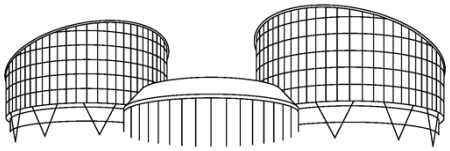

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ROSTOMASHVILI v. GEORGIA

(Application no. 13185/07)

JUDGMENT

STRASBOURG

8 November 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rostomashvili v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President,*
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 9 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 13185/07) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Paata Rostomashvili ("the applicant"), on 2 March 2007.

2. The applicant was represented by Ms S. Abuladze, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, most recently Mr L. Meskhoradze, of the Ministry of Justice.

3. The applicant alleged, in particular, that the domestic courts had failed to give reasons for their decision to convict him of a criminal offence, compromising the fairness of the criminal trial, contrary to Article 6 of the Convention.

4. On 20 April 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in the village of Akhaldaba.

A. Criminal proceedings against the applicant

6. On 16 August 2004 the applicant and two other men ("the brothers") were arrested on identical charges of aggravated murder and illegal manufacturing, possession, and carrying of firearms.

7. The charges against the applicant and the brothers were based on a statement given by the victim's father, Mr V.N., who claimed to have witnessed the crime, and on other evidence, namely a hand grenade seized from the brothers' home, as well as several forensic reports.

8. According to Mr V.N., there was a long-running dispute between his family and the respective families of the applicant and the brothers. On two occasions, one two years earlier and the second earlier that year, the three accused attempted to rob and threaten his family, but he chose not to notify the police. Early in the morning on 14 August 2004, Mr V.N. went to work on a farm near the village and was later joined by his son. At the time of the murder, at about 10 a.m., he was working in the farmhouse while his son was outside. As he heard a gunshot, he rushed to the window and saw his son lying on the ground, about forty to forty-five metres from the building. One of the accused was holding a gun, while his brother and the applicant were shouting at him to fire another shot, which he did. The three men then ran off. Mr V.N. first ran up to his son, whose body was shaking, and then ran home to bring his car back to help him. Once he got home, he took out a gun. At that moment he was visited by his neighbours, who told him the news about his son's death. Mr V.N. did not tell the visitors that he had been at the crime scene and witnessed his son's murder, or that he knew anything about the shooting. He drove them to the farmhouse to see his son's body and once there started claiming that the brothers and the applicant had killed him, without mentioning that he had witnessed the crime. It appears that he later told the police that he had witnessed the crime.

9. Three witnesses, a father and son – Mr M.M. senior and Mr M.M. junior, and Mr S.P., testified that they lived in the same village, knew the victim's family, and on the morning of 14 August 2004 had also been working on the farm, around two hundred metres from the crime scene. None of them had seen the victim's father at the farm either before the murder or immediately after. According to them, however, the victim passed by their plot at around 9 a.m. and they heard shots after about fifteen to twenty minutes. They rushed to the crime scene and found the victim dead. Mr M.M. senior sent his son to notify Mr V.N. of the murder. Mr M.M. junior was joined by Mr D.M., Mr V.N.'s neighbour, along the way. They found Mr V.N. at home. On hearing the news, Mr V.N. took his car and drove Mr M.M. junior and Mr D.M. to the crime scene, without mentioning that he had witnessed the murder, or that he knew anything about it. Once Mr V.N. arrived at the crime scene, he started blaming the

brothers and the applicant, without mentioning that he had personally witnessed the crime.

10. According to several witness statements, the applicant was seen in the village sometime between 9 and 10 a.m. Ms T.M. said that she had seen him in her yard at 9.10 a.m. Mr D.K. stated that he had seen him in Ms T.M.'s yard on the morning of 14 August 2004, without specifying the exact time. Mr G.G. could recall seeing him in the village shop sometime between 10 and 11 a.m. He stated that the shop was located approximately two kilometres from the crime scene. The shopkeeper stated that the applicant had spent about two to three hours in the shop, without specifying the exact time. The applicant had allegedly heard the news about the murder while there. He was not with the brothers at the time.

11. A forensic biological examination report (no. 140/162) ordered by a prosecutor and implemented by the Forensic Centre of the Ministry of Labour, Health and Social Affairs between 2 September and 22 October 2004 provided an analysis of bloodstains found on the trousers of one of the brothers. The blood was of type AB (II), the same as that of the victim, while the owner of the trousers had blood type AB (IV).

