 the application was communicated to the Government.

5. The Government objected to the examination of the application by a Committee. Having considered the Government's objection, the Court rejects it, as the present case is the subject of well-established case law of the Court (see, among other authorities, *Dirdizov v. Russia*, no. 41461/10, §§ 75-91, 92-100 and 108-111, 27 November 2012 and *Koryak v. Russia*, no. 24677/10, §§ 74-96 and 102-110, 13 November 2012).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1979. He is currently serving a sentence in correctional colony no. IK-1 in Penza.

A. Investigation, trial and appeal

7. In the early morning of 7 August 2007 the applicant stabbed a man in the leg during a drunken fight. Several hours later the victim died in hospital from massive blood loss.

8. On the same day the applicant was arrested. According to the police, he had started the fight and knifed the victim.

9. Two days later the applicant was remanded in custody by the Salsk Town Court of the Rostov Region ("the Town Court"). It was further extended at the investigative authorities' requests on a number of occasions given the seriousness of the charges, negative references about the applicant's character and the fact that the applicant did not have permanent residence or a job.

10. On the day of the incident a medical expert, B., performed an autopsy of the victim at the request of the investigator. He concluded that the victim, M., had died from blood loss between midnight and 4 a.m. on 6 August 2007.

11. The next day the investigator asked B. to carry out a repeat examination of the body, without informing the applicant or his lawyer. The expert stated that the victim had died between midnight and 4 a.m. on 7 August 2007. A considerable amount of alcohol was found in the victim's system.

12. On 12 September 2007 a doctor discovered several bruises on the applicant's body. The date the injuries were sustained could not be determined.

13. In October 2007 the defence were presented with the autopsy report. Having been informed of their procedural rights, including the right to challenge an expert, seek the appointment of a particular person as an expert, adduce further questions, be present during an expert examination in person and make comments or requests, including in writing, the applicant and his lawyer studied the expert report and signed it without making any remarks or objections.

14. The applicant's main line of defence at trial was that he had acted in self-defence against the unlawful actions of the victim, who had allegedly attacked him with a knife. The prosecution disputed that version of events with the in-court testimony of six people who had witnessed the incident. In particular, five of the witnesses stressed that the applicant had attacked the victim with a knife. The other witness stated that he had not seen the fight itself but had seen the victim lying wounded and had been told by others present that the applicant had knifed him and had then fled.

15. The autopsy expert testified that on the night of the murder the victim had been heavily drunk to such a point that he had been unable to think clearly. He had died because of a knife wound to his femoral artery. Neither the applicant nor his lawyer asked the expert to explain any possible

contradictions between the two autopsy reports. They did, however, challenge the admissibility of the second report in view of the fact that they had only been notified of it afterwards. The trial court rejected the objection, noting that the defence had had an opportunity to put questions to the expert in open court or to seek an additional expert examination.

16. The defence repeatedly asked the trial court to hear the three witnesses who had allegedly seen the fight. The applicant said that he had seen one of the witnesses working at the Central Market but he did not know her name. The trial court, convinced by the prosecution witnesses that the three individuals had not been present during the attack, dismissed the applicant's request. It also noted that it had no legal power to find witnesses.

17. The day before the verdict, the applicant unsuccessfully asked the trial court to order an additional autopsy of the victim.

18. On 8 August 2008 he was convicted of unintentional killing and sentenced to eight and a half years' imprisonment. His conviction was mainly based on the expert and witness testimony and the second autopsy report.

19. On 12 November 2008 the Rostov Regional Court quashed the conviction because of certain contradictions in the legal analysis of the applicant's criminal intent. The case was remitted for fresh examination. The Regional Court also ordered that the applicant should remain in custody pending a retrial.

B. Retrial

20. On 19 December 2008 the trial court rejected an application by the applicant for release, in which he complained that his detention had been excessively lengthy, that there was no reason to suspect that he had been involved in the crime, that he had a permanent place of residence and that he suffered from a serious medical condition. The court extended the applicant's detention until 20 March 2009, referring to the seriousness of the charges, negative references about the applicant's character and the "need to proceed with the trial."

