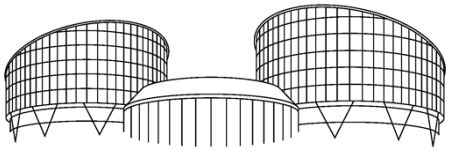

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DIMITROV AND MOMIN v. BULGARIA

(Application no. 35132/08)

JUDGMENT

STRASBOURG

7 June 2018

FINAL

07/09/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dimitrov and Momin v. Bulgaria,

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

Erik Møse, *President*,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 20 March and 15 May 2018,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 35132/08) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Bulgarian nationals, Mr Dimitar Angelov Dimitrov and Mr Ventseslav Tobiev Momin ("the applicants"), on 4 July 2008.

2. The applicants were represented by Ms Y. Vandova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mr V. Obretenov, from the Ministry of Justice.

3. Relying on Article 6 §§ 1 and 3 (d) of the Convention, the applicants alleged that they had been convicted on the basis of statements by the victim, whom they had never had the opportunity to examine.

4. On 12 December 2016 notice of that complaint was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1965 and 1964 respectively and live in Plovdiv.

6. On 14 March 1998 a 26-year-old woman, S.D., lodged a complaint with the Plovdiv police stating that she had been abducted, held captive and raped by the two applicants the previous day.

7. On the same day, criminal proceedings for rape were instituted against a person or persons unknown. S.D. underwent a medical examination, which revealed several bruises on her head, neck, arms and knees. The doctor stated that there were no other physical marks or biological evidence from which it could be conclusively determined that S.D. had had sexual intercourse. When questioned by the investigator, S.D. explained that the applicants had forced her to accompany them into premises in Plovdiv city centre, where they had ill-treated and raped her.

8. On 18 March 1998 S.D. was questioned again. She withdrew her initial statement, explaining that she wanted to keep her peace, that she was not feeling well and that she had personal problems.

9. On the same day, the investigator questioned Mr Momin as a witness. Mr Momin explained that S.D. had accompanied him and the other applicant to a café in Plovdiv city centre early in the morning of 13 March 1998, but he denied having had sexual intercourse with her. He added that, as far as he knew, Mr Dimitrov had not had sexual intercourse with S.D. on that day either. Both of them had then accompanied S.D. back to her home.

10. On 24 March 1998 Mr Dimitrov was also questioned as a witness. He stated that, on the morning of 13 March 1998, he and the other applicant had planned to go for coffee in Plovdiv city centre, that he had also decided to invite S.D., with whom he had previously had an intimate relationship, and that she had accepted the invitation. After they had entered the premises, which were being refurbished, he had had consensual sex with S.D. while Mr Momin had gone out to buy coffee nearby. Shortly afterwards, he, S.D. and Mr Momin had taken a taxi, which had dropped Mr Momin off at his workplace and S.D. at her home.

11. On 29 January 1999 S.D. was questioned again. She stated that she had had an intimate relationship with Mr Dimitrov in the past. On 13 March 1998 she had gone with the two applicants to premises in Plovdiv city centre for a coffee, and on arriving there, they had found that the coffee machine was not working. Mr Momin had then gone out to buy three coffees. S.D. stated that while he was out, she had had consensual sex with Mr Dimitrov and that later on, after drinking the coffees brought back by Mr Momin, the three of them had taken a taxi and she had returned home. The following day, under pressure from her relatives and to take revenge on Mr Dimitrov, who had admitted to her that he was married, she had lodged a complaint with the police against him and Mr Momin.

12. On 1 February 1999 the investigator sent the file to the district prosecutor's office, attaching his opinion to the effect that the criminal proceedings could be discontinued in the absence of a criminal offence.

13. On 10 March 1999 the prosecutor in charge of the investigation returned the file to the investigator for further inquiries. That order was set aside on 26 April 1999 by the Plovdiv district prosecutor's office, which ordered the prosecutor in charge of the investigation, I.P., to carry out a number of additional investigative measures himself.

