



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

1959 · 50 · 2009

FIRST SECTION

CASE OF KARYAGIN, MATVEYEV and KOROLEV v. RUSSIA

(Applications nos. 72839/01, 74124/01 and 15625/02)

JUDGMENT

STRASBOURG

28 May 2009

FINAL

28/08/2009

This judgment may be subject to editorial revision.

In the case of Karyagin, Matveyev and Korolev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 May 2009,

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

PROCEDURE

1. The case originated in three applications (nos. 72839/01, 74124/01 and 15625/02) 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 three Russian nationals, Mr Valeriy Ivanovich Karyagin, Mr Sergey Anatolyevich Matveyev and Mr Sergey Lvovich Korolev (“the applicants”), on 11 January 2001 (the two first applications) and 9 January 2001 respectively.

2. The applicant Mr S. Matveyev was represented before the Court by Mr I. Smorodin, a lawyer practising in Magnitogorsk. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that they had not received a fair trial on account of discrepancies between the copy of the judgment served on them and the copy of the judgment examined by the appeal court.

4. By decisions of 23 October 2007, the Court declared the applications admissible.

5. The Chamber decided to join the applications (Rule 42 § 1).

6. The applicants and the Government each submitted further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants Mr Karyagin and Mr Matveyev were born in 1955 and the applicant Mr Korolev was born in 1953. They live in Magnitogorsk, Chelyabinsk region.

8. On 5 February 1998 the Chelyabinsk Regional Court, composed of presiding judge Ms Ikryannikova and two lay assessors, convicted Mr Korolev, who had occupied the post of the head of the Magnitogorsk police department for the fight against economic crimes, and the applicant Mr Matveyev, who had been his deputy, of several episodes of bribe-taking, abuse of office and unlawful possession of firearms and sentenced them to nine and ten years' imprisonment respectively. The applicant Mr Karyagin was convicted of aiding and abetting bribe-taking and sentenced to nine years' imprisonment.

9. On 19 February 1998 the court sent the judgment to detention facility SIZO 70/2 of Magnitogorsk in which the applicants were detained. Each applicant received a typed copy of the judgment on twenty-seven pages. It had signatures against the words "judge" and "secretary" and the Chelyabinsk Regional Court's official stamp. The same copy of the judgment was included in the applicants' personal files at the detention facility.

10. The applicants appealed against the judgment, denying the offences and claiming that there was no proper evidence of their guilt.

11. The Regional Court forwarded the case file, which included a typed copy of the judgment on thirty-one pages, to the Supreme Court for examination.

12. On 14 October 1998 the Supreme Court examined the case. It held that the finding of the applicants' guilt had been corroborated by statements of victims and witnesses, expert reports, the applicants' own statements and other evidence. By a decision of 14 October 1998 the Supreme Court reclassified the applicants' acts in respect of one of the episodes imputed to them as an attempted crime, reduced the amount of the bribe in respect of another episode imputed to Mr Korolev and Mr Matveyev and upheld their conviction in the remaining part.

13. In 2000 the applicants learned that there had been two different copies of the judgment. They asked the Regional Court to send them the judgment from the case file. In October 2000 the Regional Court sent them a copy of the judgment on thirty-one pages. The applicants examined the twenty-seven-page copy and the thirty-one-page copy and identified over 200 differences between them.

14. The applicants complained to the Presidium of the Supreme Court about the discrepancy, arguing that they had based their points of appeal on the twenty-seven-page copy of the judgment while the appeal court had had before it the thirty-one-page copy of the judgment. They requested the court to exercise its power of supervisory review and quash the judgment. The Supreme Court replied to all three applicants that it saw no reason to reopen the case. Furthermore, in its letters of 31 May 2001, concerning the applications for the cases of Mr Karyagin and Mr Korolev to be reopened, signed by a deputy President of the Supreme Court, Mr Verin, the Supreme Court stated that it had been established as a result of the in-house inquiry carried out at the Chelyabinsk Regional Court that the copy of the judgment on twenty-seven pages had been “falsified”. It had not been endorsed by the judge Ms Ikryannikova. The Supreme Court further stated in one of its above letters that the argument that the trial court had delivered two different judgments in the case, one of which had been sent to the convicts and the other to the appeal instance, “did not comport with the materials of the case”. It stated in the other letter that it could not agree with the submission that the discrepancies between the two copies of the judgment had breached the rights of the defence on appeal.