21. On 29 December 2008 the defence appealed against the detention order. A week later the applicant gave the prison authorities an amended statement of appeal, which reached the trial court on 19 January 2009. It was returned as belated.

22. On 19 January 2009 the Regional Court examined the appeal in the absence of the applicant and his lawyer. It neither verified whether the defence had been duly summoned nor looked at the reasons for their absence or reflected upon the need to obtain their attendance. Having heard the prosecutor, who insisted on the importance of the applicant's continued detention, the Regional Court upheld the detention order, agreeing that the

seriousness of the charges and stage of the proceedings warranted the extension.

23. On 18 March 2009 the Town Court again extended the detention until 20 June 2009. In addition to the grounds previously indicated, it held that there was a lack of evidence to support the applicant's argument of poor health.

24. Nine days later the applicant lodged an appeal and application for leave to appear.

25. On 8 April 2009 the Regional Court held a hearing. The defence were absent but the prosecutor attended and argued in favour of the applicant's continued detention. There is nothing to suggest that the reasons for the defence's absence were checked by the court. It held that the applicant's presence was not necessary since his arguments were set out in his statement of appeal. Referring to the length of the criminal proceedings, the court decided to reduce the period of the applicant's detention by one month until 20 May 2009.

26. In the meantime, the trial court proceeded with the examination of the case. The applicant's only request was to have defence witnesses heard who were allegedly meant to testify that the applicant had not had any injuries prior to the fight and that all the prosecution witnesses had agreed to make untrue statements about him. It was dismissed by the trial court as irrelevant and ill-founded. The trial court again noted the difficulties in finding one of the witnesses in the absence of any relevant information about her identity.

27. The applicant also challenged the autopsy reports and, in particular, the cause of death.

28. On 21 January 2009 the trial court heard the autopsy expert. The applicant was removed from court because of insulting conduct towards the expert. The applicant's counsel stayed, but did not call into question the two reports or other expert evidence. The applicant's subsequent requests for an additional cross-examination of the expert were dismissed as unfounded.

29. On 13 May 2009 the trial court convicted the applicant of unintentional killing and sentenced him to eight and a half years' imprisonment. The judgment was based on the in-court testimony of six prosecution witnesses, including eyewitnesses to the incident, the second autopsy report and the expert's testimony. The court found that the weight of the evidence proved that the applicant had not acted in self-defence.

30. On 7 October 2009 the Regional Court upheld the sentence. It confirmed the findings of fact and law and concluded that there had been no procedural violations in the applicant's case.

C. Medical treatment in detention

31. The parties submitted the applicant's medical documents for the period September 2008 to January 2013.

32. It appears that in late September 2008 the applicant complained to a prison doctor of palpitations, fatigue, shortness of breath and chest pain. The prison doctor examined him on 29 September 2008, diagnosed him with mitral valve prolapse and ordered that he be transferred to a prison hospital "in due course".

33. On 23 December 2008 the applicant underwent an echocardiogram, which revealed symptoms of supraventricular tachycardia. He was also seen by a cardiologist, who confirmed the diagnosis of mitral valve prolapse and diagnosed him with neurocirculatory dystonia (*нейроциркуляторная дистония*). A course of drugs was prescribed.

34. On 28 January 2008 the applicant was admitted to the interregional prison hospital in the Rostov Region. Having undergone various medical tests and consultations he was diagnosed with grade II mitral valve prolapse, neurocirculatory dystonia and various comorbidities, such as encephalasthenia and behavioural disorder. The applicant was prescribed vitamin B, cardiovascular and hypotensive drugs and painkillers. He received the prescribed medication until he was discharged from the hospital on 24 February 2009. Doctors recommended further treatment with beta blockers, potassium and magnesium based drugs, nootropics and vasoprotective medication.

35. It seems that no significant changes occurred in the applicant's medical condition over the months that followed. His medical file does not contain any information on whether the detention authorities complied with the prescription. The applicant stated that he had not received the prescribed drugs for an entire year.

36. On 20 November 2009 a panel of psychiatrists examined the applicant and found that he suffered from organic personality disorder and vegetative nervous system disorder in the form of somatophrenia.