14. On 12 April 2000 S.D. sent a letter to the prosecutor I.P. reiterating her wish to withdraw her initial statement and asking him to discontinue the proceedings. She also informed him that she was very ill and undergoing chemotherapy.

15. On 12 May 2000 the prosecutor I.P. formally charged Mr Dimitrov with the rape of S.D.

16. On 18 December 2000 the prosecutor I.P. asked the Plovdiv District Court to question S.D. under Article 210a § 1 of the Code of Criminal Procedure, on the grounds that her testimony was of particular importance to the investigation.

17. On 19 December 2000 at 9.40 a.m., in the presence of the prosecutor I.P., a judge of the Plovdiv District Court questioned S.D. The judge noted that Mr Dimitrov had been informed of this procedure in a letter from Plovdiv no. 4 police station.

18. During questioning, S.D. altered her previous statement and reiterated her original version of the events, according to which she had been kidnapped, taken captive and raped by the two applicants. In particular, she stated that Mr Dimitrov had picked her up from her home on the morning of 13 March 1998 and had forced her into a taxi where Mr Momin was sitting inside. Both applicants appeared to have consumed alcohol. The taxi had dropped them off at a café that was being refurbished in Plovdiv city centre; she had tried to escape, but Mr Dimitrov had hit her on the neck and pushed her inside, where he had forced her to undress and had hit her on the head several times. She had then suffered an episode of hypoglycaemia, from which she had recovered by taking several sachets of sugar found by the two applicants. Then she had had non-consensual sex twice with Mr Dimitrov and once with Mr Momin. Afterwards, she had been taken home in a taxi paid for by the applicants. She had lodged a complaint the following day, after confiding in her family.

19. S.D. explained that she had withdrawn her original statement because she had been threatened by Mr Dimitrov and other people close to the two applicants. Immediately after a chemotherapy session she had received a visit from a lawyer, Ms N., who had apparently been sent by the same people. The lawyer had persuaded her to sign the letter retracting her original statement and withdrawing her complaint, and the letter had then been sent to the prosecutor in charge of the investigation (see paragraph 14 above). S.D. added that she had cancer, but was feeling well.

20. On 20 April 2001 both applicants were charged with the abduction, false imprisonment and rape of S.D.

21. On 3 May 2001 counsel for both applicants, Mr S., requested that his clients be confronted individually with S.D. His request was rejected on 2 July 2001 by the prosecutor I.P., on the grounds that this was a non-compulsory investigative measure which, moreover, was not necessary for the establishment of the facts of the case at hand.

22. On 25 June 2001 S.D. died of her illness.

23. On 11 February 2002 the district prosecutor's office drew up the indictment and committed both applicants for trial. They were accused of having abducted S.D., held her captive, issued death threats against her and raped her.

24. The Plovdiv District Court examined the criminal case between 14 January 2004 and 21 February 2007. It decided to admit S.D.'s statement of 19 December 2000 in evidence. The record of the questioning was accordingly read out in court. The court also heard evidence from the two applicants, the three police officers who had attended to S.D. when she had lodged her complaint, the victim's relatives and three other witnesses. In addition, it heard the opinion of a medical expert on the nature and origin of the injuries found on S.D.'s body during her medical examination on 14 March 1998. The applicants, represented by lawyers of their choosing, challenged the evidence against them, adduced evidence in their defence and sought their acquittal.

25. In a judgment of 21 February 2007 the Plovdiv District Court found Mr Dimitrov guilty of raping S.D. and acquitted him on the other charges. He was given a suspended sentence of three years' imprisonment. The court acquitted Mr Momin on all the charges.

26. In the reasoning set out in its judgment, the District Court held that the only fact that could be established from the evidence gathered was that S.D. had had non-consensual sexual intercourse with Mr Dimitrov. It based that conclusion in particular on the two defendants' statements, part of S.D.'s statement, the findings of the expert medical opinion and the statements of the other witnesses questioned. It rejected the rest of S.D.'s evidence. In that connection, the court noted that the victim had changed her account during the investigation, that it had not had the opportunity to examine her in person, that the other witnesses had portrayed S.D. in a negative light, that her statement had been given two years after the events and that it contradicted the other statements and the findings of the medical examination performed on S.D. the day after the events in question.

