



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

Communicated on 18 December 2014

**FIRST SECTION**

Application no. 20256/08  
Ibragim Asakhmatovich MSOSTOV against Russia  
and 16 other applications  
(see list appended)

**A. The circumstances of the cases**

1. The applicants are Russian nationals living in various regions of the Russian Federation. Their names and dates of birth are tabulated below. The facts of the cases, as submitted by the applicants, may be summarised as follows.

2. On various dates between 2007 and 2014 the applicants were criminally prosecuted and convicted for various offences under the Russian legislation in force.

3. The applicants' convictions were based among other evidence on the statements of one or more prosecution witnesses (including victims in certain cases), which were made during pre-trial stages of the proceedings and read out in open court while those witnesses were absent from trials.

4. The national courts allowed the pre-trial statements to be read out and admitted these statements as evidence without examination of the witnesses during trials. In doing so the courts relied on the impossibility of the witnesses' attendance due to various reasons.

5. The applicants appealed against the judgments of conviction arguing *inter alia* that their convictions were unfair due to inability to examine those witnesses. However, the judgments of conviction were upheld on appeals. The judgments' particulars and the initials of the witnesses, whose statements were read out, are tabulated below.

**B. Relevant domestic law and practice**

6. The relevant domestic law and practice had been previously summarized in the decision *Kuznetsov v. Russia (Kuznetsov v. Russia and 35 other applications)* (dec.), nos. 33389/07, 54480/07, 1570/08, 3975/08, 10309/08, 10594/08, 18069/08, 24980/08, 30066/08, 32015/08, 33965/08, 40306/08, 46581/08, 47599/08, 48895/08, 48905/08, 52304/08, 54353/08, 7710/09, 10781/09, 11068/09, 12565/09, 14252/09, 35051/09, 35656/09,

36235/09, 46918/09, 6752/12, 66754/12, 68848/12, 892/13, 5987/13, 13105/13, 13686/13, 14360/13, 18635/13, §§ 6-10, 14 January 2014).

## COMPLAINTS

7. The applicants complain under Article 6 § 1 and Article 6 § 3 (d) of the Convention that they did not have a fair trial in criminal proceedings against them, in particular since they were unable to obtain the attendance of the witnesses testifying against them and to examine them in court.

### **QUESTIONS TO THE PARTIES**

1. Did the applicants have a fair hearing in the determination of the criminal charges against them, in accordance with Article 6 § 1 of the Convention? Specifically, were the applicants able to examine the witnesses against them as required by Article 6 § 3 (d) of the Convention?
2. Were there good reasons for the witnesses' absence (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 120-25, ECHR 2011)?
  - (a) If yes, did the national authorities make reasonable effort to secure the presence of the witnesses during trials as requested by the applicant?
  - (b) Were these reasons and efforts duly reviewed by the domestic courts? What proof had been used by the domestic courts in the course of such review?
  - (c) What were the grounds in the Russian law and practice on which the national courts relied in reading out of the pre-trial statements made by the witnesses absent at trials?
  - (d) Did the Russian courts consider the fact that the pre-trial statements of the witnesses were given before police agents?
3. Were the applicants' convictions based solely or to a decisive degree on the statements of the witnesses absent from trials (see *Lucà v. Italy*, no. 33354/96, § 40, ECHR 2001 II, and *Al-Khawaja and Tahery*, cited above, §§ 126-28, ECHR 2011)?
4. Having regard to the reading out of the absent witnesses' pre-trial statements, was the overall fairness of the proceedings ensured by the domestic courts as prescribed by Article 6 § 1 of the Convention (see *Al-Khawaja and Tahery*, cited above, §§ 144-47)? In addressing this issue the parties are invited to address each of the following questions:
  - (a) Did the competent national courts assess the impact of the absence of the witnesses on the overall fairness of the proceedings?
  - (b) Did the competent national courts give in their judgments to the read-out of testimonies of non-crossed-examined witnesses the same weight that they gave to crossed-examined witnesses?
  - (c) Did the applicants have at their disposal any alternative procedural or technical means to examine during trial the witnesses whose pre-trial statements were read out and to safeguard the defence's right to impugn the fairness of the gathering of the pre-trial testimony, the credibility of the witness and the reliability of his or her testimony?
  - (d) Did the national courts ensure the overall fairness of the proceedings as prescribed by Article 6 § 1 of the Convention by relying in the

good reasons for reading out of the witnesses' pre-trial statements and duly reflecting these reasons in the judgments?

- (e) Were there strong procedural safeguards put in place by the Russian law, practice, or specific arrangements in the applicants' cases, which would counterbalance the use of such evidence (see *Al-Khawaja and Tahery*, cited above, § 147)?
- (f) Having regard to the right "to examine or have examined witnesses against him" as enshrined in Article 6 § 3 (d), were the applicants able to examine the witnesses absent at trials during the pre-trial proceedings?
  - (i) Were they able to put questions to these witnesses and to submit their objections?
  - (ii) Were the applicants assisted by defence lawyers in examining the witnesses against them during the pre-trial proceedings or were they given that opportunity?
  - (iii) Did the confrontation procedure conducted by the State officials, if any, meet the requirements of independence and impartiality (see *Melnikov v. Russia*, no. 23610/03, § 80, 14 January 2010)?
  - (iv) Did the applicants waive the right to cross-examine absent witnesses?