37. In 2010 a prison doctor saw the applicant on several occasions in relation to the latter's chronic gastritis, acute respiratory disease, urinary infection and heart condition. After each visit a course of drugs was prescribed. On several occasions he was seen by a psychiatrist about his physical symptoms.

38. Over the year that followed the applicant mostly complained to the prison doctor of heartburn and palpitations. Unsatisfied with the quality of care and drugs he was receiving, he insisted on an in-depth medical examination of his condition.

39. In July 2011 a psychiatrist noted that the applicant had minor depressive disorder and a tendency to bring vexatious claims.

40. The following month the applicant was sent to a civilian hospital in Penza for an in-depth medical examination. A gastroduodenoscopy showed that he had superficial gastroduodenitis, duodenogastric reflux and partial erosion of the esophagus. An abdominal ultrasound did not reveal any pathological conditions. Shortly after his return to the correctional colony he was prescribed various medicines to treat his conditions. He was regularly seen by a prison doctor and psychiatrist. His general medical condition remained satisfactory.

41. In January 2012 the applicant developed acute rhinitis, which was cured by prison doctors within several weeks. In March 2012 he received medical treatment for anxiety disorder and was given medication for a mild case of gingivitis.

42. On 6 September 2012 the deputy head of the prison hospital examined the applicant and noted that the applicant was absolutely convinced that he was in a serious state of ill health. The applicant submitted a number of general complaints and alleged that he become infertile in detention. However, there were no signs of any acute physical or psychiatric conditions, save for a runny nose. The applicant's heart problems had not worsened. He refused to undergo a medical examination in a prison hospital, giving the excuse that he was "too busy" until January 2013.

43. In late 2012 and the beginning of 2013 the applicant was diagnosed with chronic noninflammatory prostatitis and prescribed a complex course of treatment based on antibiotics.

II. RELEVANT DOMESTIC LAW

A. Pre-trial detention

44. For a comprehensive summary of the domestic provisions on pre-trial detention and time-limits for trial in Russia see *Avdeyev and Veryayev v. Russia* (no. 2737/04, §§ 22-34, 9 July 2009).

B. Appeals against detention orders

45. At any time during trial the court may order, vary or revoke any preventive measure, including custody (Article 255 § 1 of the Code of Criminal Procedure). An appeal against such a decision lies to a higher court (Article 255 § 4 of the CCrP). The statement of appeal must be lodged with the first-instance court within three days of the detention order being issued (Articles 108 § 11 and 355 § 1). After the time-limit for appeal has expired, the first-instance court must forward the case to the appellate court (Article 359 § 2). Upon receipt it must fix the date, time and place of the

appeal hearing and notify the parties. The hearing must take place within three days (Article 108 § 11 and Article 376 §§ 1 and 2).

46. Article 375 § 2 provides that a convicted person wishing to take part in an appeal hearing must say so in the statement of appeal. The appellate court must decide whether it is necessary to call a detained convicted person (Article 376 § 2). On 22 January 2004 the Constitutional Court delivered Ruling No. 66-O which, in so far as relevant, reads as follows:

> "Article 376 of the Code of Criminal Procedure, which regulates the presence before the appellate court of a [remanded] defendant ... cannot be read as depriving that defendant ... of the right to express his opinion to the appellate court, by way of his personal attendance at the hearing or other lawful means, on matters relating to the examination of his complaint about a judicial decision affecting his constitutional rights and freedoms ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained that the authorities had not taken steps to safeguard his health and well-being, having failed to provide him with adequate medical assistance. He relied on Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Submissions by the parties

48. The Government put forward two lines of argument. Firstly, they argued that the applicant had failed to bring his grievances to the attention of the Russian authorities, including the courts, and submitted that his complaint should be rejected for failure to comply with the requirements of Article 35 § 3 of the Convention. Secondly, they claimed that he had been provided with adequate medical care in detention. He had been regularly examined by doctors and received proper medical treatment, including as an inpatient in the prison hospital between 2008 and 2009.