27. Mr Dimitrov and the public prosecutor's office both appealed.

28. The Plovdiv Regional Court heard the case between 27 June and 4 July 2007. It ordered two expert medical opinions on the basis of the evidence to establish the process and causes of an episode of hypoglycaemia, and to check the accounts given by S.D. and Mr Dimitrov as to the cause of the injuries found on S.D.'s body during her initial medical examination. The applicants, represented by lawyers of their

choosing, challenged the evidence against them, including the admissibility and credibility of the victim's statement of 19 December 2000, and sought their acquittal.

29. In a judgment of 4 July 2007 the Plovdiv Regional Court overturned the first-instance judgment and found both applicants guilty of having abducted S.D., held her captive, issued death threats against her and raped her. Mr Dimitrov was sentenced to six years' imprisonment and Mr Momin to five and a half years' imprisonment.

30. In the reasoning set out in its forty-four-page judgment, the Regional Court established the facts of the case as follows. At the material time S.D. had been suffering from diabetes. She was separated from her husband and lived with her son at her grandmother's house. She knew Mr Dimitrov as she had previously had an intimate relationship with him. She also knew Mr Momin, who worked in a shop near her home. On the morning of 13 March 1998, after consuming alcohol the previous night, the two applicants had taken a taxi to S.D.'s home. Mr Dimitrov had called S.D. and she had come out of the house. He had then grabbed her by the hand, threatened her and forced her into the taxi, where the other applicant, Mr Momin, was waiting for them. The taxi had dropped them all off in front of a bar that was being refurbished in Plovdiv city centre. Mr Dimitrov, who had the keys, had opened the door and let Mr Momin in first, before pushing S.D. inside. The two applicants had then forced S.D. to undress. Mr Dimitrov had threatened her and hit her several times. S.D. had suffered an episode of hypoglycaemia, and the applicants had made her swallow the contents of several sachets of sugar. They had carried on threatening her, holding her down and beating her, and in that way had forced her to have sex with each of them. Subsequently, they had all left the premises in a taxi, which had dropped the applicants off at a restaurant and S.D. at her home. She had confided in her relatives, who had persuaded her to alert the police. During the subsequent investigation, S.D. had been threatened by Mr Dimitrov and people close to the two applicants in an attempt to make her withdraw her statement. Under pressure, S.D. had changed her version of events during the course of the investigation. She had then become seriously ill. The pressure on S.D. had increased further: she had been persuaded by a lawyer, apparently sent by Mr Dimitrov's employer, to sign a declaration withdrawing her statement and her complaint; the declaration had then been sent to the investigating bodies. S.D. had subsequently been questioned by a judge, had retracted her original statement and had given evidence about the pressure exerted on her during the investigation. On 25 June 2001 S.D. had died.

31. The Regional Court based its findings of fact on S.D.'s statement of 19 December 2000, the statements by the three police officers who had attended to her at the police station the day after the events and had carried out the initial investigative steps, the statement by S.D.'s husband and a

certain V.M., part of the statements by the applicants and Mr Dimitrov's employer, the findings of the site inspection report and the photographs taken in the course of the inspection, various items of documentary evidence, the findings of the initial medical examination of the victim and the two additional medical examinations, and the two psychiatric examinations of the applicants.

32. The Regional Court devoted six pages of its reasoning to an analysis of S.D.'s statement of 19 December 2000. It accepted the statement in its entirety, finding it to be coherent, logical, precise, specific and consistent with the details emerging from the other material admitted in evidence.

33. The Regional Court noted firstly that S.D. had had no cause to make false accusations against the applicants; it rejected as ill-founded and illogical the applicants' accounts to the effect that S.D.'s statement had been influenced by her relatives, or even motivated by a desire for revenge or a feeling of jealousy.

