



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

1959 · 50 · 2009

FIRST SECTION

CASE OF POTAPOV v. RUSSIA

(Application no. 14934/03)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Potapov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 14934/03) 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 Vyacheslav Anatolyevich Potapov (“the applicant”), on 20 March 2003.

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

3. On 31 August 2006 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint concerning the alleged failure to provide the applicant with legal assistance. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and is serving a sentence of imprisonment in the Novosibirsk Region.

6. The applicant was arrested on suspicion of murder. Legal aid counsel was appointed to represent him. The applicant and his accomplice were accused of having unlawfully entered the victim's flat and having robbed him. The applicant was also charged with having wounded the victim with a knife, causing the victim's death.

7. On 11 October 2001 the Novosibirsk Regional Court appointed another legal aid counsel to represent the applicant at the trial. The applicant admitted the relevant facts, while giving a version of the events which differed from that of his accomplice. In particular, he made admissions to the effect that he had wounded the victim in a fight and had then taken his belongings in order to simulate a robbery.

8. On 16 October 2001 the Regional Court convicted the applicant of murder and robbery and sentenced him to seventeen years' imprisonment. In his points of appeal to the Supreme Court of the Russian Federation the applicant challenged the admissibility and assessment of evidence by the trial court. He asked the court to ensure his attendance at the appeal hearing.

9. The applicant asked for legal assistance with a view to preparing for the appeal hearing. No response was received. On 20 June 2002 the Supreme Court granted the applicant leave to appear in person.

10. On 31 October 2002 the Supreme Court upheld the applicant's conviction on appeal. The applicant was not represented. According to the applicant, the hearing was conducted by means of a videoconferencing facility (VCF). The Government, however, submitted that the applicant "had been present at the hearing".

11. The applicant lodged a request dated 22 August 2003 for supervisory review of his conviction. This request was received by the Supreme Court on 26 September 2003. In another request dated 31 October 2002, received by the Supreme Court on 26 September 2003, the applicant challenged the appeal decision of 31 October 2002. He alleged that he had not been afforded an opportunity to be present at the appeal hearing and had not been provided with the assistance of counsel. By a decision of 25 May 2004, a Supreme Court judge rejected his request.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. For a summary of the relevant domestic law and practice, see the Court's judgment in *Shulepov v. Russia*, no. 15435/03, §§ 17-20, 26 June 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

13. The applicant complained under Article 6 of the Convention that the Supreme Court's failure to provide him with legal assistance in the appeal proceedings had resulted in his conviction being upheld by the decision of 31 October 2002.

14. Article 6 reads, in the relevant parts, as follows:

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

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

...

(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;...”

A. Admissibility

15. The Government argued that the applicant had not exhausted domestic remedies in that he had not applied for supervisory review of the appeal decision of 31 October 2002 after the Constitutional Court had issued its decision of 18 December 2003 (no. 497-O) in an unrelated case. The applicant's earlier requests had been against the conviction on various grounds and only one request concerned the appeal decision.

16. The applicant submitted that he had applied for supervisory review of both the trial and the appeal judgments.

17. The Court need not determine the exact contents of the applicant's requests for supervisory review (see paragraph 11 above), since it has already examined and dismissed a similar argument by the Government in *Shulepov v. Russia* (no. 15435/03, §§ 22-24, 26 June 2008). The Court sees no reason to reach a different conclusion in the present case. In any event, the Court finds it doubtful that it was open to the applicant to lodge a fresh application for supervisory review after the previous one had been rejected.

18. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

19. The Government acknowledged that the authorities' failure to examine the applicant's request for the assistance of counsel in the appeal proceedings had not been justified. They also pointed out that Russian law and judicial practice did not and do not determine the matter of free legal representation on the basis of any means test ("insufficient means to pay for legal assistance") or "the interests of justice". The only condition for such representation was the absence of a waiver by the defendant of legal representation. They further explained that at the relevant time most Russian courts considered that representation in appeal proceedings was not required under Russian law. Lastly, they indicated that the authorities had acted with due diligence because despite the applicant's refusal he had been provided with counsel during the preliminary investigation and at the trial.

20. The applicant maintained his complaint.

2. The Court's assessment

21. The Court reiterates that the requirements of Article 6 § 3 are particular aspects of the right to a fair trial guaranteed by Article 6 § 1, and therefore the applicant's complaint should be examined under both provisions (see *Vacher v. France*, 17 December 1996, § 22, *Reports of Judgments and Decisions* 1996-VI). The manner in which the above provisions are to be applied in relation to appellate or cassation proceedings depends upon the particular features of these proceedings; account must be taken of the domestic proceedings as a whole and the role of the appellate or cassation court therein (see *Twalib v. Greece*, judgment of 9 June 1998, § 46, *Reports of Judgments and Decisions* 1998-IV).

22. Turning to the circumstances of this case, the Court first observes that the parties disagreed as to whether defence rights had been adequately secured during the preliminary investigation and at the trial. However, in so far as relevant here, the Court is satisfied that the applicant was provided with legal assistance before and during the trial and that such representation was not manifestly ineffective. Second, it is not without relevance that the applicant admitted the relevant facts at the trial, though putting forward a version of events which differed from that of his accomplice.

23. The Court does not need to verify whether the applicant had sufficient means to pay for legal assistance since the Supreme Court failed to take any decision on his request for legal assistance and, in any event, as confirmed by the Government, no means test was applicable under Russian law for deciding on a legal aid request in criminal proceedings.

24. The Court has now to determine whether the interests of justice required that the applicant be afforded free legal assistance on appeal. The Court observes in that connection that the applicant drafted his statement of appeal without the benefit of legal advice. Nor was he represented at the appeal hearing. His appeal raised a number of points contesting *inter alia* the trial court's decision on the admissibility of certain pieces of evidence and the court's assessment of the evidence. Given the gravity of the charges against the applicant and the heavy custodial sentence to which he was liable, the Court considers that the assistance of a lawyer was essential for the applicant, as a lawyer would have been able to draw the appeal court's attention effectively to any substantial argument in the applicant's favour which might influence the court's decision. Therefore, in the Court's point of view, the interests of justice demanded that the applicant should have had legal assistance at this stage of the proceedings.

25. In view of the above findings, the Court does not find it necessary to ascertain whether the applicant was brought to the appeal hearing or participated in it from the detention centre by means of the videoconferencing facility.

26. In view of the above considerations the Court finds that the appeal proceedings before the Supreme Court did not comply with the requirements of fairness. There has therefore been a breach of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 2,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

29. The Government submitted that the claims were unsubstantiated.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

However, it finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. However, the amount claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, it awards the applicant EUR 1,000, plus any tax that may be chargeable.

31. The Court further reiterates that when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the relevant proceedings, if requested (see *Somogyi v. Italy*, no. 67972/01, § 86, ECHR 2004-IV). The Court notes, in this connection, that Article 413 of the Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court has found a violation of the Convention.

B. Costs and expenses

32. The applicant made no claim in respect of costs and expenses. The Court makes no award under this head.

C. Default interest

33. 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. *Declares* the complaint concerning the unavailability of free legal representation admissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
3. *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, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President