49. The applicant maintained his complaints. He argued that after being discharged from the prison hospital he had not been provided with the prescribed medication. He also stated that he had brought his grievances to the attention of the authorities, but to no avail. The legal avenues he had used had proved to be ineffective.

B. The Court's assessment

50. The Court notes the Government's plea of non-exhaustion of domestic remedies, but does not consider it necessary to address it in view of its conclusion that the applicant's complaint under Article 3 is, in any event, inadmissible for the reasons stated below.

51. The Court firstly observes that the applicant's health did not significantly deteriorate during several years of his detention. His cardiac and psychiatric conditions remained stable and his overall condition was satisfactory. A temporary worsening of his chronic illnesses, including gastritis and prostatitis, was duly dealt with and brought under control by the medical authorities (see paragraphs 37 and 40 above). In the Court's view, the changes in the applicant's health do not appear to be anything other than the normal development of the medical conditions over an extended period of time. They do not give cause for concern as regards the quality of medical care afforded to him in detention.

52. The Court also observes that in detention the applicant remained under close medical supervision, having undergone various medical tests and inpatient care in the prison hospital (see paragraphs 34 and 40 above).

53. The Court accepts the applicant's argument that there were interruptions in the drug treatment prescribed by the hospital doctors when he was discharged on 24 February 2009. However, in the absence of any expert evidence as to the risks the applicant had been exposed to as a result of those interruptions or any indication that the interruptions in treatment led to any serious consequences, the Court is unable to conclude that the events, albeit regrettable, undermined the quality of medical care afforded to the applicant, to the point of it finding a violation of Article 3 of the Convention. On the contrary, in the Court's view the absence of certain medication does not necessarily undermine the effectiveness of the treatment as a whole. The dynamics of the applicant's chronic illnesses and speed of his recovery from the secondary diseases convincingly demonstrate that his treatment was effective. Even if some drugs were unavailable for an extended period of time, in the circumstances the Court cannot conclude that the medical treatment was deprived of its effectiveness and led to serious suffering by the applicant.

54. In the light of the above, and taking into account the fact that the applicant did not submit any medical opinions suggesting that his treatment was ineffective, the Court cannot find that he was deprived of adequate medical care (see *Yepishin v. Russia*, no. 591/07, §§ 52-54, 27 June 2013). Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

55. The applicant complained that his detention from 12 November to 19 December 2008 had been unlawful. He relied on Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ..."

A. Submissions by the parties

56. The Government submitted that the period of the applicant's detention under examination had been lawful within the meaning of Article 5 § 1 (c) of the Convention.

57. The applicant maintained his complaints.

B. The Court's assessment

58. The Court reiterates that, under Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months of the date on which the final decision was taken.

59. It observes that the impugned period of the applicant's detention was authorised by a court on 12 November 2008 and ended on 19 December 2008, when the court approved an extension (see paragraph 20 above). The present application was lodged on 17 July 2009, more than six months after period of detention complained of had ended.

60. It therefore follows that this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Chumakov v. Russia*, no. 41794/04, § 123, 24 April 2012 and *Gubkin v. Russia*, no. 36941/02, § 107, 23 April 2009).

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

61. The applicant complained of a violation of his right to trial within a reasonable time and alleged that the orders for his detention had not been sufficiently reasoned. He relied on Article 5 § 3 of the Convention, which provides:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Submissions by the parties

62. The Government argued that the Russian courts had extended the applicant's detention because no other preventive measure would have been appropriate given the seriousness of the charges and the negative information about his character. They submitted that the length of the detention had been reasonable.

63. The applicant maintained his complaints. He stated that the detention orders had mainly been based on the seriousness of the charges and that the courts had not duly considered any other preventive measures.

B. The Court' s assessment

1. Admissibility

64. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

65. The applicable general principles are set out in the case of *Zherebin v. Russia* (no. 51445/09, §§ 49-54, 24 March 2016).