34. Next, the Regional Court found that the statement in question was credible in that it was consistent with those given by the police officers who had registered the victim's complaint and had observed her psychological and physical state on the day after the events. It added that the statement was also consistent with the findings of the medical examinations and expert opinions and the findings noted in the site inspection report.

35. The Regional Court further noted that, although two years had elapsed between the events and the questioning of S.D., her statement was very detailed. It found that her alteration of her version of events in the course of the investigation had been due to the pressure exerted on her by the applicants and people close to them.

36. The Regional Court lastly noted that both applicants and two of the defence witnesses, who had close links to them, had tried to discredit S.D. by accusing her of amoral behaviour. It rejected their evidence and found that the evidence given by S.D.'s husband was credible in this respect. By describing S.D. as a caring mother and a person whose behaviour and way of life were in no way morally objectionable, the husband had, despite being separated from her, given testimony from which a positive psychological image of S.D. could be formed.

37. Both applicants appealed to the Supreme Court of Cassation. Among other things, they challenged the admissibility and credibility of S.D.'s statement of 19 December 2000.

38. In a judgment of 7 January 2008 the Supreme Court of Cassation dismissed the applicants' appeals as to the establishment of the facts and the defendants' guilt, and upheld the Regional Court's judgment in respect of those issues. However, it decided to reduce the applicants' sentences to five years' imprisonment for Mr Dimitrov and four years for Mr Momin.

39. The Supreme Court of Cassation found that the applicants' right to participate in the questioning of S.D. on 19 December 2000 had not been

violated. In particular, it noted that, although Mr Dimitrov had yet to appoint a lawyer at that time, he had been informed of S.D.'s questioning and had therefore had the opportunity to take part. With regard to Mr Momin, at that stage of the investigation he had yet to be charged and he had therefore not been entitled to participate in the questioning of S.D.

40. The Supreme Court of Cassation rejected the applicants' arguments challenging the credibility of S.D.'s statement. It found that the Regional Court had correctly accepted the statement in its entirety after testing its credibility by comparing it with the other evidence gathered. It noted that the Regional Court had examined and rejected all the arguments casting doubt on the statement. It further held that the Regional Court had established the facts on the basis of all the evidence and that, on that basis, S.D.'s statement was "an important element, but not the only element" in establishing Mr Dimitrov's guilt and "the main evidence" in establishing Mr Momin's guilt.

II. RELEVANT DOMESTIC LAW

41. The relevant provisions of the 1974 Code of Criminal Procedure, which was in force at the material time, were worded as follows:

Article 210a

"1. Where there is a risk that the witness might not appear in court because of serious illness, prolonged absence from the country or any other reason making it impossible for him or her to appear at a hearing, and where it is necessary to take evidence from a witness that is of special importance for the establishment of the facts, the questioning shall be carried out by a judge of the competent first-instance court. ...

2. The investigator or prosecutor shall secure the appearance of the witness and shall make it possible for the accused and, as appropriate, his or her defence counsel to participate in the questioning."

Article 279

"1. Witness evidence taken in the same case by a judge at the preliminary investigation stage shall be read out [at the hearing] where:

...

(4) the witness cannot be found for the purposes of a summons, or has died."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

42. The applicants complained that they had been convicted on the basis of a statement by a witness, S.D., whom they had had no opportunity to confront or examine. They relied on Article 6 §§ 1 and 3 (d) of the Convention, which provides:

> "1. In the determination 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. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicants

44. The applicants referred first of all to the principle established in the Court's case-law concerning the application of Article 6 of the Convention, to the effect that the accused must be given the opportunity to be confronted with witnesses against them and to examine them. They argued that this principle was particularly important when the testimony in question was the main evidence for the prosecution. The opportunity to be confronted with and to examine a witness could be provided when the statement was taken or at another stage of the proceedings.

45. The applicants further stated that in their own case, they had not had the opportunity to examine S.D. at any stage of the criminal proceedings, either during the investigation or during the trial. Yet S.D. had been the main witness for the prosecution and it was on the basis of her statement that they had been convicted.

