



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

THIRD SECTION

CASE OF STADUKHIN v. RUSSIA

(Application no. 6857/02)

JUDGMENT

STRASBOURG

18 October 2007

FINAL

18/01/2008

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 Stadukhin v. Russia,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr A. KOVLER,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mrs I. ZIEMELE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 27 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 6857/02) 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 Ruslan Aleksandrovich Stadukhin ("the applicant"), on 29 June 2001.

2. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had not been apprised of an appeal hearing in criminal proceedings against him.

4. By a decision of 8 December 2005, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970 and lives in the Stavropol Region.

7. By a judgment of 5 December 2000 following a guilty verdict delivered by a jury, the Stavropol Regional Court convicted the applicant and his co-defendant of murder, robbery and the illegal acquisition, storage and carrying of arms. The applicant was sentenced to sixteen years'

imprisonment and confiscation of property and ordered to pay pecuniary and non-pecuniary damages to the victim.

8. The applicant, who was being held in custody, appealed against the judgment to the Supreme Court of Russia. He submitted, *inter alia*, that the judgment had been based on evidence which had not been thoroughly examined, that the investigating authority had failed to verify his co-defendant's statements by way of a scene-of-crime reconstruction, that the court had dismissed his request for examination of additional witnesses, that no psychiatric and psychological examination had been conducted and that he had had no motive to commit the murder and robbery. He requested the appeal court to quash the judgment and order a fresh examination of the case.

9. On 21 February 2001 the Supreme Court examined the applicant's appeal. It heard a public prosecutor who requested that the judgment should be upheld. The applicant, who had not been apprised of the hearing, was not present. He was not represented by counsel at the hearing.

10. By a decision of 21 February 2001 the Supreme Court dismissed the applicant's appeal and upheld the judgment. It found that the trial court's presiding judge had conducted the trial impartially and ensured that the case had been thoroughly examined. There had been no need for a scene-of-crime reconstruction by the investigating authority, as the evidence collected in the case had been sufficient. The applicant's unsuccessful request for examination of evidence had not concerned evidence which could have had a significant impact on the outcome of the case. The applicant's submission that he had had no motive to commit the murder and robbery could not serve as a ground for quashing a jury-based judgment, and the applicant had been informed of this by the trial court. The applicant's complaint about the authorities' failure to order a psychiatric and psychological examination had not been based on law, as neither the investigating authority nor the trial court had had doubts about the applicant's mental health and no request for such an examination had been made before or during the trial.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The right to be present at an appeal hearing

11. Under Article 335 of the Code of Criminal Procedure of 1960 ("CCP"), in force at the material time, the public prosecutor would give a conclusion at an appeal hearing on whether a judgment was lawful and well-founded. Defence counsel could participate in the hearing. A decision about the defendant's participation in the hearing was taken by the appeal court. A

defendant who appeared before the court was always entitled to give explanations.

12. In Decision no. 27-P of 10 December 1998, the Constitutional Court of the Russian Federation declared Article 335 § 2 of the CCP incompatible with the Constitution on the ground that this provision enabled appeal courts to take a final decision where a defendant's request to attend the appeal hearing had been rejected and where a defendant had not been given an opportunity to study the materials of the hearing and communicate in writing his or her opinion on the issues raised before the appeal court.

13. Article 336 of the CCP provided that persons who had submitted appeals were to be apprised of the appeal hearing if it was held before courts lower than the Supreme Court of Russia. If an appeal was to be examined by the Supreme Court, an appellant would be apprised of the appeal hearing if he or she had requested the court to do so in their appeal or observations on the appeal. Notification of the time of the hearing on appeal was to be placed in the court not later than three days before the hearing.

14. In Decision no. 200-O of 17 October 2001, the Constitutional Court held that the provisions of Article 336 of the CCP could not serve as a basis for failing to inform persons entitled to appeal against judgments about the date of examination of their appeals by a court of any level.

15. Article 338 of the CCP required that, at the beginning of an appeal hearing, the presiding judge should verify who was present and the court should decide whether to proceed with the hearing.

16. Rules set out in Articles 332, 335, 336 and 338 of the CCP concerning appeals against judgments delivered by courts in their ordinary composition also governed the procedure in respect of appeals against judgments delivered by a jury court (Article 420 of the CCP).

B. The appeal court's jurisdiction

17. Appeal courts considered, on the basis of the materials in the case file and newly submitted materials, whether a first-instance judgment was lawful and well-founded. They were not bound by the grounds of the appeal and exercised a full review of the case (Article 332 of the CCP).