12. A forensic soil examination report (no. 1700/10) ordered by a prosecutor and implemented by the Forensic and Special Research Centre of the Ministry of Justice between 7 September and 6 October 2004 provided an analysis of soil found on the brothers' shoes in relation to soil at and around the crime scene. It found that the traces of soil on the brothers' shoes seized from their home had the same characteristics as the soil at the crime scene.

13. On 8 May 2006 the Tbilisi Regional Court convicted the applicant of aggravated murder and sentenced him to fifteen years' imprisonment. The brothers were convicted of aggravated murder and illegal possession of firearms, and were sentenced to seventeen and sixteen years' imprisonment, respectively.

14. The first-instance court fully relied on Mr V.N.'s statement (see paragraph 8 above). It accordingly found that the ongoing dispute between the three men and the victim and his family had been the underlying cause of the crime. It continued to note that at around 10 a.m., the applicant and the brothers had gone to the victim's farm and killed him with a gun. After one of the accused fired the first shot, his brother and the applicant shouted at him to shoot again, which he did. The gun was never recovered. In addition, the court relied on the forensic biological examination (see paragraph 11 above) and forensic soil examination (see paragraph 12 above), and other forensic evidence such as a forensic examination of the victim's body and of the hand grenade, without elaborating on their relevance to the applicant's conviction.

15. The applicant's argument that he had an alibi for the presumed time of the crime in the light of the statements given by some of the defence

witnesses (see paragraph 10 above) was dismissed by the court. It noted that the statements in question were inconsistent, contradictory and aimed at shielding the accused from criminal responsibility.

16. On 13 June 2006 only the applicant appealed against the judgment of 8 May 2006. He emphasised that unlike his co-accused, no piece of forensic evidence available in the criminal case file implicated him personally in the crime. He argued that the only piece of evidence connecting him to the murder was the eyewitness statement given by the victim's father. However, it was doubtful whether the latter had even been at the crime scene, given the evident contradictions between his account and the statements given by witnesses M.M. junior and D.M., that they had found him at home shortly after the murder, and that he had not mentioned having witnessed the crime, despite having gone with them to the crime scene to verify the tragic news (see paragraph 9 above). He argued that Mr V.N.'s version that he had gone home after having witnessed his son's murder without notifying anyone and without telling Mr M.M. junior and Mr D.M. that he had been at the crime scene, without any other evidence corroborating his account, created serious doubts as to the veracity of his claim to have witnessed the event. The applicant further claimed to have an alibi to the effect that he had been seen alone in the centre of the village around the time of the murder, and noted that Mr V.N. might have been implicating him out of revenge. He argued that given the lack of any response to his main arguments, the conviction rendered by the first-instance court had relied on a mere doubt devoid of any evidence, in violation of Article 503 § 2 of the Code of Criminal Procedure (see paragraph 31 below).

17. On 21 September 2006 the Supreme Court, sitting as a court of second and final instance, held a hearing and upheld the lower court's verdict. It reasoned that the lower court had acted in full compliance with Article 18 of the Code of Criminal Procedure (see paragraph 31 below) and had assessed the factual circumstances of the case fully and objectively. In upholding the lower court's verdict, the Supreme Court fully relied on the statement of the victim's father, the statements of the other witnesses who were told by him that the applicant had killed his son, and the forensic evidence, without addressing any of the applicant's arguments, including that none of the cited evidence had implicated him, and that the lower court had failed to address his arguments in that regard.

18. On an unspecified date in May 2016 the applicant was released from prison.

B. Detention conditions and medical care in prison

19. On 19 September 2004 the applicant was remanded in custody and placed in Tbilisi Prison no. 5. He was allegedly held in an overcrowded cell, had to take turns with other prisoners to sleep, and was unable to shower for

months. The toilet in the cell was not separated from the living area. He also alleged that there were rodents in his cell.

20. On an unspecified date in 2005 the applicant was transferred to Tbilisi Prison no. 1. According to him, the conditions there were identical.

21. On 31 March 2006 he was transferred from Tbilisi Prison no. 1 to the newly built Rustavi Prison no. 6.

22. On 16 December 2006 the applicant was transferred to Rustavi Prison no. 2. During his time there, he was allegedly exposed to harmful emissions from a nearby concrete factory. It does not appear that he complained to the prison authorities about any aspect of his detention conditions.

23. On 6 April 2007 the applicant was returned to Rustavi Prison no. 6. He stayed at that prison until his transfer to the prison hospital on 11 January 2009 (see paragraph 27 below).