II. RELEVANT DOMESTIC LAW

15. Under Article 312 of the Code of Criminal Procedure, in force at the material time, any rectification in a judgment was allowed before the public pronouncement of the judgment.

THE LAW

16. The applicants complained under Article 6 §§ 1 and 3 of the Convention that the fact that the judgment they had appealed against was different from the judgment examined by the appeal court had violated their right to a fair trial.

Article 6 of the Convention, in so far as relevant, reads as follows:

“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:

...

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

...”

A. The parties’ submissions

1. The Government

17. The Government submitted that at the time, in the absence of computers and copying machines, judgments had been typed on printing machines either using a carbon paper or typing each copy separately. In the applicants’ case the twenty-seven-page copy of the judgment had been typed immediately after the delivery of the judgment with a view to serving it on the applicants within the established time-limit to ensure the proper exercise of their right of appeal. The thirty-one-page copy of the judgment had been typed later, in compliance with the relevant requirements, and thus was of better quality. The Government emphasised that there were no significant differences between the two copies. The existing differences did not concern the evidence assessed by the court and did not change the meaning conveyed by the judgment. They were explained by the correction of grammar and technical mistakes and bringing the text in compliance with the requirements for official documents. The different number of pages was explained by larger interlinear spacing and different paragraph formatting.

18. The Government further pleaded that the quashing of the judgment in the applicants’ criminal case for reasons of the differences between the two copies of the judgment would not be justified. It would involve summoning witnesses, victims and other participants to the proceedings for the fresh examination of the case and probably the applicants’ detention pending retrial. It would entail a violation of the “reasonable time” requirement of Article 6 of the Convention. What is more, given the insignificance of the differences between the two copies of the judgments, the retrial would lead to the same outcome.

19. The Government asserted that the proceedings in the applicants’ case complied with the fair trial requirements under Article 6. In the preparation of their appeals against the judgment the applicants had been free to consult the court records and the other documents from the case file and to signal any discrepancies in their appeals. Lastly, the applicants could have requested the criminal prosecution of the servant of the court’s registry who was responsible for the inaccuracy in the preparation of the copies of the judgment, had they considered that the twenty-seven-page copy of the judgment had been falsified. The word “falsified” in the Supreme Court’s letter of 31 May 2001 was not used in its legal meaning but simply referred to the absence of the judge’s signature.

2. The applicants

20. The applicants asserted that the thirty-one-page copy had been prepared later than the twenty-seven-page copy as all the grammatical and stylistic errors which could be found in the twenty-seven-page copy had been corrected in the thirty-one-page copy. All the appeals had been lodged with judge Ms Ikryannikova at the Regional Court who had then forwarded them to the Supreme Court. She must have prepared the thirty-one-page copy of the judgment after the examination of those appeals.

21. The applicants argued that there were over 200 discrepancies between the two texts, about half of which could allegedly be said to have changed the meaning conveyed by the judgment in respect of the circumstances of the case, the evidence and the court's conclusions with the effect of intensifying the accusations against the applicants to their detriment. The other half concerned grammatical and stylistic changes which were mostly aimed at facilitating the understanding of the text. They further complained that references to pages and lines of the twenty-seven-page copy in their appeals had become meaningless for the appeal court, which had examined the thirty-one-page copy.

22. The applicants argued that the twenty-seven-page copy had been signed by judge Ms Ikryannikova and sealed with the official court's stamp. It had been officially served on them by the Regional Court and included in their personal convict files as a basis for them to serve their sentence.

B. The Court's assessment

23. The Court notes first that the applicants lodged a supervisory review request with the Presidium of the Supreme Court. The reaction of the Supreme Court in respect of the applicants' grievance about the discrepancies between the two copies of the judgment was that the applicants' copy of the judgment had not been signed by the judge and had been "falsified", but, nevertheless, the applicants' complaint lacked foundation. The Court finds such a reaction striking in that it only gave rise to further questions and frustration.

24. The Court considers that the applicants showed convincingly that the twenty-seven-page copy of the judgment ("copy 1") had been officially served on them by the Chelyabinsk Regional Court which had delivered the judgment. It was the only copy of the judgment available to them for the preparation of their appeals. The Government did not dispute that. The Court notes further that it was not disputed by the parties that the Supreme Court as an appeal instance had based its examination on the thirty-one-page copy of the judgment ("copy 2"), which it had received from the Chelyabinsk Regional Court. Furthermore, it transpires from the parties'

submissions that copy 2 had been typed later than copy 1 and had rectified mistakes present in copy 1.