(b) Application of the above principles to the present case

(i) Period to be taken into consideration

66. The Court observes that in the present case the applicant's pre-trial detention comprised of two periods: (i) from 7 August 2007 (the date of his arrest) to 8 August 2008 (the date of his first conviction); and (ii) from 12 November 2008 (the date the conviction was quashed on appeal) to 13 May 2009 (the date of his new conviction). It finds that those consecutive periods should be regarded as one period (see, for similar reasoning, *Idalov v. Russia* [GC], no. 5826/03, §§ 127-133, 22 May 2012; *Naimdzhon Yakubov v. Russia*, no. 40288/06, § 60, 12 November 2015; and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007). Accordingly, the period of the applicant's detention under examination amounted to a year, six months and a day.

(ii) Whether there were relevant and sufficient reasons to justify the detention

67. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion that he had committed a serious offence. It remains to be ascertained whether the grounds relied on by the judicial authorities to justify his continued detention were "relevant" and "sufficient", and whether "special diligence" was used in the conduct of the proceedings.

68. The Court notes that the Town Court detained the applicant based on a reasonable suspicion that he had committed a serious criminal offence and relied on the seriousness of the charges as the main factor for his continuing detention (see paragraphs 9, 20, 22 and 23 above). In this connection, the Court reiterates that, as regards the existence of such risks, they cannot be gauged solely on the basis of the severity of the sentence faced. The risks must be assessed with reference to a number of other relevant factors which may either confirm their existence or make them appear so slight that they cannot justify detention pending trial (compare *Polonskiy v. Russia*, no. 30033/05, § 147, 19 March 2009). In addition to using the seriousness of the charges as a reason for remanding the applicant in custody, the domestic authorities considered that he might abscond because he had no job or known place of permanent residence. Although the Court might accept these grounds as relevant, it cannot find them decisive given that the judicial decisions authorising the applicant's detention remained silent as to why those risks could not have been avoided by any other means of ensuring his appearance at trial.

69. Furthermore, the Court notes that the domestic courts failed to properly consider the possibility of ensuring the applicant's attendance by using other "preventive measures" expressly provided for in Russian law to ensure the proper conduct of criminal proceedings, such as release on bail, undertakings or house arrest.

70. Having regard to the above, the Court considers that by failing to consider alternative preventive measures, relying essentially on the seriousness of the charges, the authorities extended the applicant's detention on grounds which, although relevant, cannot be regarded as sufficient to justify its duration. In the circumstances, it will not be necessary for the Court to examine whether the domestic authorities acted with special diligence.

71. There has, accordingly, been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

72. The applicant claimed that his appeals against the detention orders delivered during the second trial had been examined in the absence of the

defence, that the Regional Court had not addressed the defence's key arguments and that his additional statements of appeal, submitted in time, had not been examined on the merits. The applicant relied on Article 5 § 4, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

73. The Government argued that the applicant and his lawyer had been informed of the dates of the appeal hearings. To support this allegation they submitted two letters from the Town Court informing the applicant and his lawyer of the dates. The Government also stated that the court had duly examined the parties' arguments.

74. The applicant maintained his complaints. He pointed out that there was a lack of evidence showing that the two letters, submitted by the Government, had been sent or received by the recipients.

B. The Court' s assessment

1. Admissibility

75. The Court notes that above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) General principles

76. The applicable general principles are set out in the cases of *Idalov* (cited above, § 161) and *Naimdzhon Yakubov v. Russia* (no. 40288/06, § 73, 12 November 2015).

(b) Application of the above principles to the present case

77. Turning to the circumstances of the present case, the Court observes that the parties disagreed with whether the defence had been informed of the appeal hearings of 19 January and 8 April 2009. It notes the applicant's argument that the Government failed to demonstrate that the summons had been sent or delivered to him or his lawyer. In the absence of any evidence to the contrary, the Court accepts the applicant's submission and finds that the authorities failed to notify the defence about the appeal hearings in question.

78. The Court also observes that at the hearings of 19 January and 8 April 2009 the Regional Court failed to verify whether the defence had been summoned. Moreover, due consideration was not given to the question whether the applicant's personal attendance was required (see paragraphs 22 and 25 above). The defence were at a significant disadvantage owing to the prosecutor's attendance and his making oral submissions in favour of upholding the detention orders. In the circumstances, the Court considers that it was incumbent on the domestic judicial authorities to adhere to the principle of equality of arms and give the applicant the opportunity to appear at the same time as the prosecutor, either in person or through some form of representation, so that he could reply to the latter's arguments. The appellate court, however, failed to do so.