24. It does not transpire from the case file that the applicant raised any concerns before the prison administration or any domestic authority about the conditions of his detention in any of the penal institutions referred to above.

25. Upon the applicant's readmission to Rustavi Prison no. 6 on 6 April 2007 (see paragraph 23 above), he underwent a standard medical examination upon entry and was diagnosed with neurocirculatory dystonia but was not prescribed any treatment. It does not appear that the applicant lodged any complaints in that respect.

26. On 23 June 2008 the applicant lodged a complaint with the Department of Prisons, apparently for the first time, about headaches, and requested to have a medical examination administered in that regard. On 17 December 2008, in view of the applicant's complaint that the Government had allegedly left his medical complaints – including those concerning headaches – unaddressed, the President of the Section decided to indicate to the Government, under Rule 39 of the Rules of Court, to implement all necessary measures to assess his state of health. It transpires from the information submitted by the Government that on 28 July 2008 the applicant was consulted by a neurologist concerning the headaches. He was diagnosed with neurocirculatory dystonia, hypertensive hydrocephaly syndrome, and post-traumatic brain condition, and the relevant treatment was prescribed. The applicant complained again about headaches on 18 September and 11 November 2008. The applicant's submissions dated 29 January 2009 revealed that he had been seen by a neurologist on an unspecified date in October 2008. As regards the complaint of 11 November 2008, no immediate reaction followed from the authorities. On 14 January 2009, the applicant was consulted by a neurologist and a skull X-ray was carried out. The neurologist concluded that no pathological signs could be observed and prescribed treatment for the applicant's headache. No complaints regarding headaches appear to have been raised following that

date. As regards the other health-related complaints, on 28 October 2008 the applicant was examined and diagnosed with a chronic inflammation of the gallbladder. On 19 November 2008 an ultrasound exam was performed which confirmed the diagnosis of the chronic inflammation of the gallbladder. The relevant treatment was prescribed. The interim measure was lifted on 8 February 2012.

27. On 11 January 2009 the applicant was transferred to the prison hospital, where he underwent a series of examinations and tests. On 16 January 2009, he was diagnosed with tuberculosis. On the same day, he was put on a DOTS (Directly Observed Treatment, Short course) programme, the strategy for the detection and treatment of tuberculosis recommended by the World Health Organisation.

28. On 12 February 2009 the applicant was placed in a facility in Ksani for prisoners with tuberculosis.

29. On 9 July 2009 he was placed in Tbilisi Prison no. 1 and on 21 September 2009 successfully finished his treatment in the framework of the DOTS programme.

II. RELEVANT DOMESTIC LAW AND OTHER NATIONAL AND INTERNATIONAL DOCUMENTS

30. The Constitution of Georgia (1995), as it stood at the material time, provided as follows:

Article 40 § 3

> "The charges, bill of indictment and conviction shall be based only on incontrovertible evidence. Any kind of doubt which cannot be proven in accordance with the procedure prescribed by law shall be resolved in favour of the accused."

31. The Code of Criminal Procedure (1998), in force at the material time, provided as follows:

Article 10: Presumption of innocence

> "...3. The charges, indictment, conviction and all other procedural decisions shall be based only on incontrovertible evidence.
>
> 4. Any kind of doubt which cannot be proven in accordance with the law shall be resolved in favour of the suspect and the accused."

Article 18: Comprehensive, objective, and full examination of the circumstances of a case

> "1. Investigators, prosecutors, judges and courts shall establish, incontrovertibly, whether a crime was committed, who committed it, and all other circumstances of the criminal case.
>
> 2. The circumstances of a case shall be examined comprehensively, objectively and fully. Incriminating and exonerating [circumstances], as well as aggravating and

extenuating circumstances with respect to a suspect or an accused individual shall be determined with the same diligence.

3. All statements and complaints of a suspect, accused and a defence lawyer concerning innocence or a lesser degree of guilt, the participation of other individuals in the crime, or violations of law at the investigation or trial stage or during trial shall be given careful consideration."

Article 503 § 2

"A conviction may not be based on a supposition. [Such a decision] shall be reached only if the commission of a crime by an accused is proven during court proceedings, on the basis of incontrovertible evidence..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that the conditions of his detention had been inadequate and that he had not been provided with adequate medical care in prison. He relied on Article 3 of the Convention, which reads as follows:

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

33. The Government contested that argument.

A. The parties' submissions

34. The Government submitted that the applicant's health condition had been duly monitored, and that during his imprisonment all adequate treatment had been administered to him by the relevant specialist doctors. As regards the complaints concerning inadequate prison conditions, they were wholly unsubstantiated.