25. The Court reiterates that Contracting States enjoy considerable freedom in their choice of appropriate means of ensuring that their judicial systems comply with the requirements of Article 6. The national courts must, however, indicate with sufficient clarity the grounds on which they base their decision. It is this, *inter alia*, which makes it possible for the accused to exercise usefully the right of appeal available to him (see *Hadjianastassiou v. Greece*, 16 December 1992, § 33, Series A no. 252).

26. It is clearly preferable for the fairness of the trial that a defendant and an appeal court have identical copies of a judgment. The Court notes with concern that this was not the case in the applicants' proceedings. However, the Court cannot conclude that this impropriety as such amounts to a violation of Article 6 of the Convention (see *Zipper v. Austria*, no. 27778/95, Commission decision of 21 May 1997). What it must examine is whether the discrepancies between the two texts were such as to have adversely affected the applicants' right to defend themselves before the appeal court to an extent incompatible with the guarantees of Article 6.

27. The Court has examined in detail the two versions of the judgment and the comparison submitted by the applicants in support of their arguments. It has found that there was indeed a substantial number of discrepancies between the two documents. In its opinion, however, these discrepancies are not material, and it has been unable to identify any change that would substantiate the applicants' complaints. The overwhelming majority of differences in the texts concern rectifications of spelling or grammar, or the addition of information that is not in itself significant. The Court notes that the applicants complain, *inter alia*, of the following changes, many of which occurred more than once: hand-written words in copy 1 have been typewritten in copy 2; correction of the initial letter of a sentence to upper-case; the use of the word "as" in place of the original hyphen; figures have been given as numerals rather than written in full (and vice versa); the inclusion of a given individual's initials with the surname in copy 2; the omission of a given individual's initials in copy 2; corrections of grammatical cases to comply with the rules of written Russian; the order in which individuals' surnames are listed; "st." used in copy 2 instead of "street" (as in copy 1); altered word order in certain sentences; splitting up of a single long sentence into two sentences; the joining of two separate sentences as a single sentence; abbreviations written out in full; dates given in figures rather than in full; time references expressed in different forms; the correction of typing errors in individuals' names; a home address has been written in different ways; the regrouping of paragraphs; etc.

28. The Court considers that these numerous instances of minor changes, while regrettable, were not sufficient to render the applicants' right of appeal nugatory. According to the applicants, other discrepancies had

intensified the accusations against them, making the perception of the judgment by the appeal court more unfavourable, and had rendered references to pages and lines in their appeals meaningless. However, a detailed examination of the discrepancies alleged to be significant indicates that most of the limited number of differences in question concern the order in which the defendants' names were listed, the use of different verbal forms (imperfective or perfective aspects, passive or active voice) or the use of plural rather than singular nouns (and vice versa). Certain words have been substituted (taken/undertaken, audio-cassettes/audio-recordings). The other examples are discussed below. The Court further notes that the applicants did not give specific examples of the connection between the discrepancies in the judgments and the points of their appeals. No tangible argument can be elicited from their submissions as to how these discrepancies had affected the appeal court's examination of the case to their detriment.

29. Thus, for example, the applicants pointed out that copy 2 of the judgment recounted that, according to record no. 1413 concerning a search in a garage, five million roubles received as a bribe had been found and seized. In copy 1 of the judgment the same sentence refers to six million roubles. However, the applicants gave no indication to the Court as to the precise connection between this piece of evidence and their conviction, nor as to the impact of this discrepancy on their appeals. It is unclear why a lesser amount of money being involved, as indicated in the copy of the judgment examined by the appeal court, could have led to an assessment less favourable for the applicants. In another example the applicants complained of a difference in the spelling of the initials of one of the victims. However, it is unclear what problem this might have created for the applicant since in both copies that person is clearly identified with a reference to his post as a manager of a specific company. In another instance the applicants complained that copy 2 omitted one sentence mentioning audiotapes as evidence and individuals whose speech had been recorded. However, the text below in that copy contains a detailed description of what was recorded on those audiotapes, including the names of the relevant persons. Similarly, a missing paragraph of an article of the Criminal Code, under which, along with other provisions, the applicant Mr Karyagin had been convicted, appears further down in the operative provisions of copy 2 of the judgment.

30. In view of the above considerations the Court finds that in the particular circumstances of the present case the procedural irregularity concerning the discrepancies between the two copies of the judgment did not render the applicants' proceedings unfair.

31. Therefore, there has been no violation of Article 6 §§ 1 and 3 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 §§ 1 and 3 of the Convention.

Done in English, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President