18. Under Article 465 of the CCP, in cases decided by a jury the appeal court could change or quash the judgment on the following grounds:

- (i) incomplete court examination as a result of the trial court's failure or refusal to examine admissible evidence, or examination of inadmissible evidence, where the evidence in question could have had a significant impact on the outcome of the case;
- (ii) grave violations of the criminal procedural law;
- (iii) improper application of law;
- (iv) unfair punishment.

19. Appeal courts could quash or vary the judgment provided that the changes were not to the detriment of the defendant. They could not quash an acquittal or a decision to terminate the proceedings or another decision in the defendant's favour on the grounds of a grave violation of his or her rights (Article 465 of the CCP).

THE LAW

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

20. The applicant complained about the failure of the judicial authorities to apprise him of the appeal hearing. He relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

A. The parties' submissions

1. The Government

21. The Government submitted that the applicant had not informed the court that he had wished to be present at the appeal hearing. No request for his notification of the place and date of the appeal hearing had been made in his appeal or by way of a separate written request.

22. According to Article 336 of the Code of Criminal Procedure, in force at the material time, only an appellant who requested notification of an appeal hearing in his or her appeal or observations on the other party's appeal was to be informed of the date of an appeal hearing before the Supreme Court of the Russian Federation. Since the applicant had failed to request notification of the appeal hearing, as required by the rules governing criminal procedure, the Supreme Court had not violated his right to a fair hearing by holding a hearing in his absence. Decision no. 200-O of 17 October 2001 of the Constitutional Court, which made it obligatory to inform all appellants of the date of examination of their appeals, had been adopted after the examination of the applicant's case.

23. The applicant's absence before the appeal court had had no impact on the appeal court's decision to uphold the judgment. It followed from the Supreme Court's decision of 21 February 2001 that all of the arguments raised by the applicant in his appeal were examined and all the conclusions

were reasoned. The lawfulness and well-foundedness of the judgment had also been verified by a supervisory review instance.

2. The applicant

24. The applicant claimed that he had sent, from the remand prison, separate written requests for notification of the date of the appeal hearing, to the Stavropol Regional Court on 10 January and 9 February 2001 and to the Supreme Court on 31 January 2001. He referred to an extract from the records of remand prisoners' outgoing correspondence in 2000-2001, dated 5 July 2006. Referring to Decision no. 200-O of 17 October 2001 of the Constitutional Court, the applicant argued that the Supreme Court should have applied the Constitution directly and informed him of the hearing anyway.

25. In his observations on the merits, the applicant submitted a new complaint concerning the allegedly inhuman conditions in a pre-trial detention facility in Stavropol in which he had been detained in 2000 and 2001. He also submitted complaints concerning the criminal proceedings brought against him, which were partly new and partly repeated those complaints which were dismissed by the Court in its admissibility decision of 8 December 2005. Thus, he complained that his acts had been wrongly classified under the Criminal Code, that he had had no time to prepare for examination of witnesses, that his request for examination of additional witnesses and other evidence had been rejected, that one of his lawyers had failed to represent him properly, that third parties had not been obliged by law to give information to a lawyer, that he had had no full-scale trial before a supervisory review court and that he had served part of his sentence in a prison instead of a correctional facility as ordered in the judgment. He relied on Articles 3, 6 §§ 1 and 3 (b) and (d), 7 and 13 of the Convention and Articles 2 and 4 of Protocol No. 7 to the Convention.

B. The Court's assessment

1. Scope of the case

26. The Court notes that in his observations on the merits the applicant raised new complaints relating to his conviction and resubmitted some of the complaints which were declared inadmissible by the Court in its decision of 8 December 2005 (see paragraph 25 above).

27. The Court reiterates that the admissibility decision delimits the scope of the case before it (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 59, ECHR 2001-IX). It follows that it cannot take into account the newly raised complaints in the

framework of the present application. Nor can it re-examine the complaints which were earlier declared inadmissible.

2. Merits

28. The concept of a fair trial guaranteed under Article 6 § 1 of the Convention requires that the rights of the defence and equality of arms in the sense of a “fair balance” between the parties must be respected (see *Borgers v. Belgium*, judgment of 30 October 1991, Series A no. 214-B, p. 31, § 24, and *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 33). In this context importance is attached to appearances as well as to the increased sensitivity of the public to the fair administration of justice (see *Borgers v. Belgium*, cited above, *ibid.*).