35. The applicant maintained that there had been a lack of medical supervision and treatment of his health concerns in prison, including tuberculosis, and that the prison conditions in all of the institutions where he had been held had been unsatisfactory.

B. The Court's assessment

36. The Court observes that the applicant's complaints under Article 3 of the Convention concern the conditions of his detention and the adequacy of medical care in prison. These complaints will be addressed in turn.

1. Conditions of detention

(a) Detention prior to 31 March 2006

37. The Court reiterates its relevant case-law, according to which it will not consider detention conditions as a continuous situation in circumstances where the complaint concerns an episode, treatment or particular detention regime attached to an established period of detention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 76-78, 10 January 2012).

38. The applicant complained that the conditions of his detention in Tbilisi Prison no. 5 and Tbilisi Prison no. 1 had been wholly unsatisfactory owing to overcrowding and substandard sanitary conditions, among other things (see paragraphs 19-20 above). The Court notes the generally favourable assessment of prison conditions in the then newly built Rustavi Prison no. 6 made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (see *Mirzashvili v. Georgia*, no. 26657/07, § 45, 7 September 2017).

39. Against this background, the Court observes that the applicant's detention in the two prisons concerned ended with his transfer to Rustavi Prison no. 6 on 31 March 2006. The present application was submitted to the Court on 2 March 2007.

40. Having regard to the above circumstances, the Court cannot conclude that there was a continuous situation. It therefore considers that this part of the applicant's complaint under Article 3 of the Convention was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Mirzashvili*, cited above, § 51; *Gorguiladze v. Georgia*, no. 4313/04, §§ 23-24, 20 October 2009; and *Mazanashvili v. Georgia*, no. 19882/07, § 40, 28 January 2014).

(b) Rustavi Prison no. 6 and subsequent penal institutions

41. Referring to its relevant case-law in respect of conditions of detention in Georgian custodial institutions at the material time, the Court reiterates the rule that whenever an applicant wished to challenge allegedly poor material conditions of detention in a Georgian prison, even if such complaints did not call for the full and meticulous exhaustion of any specific criminal or civil remedies (see, for comparison, *Aliev v. Georgia*, no. 522/04, § 62 and 63, 13 January 2009, and *Goginashvili v. Georgia*, no. 47729/08, §§ 54 and 57, 4 October 2011), it was still required, at the very minimum, that at least one of the responsible State agencies must have been informed of the applicant's subjective assessment that the conditions of the detention in question constituted a lack of respect for, or diminished, his or her human dignity. Without such basic conduct at the domestic level by a person who wished to challenge the conditions of his or her detention under the Convention, the Court would necessarily have difficulty in evaluating the credibility of an applicant's allegations of fact in that

connection (see *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007, and *Janiashvili v. Georgia*, no. 35887/05, § 70, 27 November 2012).

42. Having regard to the material available in the case file, the Court notes that the applicant never informed any of the relevant authorities of his dissatisfaction with any particular aspect of the material conditions of his detention in any of the relevant prisons. However, it observes that, even supposing that, at the relevant time, the applicant had had an effective domestic remedy at his disposal which he could have exhausted (see paragraph 41 above), in the proceedings before the Court, he limited his submissions to vague and general statements only. Consequently, the Court finds that the applicant has failed to discharge his burden of proof and substantiate his complaint properly (compare, amongst many other similar authorities, *Muršić v. Croatia* [GC], no. 7334/13, § 127, ECHR 2016; *Ananyev and Others*, cited above, § 122, 10 January 2012; and *Ildani v. Georgia*, no. 65391/09, §§ 26 and 27, 23 April 2013).

43. It follows that the applicant's complaints under Article 3 of the Convention concerning the material conditions of his detention in Prison no. 6 and subsequent penal institutions is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Medical care in prison

44. The relevant general principles concerning the adequacy of medical treatment in prisons were summarised by the Court in the cases of *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135-140, ECHR 2016, with further references therein); *Goginashvili* (cited above, §§ 69-70); *Irakli Mindadze v. Georgia* (no. 17012/09, §§ 39-40, 11 December 2012); and *Jeladze v. Georgia* (no. 1871/08, §§ 41-42, 18 December 2012).