46. The applicants submitted that there had not been sufficient counterbalancing factors to compensate for the handicaps under which the defence had laboured as a result of the admission of that evidence and to ensure the fairness of the criminal proceedings as a whole. The evidence in question should have been rejected by the courts, just as they had rejected the statement by the victim's grandmother whom the applicants had not been able to cross-examine; the reduction of their sentences by the court of final instance had been unable to compensate for that shortcoming. The applicants contended that S.D.'s questioning had been carried out in breach of Bulgarian procedural law, since they had not been informed of it and had thus been denied any opportunity to attend it. Furthermore, the courts had not performed a thorough analysis of the credibility of this witness, who had changed her account several times during the investigation. In that connection, the allegation that S.D. had been pressured into withdrawing her statement had never been proved. The absence of any opportunity to examine that witness could in no way be offset by the opportunity they had had at the trial to challenge the accuracy of her statement or to cross-examine the other witnesses, since her statement had been the main evidence for the prosecution, and the other evidence was contradictory and did not corroborate S.D.'s version of events as set out in her statement.

(b) The Government

47. The Government contested the applicants' position and submitted that there had been no violation of Article 6 of the Convention in the present case. Article 6 §§ 1 and 3 (d) of the Convention required accused persons to be given the opportunity to familiarise themselves with the evidence, which had to be presented to them at the hearing. There could be exceptions to this principle, but they should not infringe the rights of the defence, which as a rule required accused persons to be entitled to examine or have examined a witness against them, either when the witness gave a statement or at a later stage (they cited *Solakov v. the former Yugoslav Republic of Macedonia*, no. 47023/99, § 57, ECHR 2001-X). Furthermore, in *Schatschaschwili v. Germany* ([GC], no. 9154/10, § 107, ECHR 2015), *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, § 119, ECHR 2011) and *Seton v. the United Kingdom*, (no. 55287/10, §§ 58 and 59, 31 March 2016), the Court had established three criteria which criminal proceedings had to satisfy in order to be compatible with Article 6 §§ 1 and 3 (d) where witness statements had been admitted in evidence without the witness having been examined by the accused.

48. Concerning the first of the three criteria, namely the existence of a good reason for S.D.'s absence from the trial, the Government pointed out that the young woman had died eight months before the indictment had been drawn up and the applicants had been committed for trial. The fact that the applicants had not examined S.D. before the trial was not attributable to

the authorities. In that connection, Mr Dimitrov, who at the time had been charged but had yet to appoint a lawyer, had been notified by the police that S.D. would be questioned on 19 December 2000, and since Mr Momin had yet to be charged, there had been no obligation for the authorities to secure his presence at the questioning.

49. As regards the second criterion established in the Court's case-law, namely the significance of the evidence in question, the Government referred to the judgment delivered by the Supreme Court of Cassation in the present case and acknowledged that S.D.'s statement had indisputably constituted the main evidence in the case. Nevertheless, the statement had not been the sole basis for establishing the applicants' guilt and had been corroborated by a range of other items of evidence.

50. The Government submitted, lastly, that there had been sufficient counterbalancing factors to compensate for the handicaps under which the defence had laboured as a result of the admission of S.D.'s statement. They contended that the applicants had been able to challenge the admissibility and credibility of the statement in question at the trial; that the courts dealing with the case had carried out a thorough analysis of the statement, giving consideration to all the factors which, as the applicants had argued, could undermine its credibility, and in particular had had regard to the circumstances in which the statement had been taken; and that the courts had also excluded other items of evidence against them for failure to comply with procedural rules. Furthermore, the applicants had actively participated in the trial – having been able to examine the other witnesses and to submit arguments in favour of their acquittal – and their respective sentences had been reduced by the Supreme Court of Cassation.

2. The Court's assessment

(a) General principles

51. The Court reiterates that the various guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of that Article which must be taken into account in any assessment of the fairness of proceedings as a whole (see *Al-Khawaja and Tahery*, cited above, § 118; *Gäfgen v. Germany* [GC], no. 22978/05, § 169, ECHR 2010; and *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 113, 12 May 2017).

52. Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence (see *Al-Khawaja and Tahery*, cited above, § 118). In particular, the Court has established the following criteria in its case-law for assessing the compliance with Article 6 of a trial at which a witness statement has

been admitted in evidence even though the defendant has not had the opportunity to examine or to have examined the witness in question: firstly, it must ensure that there was a good reason for the non-attendance of the witness at the trial; next, it must ascertain whether the applicant's conviction was based solely or to a decisive extent on the statement of the absent witness; and lastly, it must determine whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps under which the defence laboured as a result of the admission of such evidence and to ensure that the trial, judged as a whole, was fair (ibid., §§ 119 and 147).

53. Subsequently, in *Schatschaschwili v. Germany* ([GC], no. 9154/10, § 118, ECHR 2015) the Court pointed out that as a rule, it was pertinent to examine those three steps in the order set out above, although it might be appropriate, in a given case, to examine them in a different order, especially if one of the steps proved to be particularly conclusive as to either the fairness or the unfairness of the proceedings. It also specified what factors should be taken into account in analysing the third step mentioned above, namely: the trial court's approach to the evidence in question, the availability and strength of further incriminating evidence, and the procedural measures taken to compensate for the lack of opportunity to directly cross-examine the absent witness at the trial (ibid., §§ 125-31).

(b) Application of those principles to the present case

(i) Whether there were "good reasons" for not arranging a confrontation between the applicants and the witness in question

54. The Court observes that in the present case, the applicants complained that they had been convicted on the basis of the statement taken from S.D. during the preliminary investigation and that they had never had the opportunity to examine her as a witness.

55. The Court observes that S.D. did not give evidence at the applicants' trial because she died before it had started (see paragraphs 22 and 24 above). The statement she had made at the preliminary investigation stage was read out at the trial, in accordance with domestic law, and was admitted in evidence by the criminal courts (see paragraphs 24, 26, 31 and 40 above). The Court considers that S.D.'s death constituted a "good reason", within the meaning of its case-law, for not hearing her as a witness at the trial and for admitting in evidence the statement she had made while still alive (see *Al-Khawaja and Tahery*, cited above, § 153).

56. Both the applicants complained that the investigating authorities had not given them the opportunity to be confronted with the witness during the criminal investigation (see paragraph 45 above). The Court observes, for its part, that Mr Dimitrov had been informed of the date on which S.D. was to be questioned by a judge, but did not attend (see paragraph 17 above). It is

obliged to take this fact into account. Nevertheless, it observes that at that stage he did not have a lawyer who could have explained the importance of the questioning for the subsequent course of the proceedings (see paragraph 39 above). Accordingly, having regard to its case-law in this area (see *Dvorski v. Croatia* [GC], no. 25703/11, § 100, ECHR 2015, and *Pishchalnikov v. Russia*, no. 7025/04, § 77, 24 September 2009), the Court cannot accept that Mr Dimitrov's absence amounted to a waiver of his right to examine the witness at a later stage of the proceedings. In the case of Mr Momin, on the date of the questioning he had yet to be formally charged and the applicable domestic law did not require the authorities to notify him of that investigative measure (see paragraphs 17, 20, 39 and 41 above). The Court considers that this fact is also relevant in the present case. It does not rule out the possibility, having regard to the criminal complaint lodged by S.D. (see paragraph 6 above) and the questioning of Mr Momin on 18 March 1998 (see paragraph 9 above), and with reference to the criteria outlined in *Simeonovi* (cited above, §§ 110 and 111), that this applicant could have been regarded as having been "charged with a criminal offence" within the autonomous meaning of Article 6 of the Convention and thus as being entitled to the guarantees of that Article. However, this would not imply that Mr Momin, who had yet to be formally charged at that time, should have been invited to attend the questioning of S.D. on 19 December 2000. In the light of those circumstances, the Court considers that the fact that the two applicants were not present during the questioning cannot in itself amount to a violation of Article 6 §§ 1 and 3 (d) of the Convention.