79. The Court reiterates that it has frequently found violations of Article 5 § 4 of the Convention in cases raising issues similar to those in the present case (see *Idalov*, cited above, §§ 161-64; *Artemov v. Russia*, no. 14945/03, §§ 95-97, 3 April 2014*; Pyatkov v. Russia*, no. 61767/08, §§ 128-133, 13 November 2012; *Solovyevy*, cited above, §§ 134-138; *Koroleva v. Russia*, no.1600/09, §§ 107-110, 13 November 2012; and *Gubin v. Russia*, no. 8217/04, §§ 64-68, 17 June 2010). The Court sees no reason to hold otherwise in the present case. It finds that the hearings held by the Regional Court on 19 January and 8 April 2009 did not satisfy the requirements of Article 5 § 4 of the Convention. Accordingly, there has been a violation of this Article.

80. Having regard to the above finding, the Court does not consider it necessary to examine the remaining complaints in respect of the above-mentioned hearings (see, *mutatis mutandis, Naimdzhon Yakubov v. Russia*, no. 40288/06, §§ 71 and 72, 12 November 2015; *Niyazov v. Russia*, no. 27843/11, § 195, 16 October 2012; *Miminoshvili v. Russia*, no. 20197/03, § 106, 28 June 2011; and *Ryabikin v. Russia*, no. 8320/04, § 141, 19 June 2008).

V. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 and 3 (d) OF THE CONVENTION

81. The applicant claimed that the overall fairness of the criminal proceedings against him had been undermined. Firstly, he had been unable to take part in the decision-making process leading to the preparation of the autopsy report of 8 August 2007 or challenge that report at trial. Secondly, the trial court had refused to hear defence witnesses. He relied on Article 6 §§ 1 and 3 (d) of the Convention which, in the relevant parts, read as follows:

> "1. In the determination of ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...”

A. Submissions by the parties

82. As regards the applicant’s complaint pertaining to the autopsy report of 8 August 2007, the Government argued that the defence had been given access at the early stage of the proceedings, but neither the applicant nor his lawyer had had any complaints regarding its content or procedural form. They had not asked for a new autopsy report or put forward any questions to the expert. The trial court had acted reasonably in declaring the autopsy report admissible and refusing an additional examination.

83. As regards the defence witnesses, the Government observed that at the investigation stage the defence had not claimed that there were any other witnesses or sought their interrogation by the authorities. The defence’s requests to the trial court to have certain witnesses heard had been ill-founded. Moreover, it had been impossible to identify and/or find them.

84. The applicant maintained his complaints. He submitted that the belated notification of the autopsy report of 8 August 2007 had deprived the defence of important procedural rights and guarantees. That fact combined with the unreasonable refusal to question witnesses had rendered the proceedings unfair.

B. The Court’ s assessment

1. Late notification of autopsy

85. The Court reiterates that according to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Foucher v. France*, 18 March 1997, § 34, *Reports of Judgments and Decisions* 1997-II, and *Bulut v. Austria*, 22 February 1996, § 47, *Reports* 1996-II).

86. On the facts, the Court observes that the case for the prosecution rested, *inter alia*, on several expert examinations they had ordered during the pre-trial stage of the proceedings, including the autopsy report of 8 August 2007. Having regard to the circumstances of the case and the parties’ submissions, the Court cannot subscribe to the applicant’s argument that a delay in serving the report in October 2007 had rendered the proceedings unfair.

87. To begin with, the Court observes that at the time the investigator's order for the amended autopsy report and the report itself were served, both the applicant and his counsel had been officially informed about the procedural rights of the accused, including the right to challenge an expert, seek the appointment of a particular person as an expert, adduce further questions, be present during the expert examination in person and make any comments and be informed of expert conclusions (see paragraph 13 above). The applicant and his counsel had many opportunities to make related requests at the pre-trial stage but failed to do so. During the first and second trial the expert was questioned in court and the defence had an opportunity to effectively cross-examine him (see paragraphs 15 and 28 above). The defence also had an opportunity to contest the admission of the autopsy report as prosecution evidence or apply for additional or repeat expert examinations.

