



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

FIRST SECTION

CASE OF STANISLAV ZHUKOV v. RUSSIA

(Application no. 54632/00)

JUDGMENT

STRASBOURG

12 October 2006

FINAL

12/01/2007

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 Stanislav Zhukov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 21 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 54632/00) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Stanislav Yevgenyevich Zhukov (“the applicant”), on 5 January 2000.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr A. Knyazev, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the proceedings before the supervisory-review instance had been unfair because the hearing had been conducted in his absence.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 31 March 2005 the Court declared the application partly admissible.

6. The Government but not the applicant filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1959 and lives in Moscow.

8. On 15 December 1997 the Ostankinskiy District Court of Moscow found the applicant guilty of kidnapping committed by a group of persons with the use of violence and of another minor offence. He was sentenced to five years' imprisonment.

9. On 7 May 1998 the Moscow City Court upheld, on appeal, the applicant's conviction of kidnapping but discontinued the prosecution in respect of the minor offence which had meanwhile become time-barred.

10. On an unspecified date the applicant asked the Moscow City Court for supervisory review of his conviction. By letter of 26 May 1999, the City Court rejected his request.

11. On 3 June 1999 the applicant lodged a request for supervisory review with the Supreme Court of the Russian Federation.

12. On 19 October 1999 a deputy president of the Supreme Court of the Russian Federation lodged an application for supervisory-review with the Presidium of the Moscow City Court. In his view, the applicant had been an accomplice to kidnapping rather than the actual doer and he had not resorted to violence.

13. By letter of 27 October 1999, the applicant was notified about the introduction of the application for supervisory review. He was also told that he would be informed about the outcome of the proceedings.

14. On 11 November 1999 the Presidium of the Moscow City Court examined the application for supervisory review. The applicant was not invited to the hearing. The Moscow city prosecutor spoke before the Presidium in support of the proposed recharacterisation. The Presidium followed the proposal and found the applicant guilty of being an accomplice to kidnapping without the use of violence (an offence under Article 126 § 2 (a) of the Criminal Code in conjunction with Article 33 § 5). The sentence remained unaffected.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The RSFSR Code of Criminal Procedure (in force at the material time)

15. Article 254 required that the court examine the case within the scope of the charges brought against the defendant. The charge could be amended

by the court, provided that such an amendment did not aggravate the situation of the defendant or violate his right to defend himself.

16. Chapter 30 described the power of certain State officials to contest criminal judgments by way of supervisory-review proceedings in which the case could be reviewed on points of law and procedure. The supervisory-review proceedings were distinct from review of a case on account of newly discovered facts. The power to lodge an application for supervisory review could be exercised by the Prosecutor General, the presidents of the Supreme Court of the Russian Federation and of the regional courts and their deputies. A party to the proceedings could petition these officials for institution of supervisory-review proceedings (Article 371).

17. The supervisory-review instance was not bound by the scope of the application for supervisory review and had to review the criminal case in its entirety. It could uphold, amend or quash any of the earlier judgments, vary the sentence, discontinue the criminal proceedings or remit the matter for a new consideration by the trial or appeal court. It could not, however, increase the sentence or recharacterise the defendant's actions as a more serious offence (Article 380).

18. Article 377 established that a prosecutor had to be present at the supervisory-review hearing. If necessary, the convicted person and counsel could be summoned to the hearing in order to make submissions. If summoned to the hearing, the defendant and counsel should be able to study the application for supervisory review.

B. Case-law of the Constitutional Court

19. In Ruling no. 2-P of 14 February 2000, the Constitutional Court declared Article 377 incompatible with the Russian Constitution to the extent that it permitted the supervisory-review instance to decide on an application for supervisory review which was to the detriment of the convicted or acquitted person. The Court held that such person and his or her counsel should be able to study the application, they should be notified about the date and place of the hearing and given an opportunity to present their position on the arguments in the application.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicant complained under Article 6 §§ 1 and 3 (a), (b) and (c) that he had not received a fair trial in the determination of the criminal

charge on supervisory review because he had not been notified of the date and place of the hearing and had not been able to defend his case in person or through legal representation. The relevant parts of Article 6 read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal...

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

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require...”

21. The applicant submitted that the supervisory-review proceedings had resulted in the determination of a new criminal charge against him. That new charge had never been brought against him and he had not had a possibility to defend himself against it. The arguments raised in his request for supervisory review had differed from those contained in the application for supervisory review brought by the deputy President of the Supreme Court. The applicant and his counsel had not been aware of the contents of that application and had no possibility to comment on the proposed recharacterisation.

22. The Government pointed out that a request for supervisory review was merely a cause for introducing an application for supervisory review by an authorised State official who was not bound by the reasons exposed in the request. The applicant had been informed, by letter of 27 October 1999, about the lodging of an application for supervisory review but he had not sought leave to attend the supervisory-review hearing. The Government conceded that the applicant and his counsel had not been informed that the hearing would take place on 11 November 1999. However, their presence had not been necessary because the application for supervisory review had not been to the applicant's detriment and no new charge had been considered.

23. The Court has already found a violation of the fairness requirement of Article 6 § 1 of the Convention in the case where the supervisory-review court adopted a different legal characterisation of the applicant's offence without summoning him to the hearing and affording him an opportunity to comment on the application for supervisory review (see *Vanyan v. Russia*, no. 53203/99, §§ 63-68, 15 December 2005).

24. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put

forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Presidium of the Moscow City Court amended the conviction and adopted a different legal characterisation of the applicant's actions, thereby determining a criminal charge against him. The prosecution was present before the Presidium and made oral submissions in support of the recharacterisation. The Presidium had to exercise a full review of the case and could dismiss the application for supervisory review, quash the conviction and/or the appeal judgment, discontinue the criminal proceedings, or amend any of the earlier decisions. In these circumstances, the Court considers that the Presidium of the Moscow City Court could not, if the trial were to be fair, determine the applicant's case in the absence of the applicant and/or his counsel. Had they been present, they would have had an opportunity to plead the case and comment on the application by the deputy President of the Supreme Court and on the oral submissions by the prosecutor (see *Vanyan, loc. cit.*).

25. In view of the above considerations the Court finds that the proceedings before the Presidium of the Moscow City Court did not comply with the requirements of fairness. There has therefore been a breach of Article 6 § 1 of the Convention. In the light of this finding it is not necessary to examine separately whether the provisions of Article 6 § 3 have been complied with.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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.”

27. The applicant did not submit a claim for just satisfaction within the established time-limit. Accordingly, the Court considers that there is no call to award him any sum under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 12 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President