57. It is true that counsel for both applicants subsequently asked the authorities to arrange a confrontation between his clients and S.D. That request was refused by the public prosecutor on the grounds that that this was a non-compulsory investigative measure which was not necessary for the establishment of the facts (see paragraph 21 above).

58. The Court emphasises, however, that S.D. had complained that she had been the victim of a particularly serious sexual assault, involving rape and physical violence. In the context of criminal proceedings for rape, the victims are frequently in a fragile psychological state. The investigating authorities therefore have a particular duty of care towards them, especially when it comes to taking their statements and arranging a confrontation with their alleged attackers (see *Przydział v. Poland*, no. 15487/08, § 48, 24 May 2016). This was especially true in the present case, where the victim was also seriously ill and had come under pressure during the investigation to withdraw her complaint and alter her statement (see paragraphs 19 and 30 above). In view of these very specific circumstances, the Court cannot reproach the investigating authorities for not arranging a confrontation between S.D. and the two applicants at the preliminary investigation stage.

59. Admittedly, S.D.'s death before the end of the investigation (see paragraphs 22 and 23 above) had the effect of denying the applicants the

opportunity to be confronted with that witness during the trial. The investigating authorities had indeed been aware since April 2000 that S.D. was ill and undergoing chemotherapy (see paragraph 14 above). However, there is no indication in the present case that either the investigator or the prosecutor knew that S.D.'s condition was so serious that she might be unable to attend the trial. It must be noted that when questioned on 19 December 2000, S.D. had explained before the prosecutor that she had cancer but was feeling well (see paragraph 19 *in fine* above). The Court observes that the present case differs in that respect from *Schatschaschwili* (cited above, §§ 159 and 160), where the authorities knew that the key witnesses would probably not give evidence at the trial.

(ii) Whether the applicants' conviction was based solely or to a decisive extent on the statement of the witness in question

60. With regard to the significance of S.D.'s statement in forming a basis for the applicants' conviction, the Court observes that in its judgment of 7 January 2008 the Supreme Court of Cassation noted that it was "an important element, but not the only element" in establishing Mr Dimitrov's guilt and "the main evidence" in establishing Mr Momin's guilt (see paragraph 40 *in fine* above). The parties agreed on this issue: the applicants submitted, and the Government acknowledged, that S.D.'s statement had been the main item of evidence forming the basis for their conviction (see paragraphs 45 *in fine* and 49 above). In the specific circumstances of the case, the Court can see no reason to reach a different conclusion on this point. It therefore considers that the statement by S.D. was the decisive evidence in securing the applicants' conviction.

61. The Court observes, however, that S.D.'s statement was not the sole evidence against the applicants in the criminal proceedings. The Regional Court, which convicted the applicants and whose decision was upheld by the Supreme Court of Cassation, had before it other witness statements and other circumstantial evidence against the accused corroborating S.D.'s statement: the statements by the police officers who had registered S.D.'s complaint, the findings of the medical examinations and expert opinions, and the findings of the site inspection report (see paragraph 34 above). The applicants' conviction was therefore based on a body of evidence within which the statement in question was not an isolated element.

(iii) Whether there were sufficient counterbalancing factors to ensure that the criminal proceedings as a whole were fair

62. Next, the Court must address the question whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps under which the defence laboured as a result of the admission of S.D.'s statement and to ensure that the trial as a whole was fair (see paragraph 52 above). To that end, it will examine the

trial courts' approach to the evidence in question, the availability and strength of further incriminating evidence, and the procedural measures taken to compensate for the lack of opportunity to cross-examine S.D. directly (see paragraph 53 above).

63. The two courts that heard the criminal case on the merits and the Supreme Court of Cassation addressed issues relating to the admissibility and credibility of S.D.'s statement. The first-instance court rejected most of the statement (see paragraph 26 above), whereas the appellate court accepted it in full and thus convicted both applicants (see paragraph 32 above). The latter approach was endorsed in the judgment of the Supreme Court of Cassation (see paragraphs 38-40 above). The Court therefore considers it appropriate to focus its analysis on the approach of the Plovdiv Regional Court and the Supreme Court of Cassation to this evidence.