88. In view of the foregoing, the Court concludes that the late notification of the autopsy report did not place the applicant at a substantial disadvantage *vis-à-vis* the prosecution or otherwise interfere with his rights under Article 6 of the Convention. His complaint in this respect is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention (see, *mutatis mutandis*, *Klimentyev v. Russia*, no. 46503/99, §§ 95-98, 16 November 2006).

2. Refusal to hear defence witnesses

89. At the outset the Court notes that Article 6 § 3 (d) of the Convention does not require the attendance and examination of every witness on the accused's behalf. It is for the domestic courts to decide whether it is necessary or advisable to examine witnesses (see *S.N. v. Sweden*, no. 34209/96, § 44, ECHR 2002-V, with further references). Similarly, the requirement of a fair trial does not impose an obligation on a trial court to question a witness merely because a party has sought it. It remains for the court to judge whether such a measure would serve any useful purpose (see *H. v. France*, 24 October 1989, §§ 60-61, Series A no. 162-A). Where the defendant wants a witness to be questioned he must support his request by explaining why it was important for the witnesses concerned to be heard (see *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22). Lastly, the Court reiterates that the scope of the rights guaranteed by Article 6 § 3 of the Convention must, in particular, be assessed in the light of the more general right to a fair hearing guaranteed by Article 6 § 1 of the Convention.

90. Turning to the present case, the Court observes that at the pre-trial stage of the proceedings the defence did not claim that there had been any other witnesses to the incident except those mentioned by the prosecution. At trial the court heard several eyewitnesses to the incident (see paragraph 29 above). The applicant claimed that the prosecution witnesses

had coordinated their statements and asked the trial to question witnesses who could allegedly confirm that. According to the defence, their witnesses could also confirm that the victim had attacked the applicant and that the latter had not had any visible bodily injuries prior to the fight (see paragraph 26 above). The defence were unable to provide information about the whereabouts of their witnesses. The Town Court rejected the requests as unfounded or irrelevant, noting, *inter alia*, that it had no legal power to locate witnesses (see paragraphs 16 and 26 above).

91. The Court finds that the domestic courts questioned the key witnesses to the events of 7 August 2007. Their submissions were consistent and weighty. The applicant's conviction was mainly based on the testimony of those six prosecution witnesses, including eyewitnesses to the incident, expert reports and the expert's explanations given at trial (see paragraph 29 above). The Court considers that even if the submissions of the defence witnesses had been relevant, they were not crucial for determining the applicant's guilt and, accordingly, could not arguably have led to an acquittal or any other favourable outcome. In the circumstances, and considering the inevitable difficulties the trial court would have faced in identifying certain defence witnesses and establishing their whereabouts if it had agreed to summon them, the Court finds that the refusal to find and summon them did not restrict the applicant's defence rights to an impermissible extent (see *Polufakin and Chernyshev v. Russia*, no. 30997/02, § 209, 25 September 2008, and *Dorokhov v. Russia*, no. 66802/01, § 74, 14 February 2008). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

92. Lastly, the applicant raised a number of complaints under various Articles of the Convention.

93. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

95. The applicant claimed 150,000 euros (EUR) for non-pecuniary damage.

96. The Government disagreed.

97. In the present case, the Court considers it reasonable to award the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

98. The applicant also claimed 60,000 Russian roubles (approximately EUR 1,480) and EUR 4,950 for legal costs incurred before the domestic courts and the Court.

99. The Government considered the claims excessive and unsubstantiated.

100. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, bearing in mind that the applicant was granted EUR 850 in legal aid for his representation by Ms O. Preobrazhenskaya, and regard being had to the absence of any supporting documents showing that the costs were actually incurred, the Court rejects the claim for costs and expenses.

C. Default interest

101. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 §§ 3 and 4 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the holding of appeal hearings on 19 January and 8 April 2009 in the absence of the applicant and his lawyer;

4. *Holds* that there is no need to examine the remaining complaints under Article 5 § 4 of the Convention;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount. This amount is to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President