29. The Court notes the Government's submission that the applicant had failed to make known to the judicial authorities that he had wished to be apprised of the appeal hearing, as was required by the rules governing criminal procedure. The applicant claimed that he had done so.

30. The Court observes that the Code of Criminal Procedure in force at the material time released the Supreme Court from the duty to apprise an appellant of the appeal hearing if an appellant had not made an explicit request to that end. However it appears that the Supreme Court had the discretion to ensure the applicant's participation in the hearing notwithstanding his failure to make a request to attend the hearing (see paragraph 11 above). The Court further observes that the extract from the records of the remand prisoners' correspondence produced by the applicant does not make it possible to ascertain whether such a request was indeed made in his applications to the Regional Court and the Supreme Court. However, the Court does not find it necessary to resolve this discrepancy between the parties' submissions. It considers, for the reasons stated below, that even assuming that the applicant had failed to request explicitly that he be apprised of the appeal hearing, it was incumbent on the judicial authorities to do so in order for the proceedings to be fair (see, *mutatis mutandis*, *Kremzow v. Austria*, judgment of 21 September 1993, Series A no. 268-B, p. 45, §§ 67-69).

31. In the present case the defence was unrepresented at the appeal hearing before the Supreme Court.

32. The Supreme Court examined the applicant's appeal, in which he contested his conviction on the grounds of the trial court's allegedly improper examination of evidence and the lack of a motive to commit the crimes. He sought the quashing of the judgment and a fresh examination of the case by the first-instance court (see paragraph 8 above).

33. The Supreme Court was entitled to quash the Stavropol Regional Court's judgment and remit the case for a fresh trial, or to vary the judgment for reasons such as the improper examination of evidence, serious breaches

of the procedural law, incorrect application of the law or an unfair punishment. The Supreme Court was not bound by the scope of the appeal and had to exercise a full review of the case in order to assess whether the judgment had been lawful and well-founded (see paragraphs 17-19 above).

34. The Supreme Court exercised the above powers in the applicant's case by upholding the conviction and the sentence.

35. The prosecution was present at the appeal hearing and made oral submissions to the Supreme Court. They requested that the judgment be upheld.

36. The Court considers that in these circumstances there was a violation of the rights of the defence and the principle of equality of arms (see *Ekbatani v. Sweden*, judgment of 26 May 1988, Series A no. 134, p. 14, § 30, and *Monnell and Morris v. the United Kingdom*, judgment of 2 March 1987, Series A no. 115, pp. 23-24, § 62).

37. In conclusion, the Court finds that the appeal proceedings before the Supreme Court failed to comply with the requirements of fairness. It follows that there has been a violation of Article 6 § 1 in the present case.

38. In view of this conclusion, the Court considers it unnecessary to carry out a separate examination of whether the proceedings disclosed any further unfairness in relation to the fact that the applicant did not appear in person before the Supreme Court.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed pecuniary damage comprising of 50,000 euros (EUR) for the loss of his flat in Stavropol, EUR 6,800 and EUR 6,600 for the cost of food and clothing which his family had brought him during his detention in a pre-trial detention facility and in a correctional facility after his conviction and EUR 500 for the loss of a tooth in a pre-trial detention facility, allegedly as a result of improper medical care. The applicant also claimed EUR 1,500,000 in respect of non-pecuniary damage.

41. The Government contested the applicant's claims. They submitted that the claims for pecuniary damage were unsubstantiated and lacked connection with the alleged violation of the Convention.

42. The Court finds that there has been no causal link between the violation found and the claimed pecuniary damage. Consequently, it sees no reason to award the applicant any sum under this head.

43. The Court accepts that the applicant has suffered non-pecuniary damage which would not be adequately compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. The applicant claimed EUR 10,000 for reimbursement of lawyers' fees, postal expenses relating to correspondence with his representative and the domestic judicial authorities, the cost of legal books and travel expenses. He claimed 653.45 Russian roubles for postal expenses relating to his correspondence with the Court.

45. The Government submitted that these claims were unsubstantiated.

46. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part". According to the Court's established case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court considers that only postal expenses relating to the applicant's correspondence with the Court meet the above criteria. Thus, the applicant failed to provide the Court with any information or documents concerning the work allegedly done by lawyers and the relevant expenses allegedly incurred by him. The Court awards the applicant EUR 19 in respect of his postal expenses, plus any tax that may be chargeable on that amount.

C. Default interest

47. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 19 (nineteen euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President