5. Given the number of similar complaints originating from different Russian regions submitted to the Court over the period of many years and up until now, as well as repeated violations of Article 6 § 3 (d) in connection with Article 6 § 1 found by the Court in certain Russian cases, may it be considered that the present cases reveal an underlying problem that requires adoption of general measures in accordance with Article 46 § 1 of the Convention as interpreted in the light of Article 1 of the Convention?

6. The Government are invited to provide where available:
- (a) the copies of reports on pre-trial confrontations of the applicants with the witnesses absent from trials;
  - (b) the copies of police reports and other relevant documents on the attempts to secure presence of these witnesses during trials;
  - (c) the copies of relevant documents of the absent witnesses confirming their inability to attend the respective proceedings.

## APPENDIX

No.	Application no.	Lodged on	Applicant's name, date of birth	Represented by	Judgments	Witnesses absent from trial
1.	20256/08*	14/04/2008	<b>Ibragim Asakhmatovich MSOSTOV</b> 04/01/1970	Leyla Abdullayevna KHAMZAYEVA	Moscow City Court, 19 November 2007	prosecution witnesses Mrs B., Mrs Ch., Mr P.
2.	26663/08*	24/04/2008	<b>Oleg Anatolyevich ZLOTNIKOV</b> 16/12/1960	Yevgeniy Sergeyevich ARKHIPOV	Supreme Court of the Russian Federation, 25 October 2007	prosecution witness Mr Akh.
3.	27663/08*	16/04/2008	<b>Svetlana Anatolyevna SADUAKASOVA</b> 16/10/1966		Supreme Court of Altai Republic, 17 October 2007	prosecution witness Mr S.
4.	52016/09*	07/09/2009	<b>Oleg Grigoryevich KOBLOV</b> 22/05/1970		Moscow Regional Court, 09 April 2009	prosecution witnesses Mr MN., Mr MSh.
5.	56603/10*	07/09/2010	<b>Vladimir Alekseyevich SHCHERBATYKH</b> 09/10/1978	Mikhail Ivanovich TREPASHKIN	Moscow Regional Court, 6 April 2010	prosecution witness Mr Ch.
6.	71069/10*	24/11/2010	<b>Vladimir Petrovich LYSENKO</b> 17/08/1950	Igor Borisovich BUSHMANOV	Moscow City Court, 26 May 2010	prosecution witness Mr G.

7.	9683/12*	20/01/2012	<b>Vladimir Gennadyevich FEDOTOV</b> 18/01/1976	Valeriy Alekseyevich RACHKOV	Moscow Regional Court, 20 October 2011	prosecution witness Mr Sh.
8.	26138/12*	03/09/2012	<b>Nikolay Gennadyevich BESPALOV</b> 28/06/1978		Chelyabinsk Regional Court, 23 March 2012	prosecution witness Mr Ts.
9.	33047/13*	22/04/2013	<b>Anton Vladimirovich KOLESNIKOV</b> 20/05/1987		Altai Regional Court, 13 June 2013	prosecution witnesses Mr S., Mr G., Mr K., Mrs I., Mr V., victim Mr M.
10.	60646/13*	22/08/2013	<b>Aleksandr Vasilyevich BUKREYEV</b> 16/07/1953		Kursk Regional Court, 5 June 2013	prosecution witnesses Mrs Kr. and Mrs Kor.
11.	76629/13	20/11/2013	<b>Sergey Ilyich LIDYAYEV</b> 10/08/1987		Moscow City Court, 22 May 2013	prosecution witness Mr M.
12.	25124/14*	05/03/2014	<b>Dagir Abakarovich SOLTANOV</b> 02/07/1983	Khalimat Shapigadzhievna ALIGADZHIYEVA	Supreme Court of Dagestan Republic, 19 February 2014	prosecution witness Mr R.
13.	30124/14*	20/06/2014	<b>Sergey Anatolyevich TOMOCHINSKIY</b> 28/05/1987		Supreme Court of the Russian Federation, 29 April 2014	prosecution witnesses Mr I.
14.	31903/14*	14/04/2014	<b>Mikhail Igorevich ZISMAN</b> 20/03/1986  <b>Aleksandr Sergeyevich SHKUROPATSKIY</b> 07/11/1980  <b>Yegor Vladimirovich ZYKOV</b> 11/06/1986		Chelyabinsk Regional Court, 19 September 2013 (judgment received on 18 October 2013)	victims Mr D., Mr G. and Mr Sh.

<b>15.</b>	31933/14*	16/04/2014	<b>Vsevolod Vladimirovich NAZAROV</b> 06/01/1967	Igor Borisovich BUSHMANOV	Moscow City Court, 22 October 2013	prosecution witnesses Mrs Yak., Mrs Pch., Mr Kor., Mrs Va., Mrs Ag., Mrs Scher., Mrs L., Mrs N., Mrs F., Mr P., Mrs Ul., Mrs Abr., Mr Abr., Mrs M.
<b>16.</b>	40898/14	12/05/2014	<b>Boris Khaychiyevich DARMAYEV</b> 01/02/1969	Karmen Erdniyevna PAVLOVA	Astrakhan Regional Court, 9 April 2014	victim Mr Kh., prosecution witnesses Mr Kur. and Mr An.
<b>17.</b>	52996/14*	23/08/2014	<b>Yuriy Yuryevich OVCHENKOV</b> 12/09/1958		Moscow City Court, 24 February 2014	prosecution witnesses Mr Ya. and Mr K.