45. The applicant complained of a lack of medical supervision and care. It appears from the information submitted by the Government in response to the indication of interim measures under Rule 39 of the Rules of Court that the applicant's complaints regarding his headaches had been addressed on 28 July 2008 (see paragraph 26 above). The applicant subsequently admitted having been seen by a neurologist on an unspecified date in October 2008 (see ibid.). While the complaint regarding headaches dated 11 November 2008 was not followed by an immediate response, the applicant was consulted by a neurologist on 14 January 2009, and relevant treatment was prescribed. No complaints regarding headaches appear to have been raised following that date (see ibid.). As regards the symptoms of an inflamed gallbladder were addressed on 28 October and 19 November 2008. He was accordingly diagnosed with a chronic inflammation of the gallbladder and prescribed the relevant treatment (see ibid.).

46. As concerns the treatment in relation to his tuberculosis, the seriousness of the problem of tuberculosis in Georgian prisons, as well as

the role of screening for tuberculosis in minimising the spread of the disease, has already been acknowledged by the Court in its case-law on the matter (see *Poghosov v. Georgia* [Committee], no. 33323/08, § 29, 26 June 2017, with further references). The Court notes that while the applicant did not have a screening test for tuberculosis during the initial period of his detention, it does not appear that he voiced any related ailments in the period concerned (contrast *Ildani*, cited above, §§ 37-38, where despite a diagnosis of chronic bronchitis and repeated requests for a proper medical check-up, the applicant was not given a tuberculosis test for fifteen months). Nor did the applicant complain of being held in a cell with an inmate with tuberculosis (compare *Vasyukov v. Russia*, no. 2974/05, § 68, 5 April 2011).

47. Against this background, the Court notes that immediately following the applicant's diagnosis of tuberculosis on 16 January 2009, the Government involved the applicant in the DOTS programme, and the treatment was successfully completed on 21 September 2009 (see paragraphs 27-29 above).

48. In the light of the foregoing, the Court finds that the complaint should be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

49. The applicant complained that the domestic courts had failed to give sufficient reasons for their decision to convict him of a criminal offence in view of their silence concerning his principal arguments, compromising the overall fairness of the criminal proceedings. He relied on Article 6 § 1 of the Convention which, in its relevant part, reads as follows:

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

50. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

52. The applicant submitted that there had been a manifest lack of duly reasoned domestic decisions confirming his guilt. He maintained that the

statement given by the victim's father – the sole piece of evidence allegedly implicating him in the murder – contained such manifest contradictions and ambiguities that his presence at the crime scene was called into question and needed to be addressed explicitly. Therefore, the domestic courts' undisputed reliance on it, in the absence of any other evidence, as well as their total silence concerning his objections in that regard, had compromised the fairness of the criminal proceedings against him. He also argued that his arguments concerning an alibi had not been properly addressed.

53. The Government stated that the domestic courts had duly considered all the evidence available in the case file and reached their verdict accordingly.

2. The Court's assessment

54. The Court reiterates that Article 6 § 1 of the Convention obliges the domestic courts to indicate with sufficient clarity the grounds on which they base their decisions (see, among other authorities, *Taxquet v. Belgium* [GC], no. 926/05, § 91, ECHR 2010, and *Nikolay Genov v. Bulgaria*, no. 7202/09, § 27, 13 July 2017). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A; *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I; and *Moreira Ferreira v. Portugal (no. 2)* [GC] (no. 19867/12, § 84, 11 July 2017).

55. Without requiring a detailed answer to every argument advanced by the complainant (see *Fomin v. Moldova*, no. 36755/06, § 31, 11 October 2011), this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Moreira Ferreira*, cited above, § 84; *Tchankotadze v. Georgia*, no. 15256/05, § 103, 21 June 2016; and *Deryan v. Turkey*, no. 41721/04, § 33, 21 July 2015). It must be clear from the decision that the essential issues of the case have been addressed (see *Boldea v. Romania*, no. 19997/02, § 30, 15 February 2007, and *Uche v. Switzerland*, no. 12211/09, § 37, 17 April 2018).

56. Turning to the circumstances of the present case, the Court observes at the outset that the applicant's argument concerning his alibi was addressed, even if briefly, by the court of first instance. It reasoned that the statements given by the defence witnesses were contradictory and considered the account untrustworthy (see paragraph 15 above).

