



State-secrets treason trial lacked impartiality

In today's **Chamber judgment**¹ in the case of [Danilov v. Russia](#) (application no. 88/05) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 §§ 1 and 3 (d) (right to a fair trial/right to obtain attendance and examination of witnesses) of the European Convention on Human Rights, and

a failure to comply with Article 38 (obligation to provide necessary facilities for the examination of the case) because of the refusal to provide articles requested by the Court.

The case concerned a physicist who had been found guilty of treason for giving away State secrets. The applicant complained that the jury's bias and that restrictions on his examining witnesses had denied him a fair trial.

The Court found in particular that the composition of the jury, although not necessarily partial, had at least had objective issues around its impartiality, as some of the jurors had State security clearance. The trial court thus should have thoroughly examined that matter. Failure to do so had breached the Convention.

The Court furthermore found that the applicant having been denied the right to cross-examine prosecution experts had infringed his fair-trial rights.

Principal facts

The applicant, Valentin Vladimirovich Danilov, is a Russian national who was born in 1948 and lives in Novosibirsk (Russia).

The applicant is a renowned physicist and at the relevant time was head of the Thermophysics Centre at Krasnoyarsk State Technical University. In 2000 the FSB opened an investigation in respect of him, ultimately bringing charges of high treason. He was accused of divulging State secrets in the course of a collaboration with Chinese academics.

Over four sets of proceedings the applicant consistently denied that the information given had been a State secret. In the fourth set of proceedings he was found guilty by the Krasnoyarsk Regional Court on 24 November 2004 following a jury trial.

The applicant appealed against the judgment of 24 November 2004, contesting, in particular, the quality and conclusions of the expert reports, his inability to challenge those experts in court, and the impartiality of the jurors (four of whom had had State security clearance) and judge in the earlier trial, and the Regional Court's refusal to examine witnesses for the defence. The applicant also challenged the objectivity of the presiding judge. The Supreme Court rejected the challenge. It then dismissed the appeal, upheld the conviction and sentenced the applicant to 13 years' imprisonment.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair trial), 7 (no punishment without law), and Article 10 (freedom of expression) of the Convention, the applicant complained that the judge and jury in his criminal case had been biased, that he had not had a fair trial, and that his actions had not amounted to treason as the information had been available from open sources.

The application was lodged with the European Court of Human Rights on 11 December 2004.

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

Paul Lemmens (Belgium), *President*,
Georgios A. Serghides (Cyprus),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Darian Pavli (Albania),
Anja Seibert-Fohr (Germany),
Peeter Roosma (Estonia),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

[Article 38 \(obligation to provide necessary facilities for the examination of the case\)](#)

The Court had given the Government notice of the present application on 2 February 2007 and asked for copies of all the relevant documents in the case to be provided. It had repeated the request, stating that the Government could redact the documents as necessary. The Government had refused to provide the documents from the criminal case file on both occasions. The Court noted that it had previously found unsatisfactory the respondent Government's explanation that there was no legal procedure for giving information classified as a State secret to an international organisation.

The Court found that owing to this failure the State had not met the requirements of the Convention.

[Article 6 \(right to a fair trial/right to obtain attendance and examination of witnesses\)](#)

The Court reiterated that "justice must not only be done, it must also be seen to be done". In particular, fears around jury impartiality had to be objectively justified, and should be examined if so.

Four of the 12 jurors had had State security clearance. The applicant argued that this would have been impossible on random selection; the Government disagreed. The Court doubted that such a jury could have been representative. The Court noted, furthermore, that the applicant's argument concerned people with security clearance sitting on the jury in *his* case specifically, given that it had concerned charges of treason and had been investigated by the FSB, who also monitored people with security clearances. The Court found that although security clearance did not imply partiality, the appearance in this case was such so as to have warranted an examination by the judge. The judge in the case had dismissed the applicant's objections on formal grounds.

The authorities had failed to safeguard against objectively justified concerns regarding the impartiality of the jury, in violation of Article 6 § 1 of the Convention.

Regarding examination of witnesses, the applicant had asked to cross-examine the ten experts who had prepared the key reports ultimately leading to his conviction, and to call 17 experts in his defence. Those requests had been denied.

The Court reiterated that a fair trial implies being able to confront and have examined witnesses before the deciding judge. The Court was satisfied that the applicant had correctly stated his wish to do so before the domestic courts. The failure to allow cross-examination had greatly affected his rights, in particular to question the bases of the reports. That failure had led to the applicant's trial lacking "equality of arms" safeguards and proper "adversarial proceedings".

There had therefore been a breach of his Convention rights.

Other articles

The Court did not consider it necessary to examine separately the applicant's complaints under Articles 7 and 10, as the central issue – whether the applicant had disclosed State secrets – related to whether the applicant had been able to challenge the experts' conclusions regarding the nature of the information in the case, which the Court had already found that the domestic authorities had denied him the right to do.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 21,100 euros in respect of non-pecuniary damage.

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.