64. The Plovdiv Regional Court devoted a significant part of the reasoning in its judgment to S.D.'s statement (see paragraph 32 above). It sought to test its credibility by first determining whether the young woman might have had a motive for making unfounded accusations against the two applicants. The various accounts submitted by the applicants on this issue were rejected by the court as ill-founded (see paragraph 33 above).

65. Next, the court compared the statement with other witness evidence, the findings of the medical examinations and expert opinions and the findings of the site inspection report. It found that the victim's statement was corroborated by those items of evidence and thus credible (see paragraph 34 above).

66. In assessing the credibility of the statement, the Regional Court took care to point out that it had been taken two years after the events, but observed that the passage of this period of time had in no way prevented the victim from making a very detailed statement (see paragraph 35 above).

67. The question concerning S.D.'s alteration of her account in the course of the investigation was also addressed by the court, which found that this had been due to the pressure exerted on her by the applicants and people close to them (see paragraph 35 *in fine* above).

68. Lastly, the Regional Court addressed and rejected the arguments put forward by the applicants and people close to them, when questioned during the course of the proceedings, in an attempt to discredit the victim by accusing her of amoral behaviour. In so doing, the court found that the statement by S.D.'s husband, painting a positive picture of her, was credible (see paragraph 36 above).

69. In the light of the above circumstances, the Court considers that the Regional Court's examination of S.D.'s statement was thorough, objective and comprehensive. The Regional Court addressed all the relevant questions for the assessment of her credibility as a witness and the truthfulness of her statements of 19 December 2000. It therefore provided detailed reasons for

its conclusion that the statement as a whole was credible and for its subsequent decision to admit it as the main evidence against the applicants.

70. The Court further reiterates that the Regional Court had before it other witness statements and other circumstantial evidence against the accused corroborating S.D.'s statement: the statements by the police officers who had registered S.D.'s complaint, the findings of the medical examinations and expert opinions, and the site inspection report (see paragraphs 34 and 61 above). The applicants' conviction was therefore based on a body of evidence within which the statement in question was not an isolated element.

71. In their observations, the Government emphasised the existence of several procedural safeguards serving as counterbalancing factors in the present case (see paragraph 50 above). The applicants contested the Government's position (see paragraph 46 above).

72. The Court observes that the applicants played an active role in the proceedings brought against them: with assistance from their lawyers, they challenged the admissibility and credibility of the victim's testimony and adduced evidence in their defence (see paragraphs 24 *in fine* and 28 *in fine* above). The Regional Court and the Supreme Court of Cassation addressed and rejected their arguments in decisions that contained detailed reasoning and were not arbitrary (see paragraphs 29-36 and 38-40 above). In this connection, the Court attaches particular significance to the detailed and comprehensive analysis of the credibility of the victim's statement performed by the Regional Court with a view to ensuring fairness and due process (see paragraphs 64-69 above).

(iv) The Court's conclusion

73. To sum up, the Court considers that S.D.'s death constituted a "good reason", within the meaning of its case-law, for not hearing her as a witness during the trial and for admitting in evidence the statement she had made while still alive during the criminal investigation. It also finds that there were valid reasons for not arranging a confrontation between the two applicants and S.D. during the preliminary investigation. Although the applicants' subsequent conviction was based primarily on the statement by that witness, the courts also took other corroborating evidence into account. Moreover, in the criminal proceedings against the applicants, sufficient procedural safeguards were available to them to compensate for the handicaps under which the defence laboured as a result of the admission of S.D.'s statement and to ensure that the trial as a whole was fair: the applicants actively participated in the trial and submitted arguments in favour of their acquittal; the courts carried out a very careful analysis of the credibility of the main evidence against the applicants, considering their objections in that regard and providing reasons for rejecting them; and

lastly, the domestic courts' decisions contained detailed reasoning and were not arbitrary.

74. The Court therefore finds that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

Done in French, and notified in writing on 7 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Erik Møse
Registrar	President