57. By contrast, the applicant's two principal arguments before the domestic courts were not given an explicit reply. Firstly, he had argued that unlike his co-accused, no piece of forensic evidence concerned him or his alleged actions and therefore did not implicate him, in any manner whatsoever, in the crimes he had been charged with. Secondly, the applicant

had underlined that immediately following the murder the victim's father was found at home, apparently unaware of his son's death (see paragraph 9 above), and that it was unclear why he had allegedly pretended being unaware of his son's murder. This, the applicant had argued, made it open to doubt whether the eyewitness had been at the crime scene at all. Based on those submissions, the applicant maintained that the prosecution's case against him was devoid of any factual and evidentiary grounds and was based on a mere suspicion, in violation of the pertinent legislation (see paragraphs 16 and 30-31 above).

58. The Court reiterates that it is not its task to review the manner in which forensic and witness evidence is assessed by the domestic courts. Nor is the Court called upon to rule on the guilt or innocence of a person convicted by the domestic courts, that matter being within the competence of the domestic courts (see, *mutatis mutandis, Rohlena v. the Czech Republic* [GC], no. 59552/08, § 55, ECHR 2015, and *Popov v. Russia*, no. 26853/04, § 188, 13 July 2006). In addition, the Court recognizes that, in a case such as this, a trial court, which relies on witness statement for the accused's conviction, is able to base itself on direct contact with the witness, the reliability of whose statement it must nevertheless properly assess. However, it is within the Court's jurisdiction to assess whether the proceedings as a whole, including the obligation of the domestic courts to give reasons for their judgments, were in compliance with the Convention. It is against this background that the Court will proceed with its assessment of the applicant's complaint under Article 6 § 1 of the Convention.

59. The Court is of the opinion that the two arguments raised by the applicant before the domestic courts (see paragraph 57 above) related to the core of the criminal case against him and called for a specific and explicit reply. However, none of the domestic judicial authorities addressed them. The generic response given by the domestic courts that "all the evidence available in the case file" was sufficient to convict the applicant cannot be regarded as an explicit and specific reply to the latter's principal arguments before them. Such an answer, on the facts of the present case, amounts to a manifest lack of reasoning on the part of the domestic courts as in fact, no piece of forensic evidence had implicated the applicant, and the sole eyewitness statement was subjected to repeated reasoned yet unanswered challenges questioning its veracity and probative value. Accordingly, the domestic courts failed to address, in any manner, the applicant's reasoned arguments (see *Fomin*, cited above, § 30, and contrast *Kuparadze v. Georgia*, no. 30743/09, §§ 72-73, 21 September 2017).

60. In these circumstances, the Court concludes that the domestic courts adjudicating the applicant's criminal case failed to fulfil one of the requirements of a fair hearing, namely to provide adequate reasons for their decisions. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. The applicant also complained under Article 5 §§ 1 (c), 2 and 3 of the Convention concerning the lawfulness and reasonableness of his pre-trial detention. However, the applicant's pre-trial detention ended upon his conviction at first instance on 8 May 2006 (see, *inter alia*, *Labita v. Italy* [GC], no. 26772/95, § 147, ECHR 2000-IV; *Kalashnikov v. Russia*, no. 47095/99, § 110, ECHR 2002-VI; and *Jeladze*, cited above, § 52). As the application was lodged with the Court on 2 March 2007, this complaint is inadmissible for failure to comply with the six-month rule, and must be rejected under Article 35 §§ 1 and 4 of the Convention.

62. As regards the applicant's complaint under Article 6 §§ 1 and 3 (b) of the Convention concerning the alleged failure of the domestic courts to ensure the attendance of a party at a reconstruction of events, the applicant admitted before the Court that his lawyer had been notified. The complaint is therefore manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. COMPLIANCE WITH ARTICLE 34 OF THE CONVENTION

63. The applicant complained that the Government had not complied with its obligations under Article 34 of the Convention in the context of the interim measures indicated to it under Rule 39 of the Rules of Court to provide the applicant with adequate medical care. However, in the light of the Court's findings concerning the adequacy of the medical care administered to the applicant (see paragraphs 44-48 above), the respondent State cannot be considered to have failed to comply with its obligations under Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 7,000,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government contested the claim as excessive and unsubstantiated.

67. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant submitted that his claim in the sum of EUR 7,000,000 included the costs and expenses incurred before the Court.

69. The Government contested the claim as excessive and unsubstantiated.

70. 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, regard being had to the absence of relevant documents and the above criteria, the Court decides that no award shall be made in this respect.

C. Default interest

71. 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 complaint under Article 6 § 1 of the Convention concerning the inadequate reasoning of the domestic judgments admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that the respondent State has not failed to comply with its obligations under Article 34 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement; and
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President