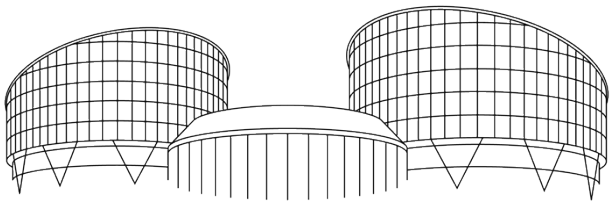

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF GENNADIY MEDVEDEV v. RUSSIA**

*(Application no. 34184/03)*

JUDGMENT

STRASBOURG

24 April 2012

**FINAL**

*24/07/2012*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Gennadiy** Medvedev v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 3 April 2012,

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

# PROCEDURE

1. The case originated in an application (no. 34184/03) 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 Gennadiy Semenovich Medvedev ("the applicant"), on 12 August 2003.

2. The applicant, who was granted legal aid, was represented, until 17 May 2010, by Ms K. Moskalenko and Ms O. Preobrazhenskaya, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the former Representative of the Russian Federation before the European Court of Human Rights, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation before the European Court of Human Rights.

3. The applicant alleged, in particular, that his right to defend himself in person or through legal assistance was impaired during appeal proceedings.

4. On 17 September 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). On 6 April 2009 the Court put additional questions to the parties.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and is currently serving a prison sentence in the Kemerovo Region.

### A. The circumstances of the case

#### *1. Criminal proceedings against the applicant*

##### (a) First set of criminal proceedings against the applicant

6. On 9 March 2001 the applicant was arrested on suspicion of murder. He was remanded in custody pending the investigation and trial. According to the applicant, from 9 March to 4 May 2001 no medical assistance was available to him and from 12 March to 15 June 2002 he was detained in appalling conditions.

7. On 3 May 2002 the applicant broke a toe on his right foot. The fracture caused him severe pain which allegedly rendered him unfit to attend the trial on 3 and 6 May 2002.

8. On 15 July 2002 the Kemerovo Regional Court found the applicant guilty of murder, abduction, disturbance of the peace and illegal possession of firearms, and sentenced him to eighteen years' imprisonment. Both the applicant and his lawyer submitted statements of appeal.

9. On 5 September 2002 the applicant was allegedly beaten by guards. He complained to the prosecutor but to no avail.

10. On an unspecified date the Supreme Court of the Russian Federation dismissed the applicant's request for the appointment of a lawyer to represent him before the appellate court, noting that "the applicable rules of criminal procedure [did] not provide for the appointment of a public defender to represent a defendant in appeal proceedings".

11. On 24 April 2003 the Supreme Court acquitted the applicant on the charge of disturbance of the peace, upheld the remainder of the verdict and reduced the applicant's sentence to seventeen and a half years' imprisonment. The applicant was not present or represented during the hearing. The prosecutor was present and made submissions to the court.

12. On 14 May 2004 the Yurga Town Court reclassified the applicant's conviction in accordance with the latest amendments to the Russian Criminal Code, reducing his sentence to seventeen years' imprisonment.

**(b) Supervisory review of the appeal judgment and the second set of criminal proceedings**

13. On 16 November 2007 the Deputy Prosecutor General of the Russian Federation asked the Presidium of the Supreme Court of Russia for a supervisory review of the judgment of 24 April 2003 in view of a violation of the applicant's right to be represented by a State-appointed lawyer before the appellate court.

14. On 28 December 2007 the Supreme Court granted the prosecutor's request and remitted the matter for further consideration to the Presidium of the Supreme Court.

15. On an unspecified date the Supreme Court appointed counsel P. to represent the applicant in the supervisory-review proceedings.

16. On 12 March 2008 the Presidium of the Supreme Court quashed the judgment of 24 April 2003 by way of supervisory review and remitted the matter for fresh consideration. The court expressly acknowledged the violation of the applicant's right to legal assistance. The applicant did not participate in the hearing. Counsel P. was present and made submissions to the court.

17. On 27 June 2008 the Town Court again reclassified the applicant's conviction in accordance with the latest amendments to the Russian Criminal Code, reducing his sentence by six months.

18. On 1 July and 1 October 2008 the Supreme Court received additional statements of appeal from the applicant whereby he also requested the court to appoint a public defender to represent him. The court appointed counsel K. On 15, 16, 22 and 24 September 2008 counsel K. studied the case-file.

19. The applicant requested to take part in the appeal hearing in person. On 16 July 2008 the Supreme Court granted him leave to attend in person and ordered the applicant's temporary transfer to a remand prison in Kemerovo (3,742 kilometres away from Moscow) to ensure his participation in the appeal hearing by means of video link.

20. On 1 October 2008 the Supreme Court held the appeal hearing. The applicant participated in the hearing by means of a video link. Counsel K. attended the hearing and made submissions to the court. According to the applicant, he was provided with an opportunity to communicate with counsel K. prior to the hearing (he did not provide further detail as regards the time and means of such communication). The court acquitted the applicant on the charges of disturbance of the peace and illegal possession of firearms, upheld the remainder of the verdict and reduced the applicant's sentence to sixteen years' imprisonment. The court further granted counsel K.'s application for reimbursement of his fee and awarded him 5,967.5 Russian roubles (RUB) – approximately 165.4 euros (as per the Euro foreign exchange reference rate of the European Central Bank at 1 October 2008) – to be paid by the applicant.

21. The applicant provided the following description of the appeal hearing:

> "The appeal hearing was conducted by means of a video link. The video link was of poor quality. The image [quality] remained unchanged, but there were interruptions in the sound and not everything that was said was understandable. ... After the court opened the hearing I was invited to make a statement. Then I asked the court to admit to the case-file the documents that proved my innocence. These were the documents showing that secretary G. had not been present at a number of trial hearings and that my lawyer had been absent from one of the court hearings. Despite that, the court hearing had not been adjourned and the court had proceeded with the examination of the witnesses. The [trial] court had not respected my right to defend myself and had proceeded with the examination of the case when I had a fracture [of the toe]. The court interrupted me, saying that I was deliberately delaying the proceedings and that they had other cases to consider after mine.
>
> After the judge rapporteur had presented the case I was invited to present my complaint. However, when I started reading out my statement of appeal the judge interrupted me, saying that those issues had been already considered in the previous appeal hearing or had been submitted in the statements of appeal. The court heard the prosecutor and [my] counsel, who failed to present any argument in my defence. He merely suggested that the charges [of illegal possession of firearms and disturbance of the peace] should be dropped owing to the expiry of the statutory time-limit for prosecution or decriminalisation of the offence. Then the judges exited to the deliberations room without giving me a chance to make my final statement. When the judges returned and pronounced their decision, I realised that neither counsel, the prosecutor, nor the court had studied my case. They were simply giving the appearance of a hearing."

### *2. Comments in the media about the applicant's case*

22. According to the applicant, in 2001 numerous newspapers and television channels covered his case. In one article the applicant was referred to as "a gang leader". The regional officials who were quoted in the articles expressed the opinion that the applicant was guilty of murder, thus appearing to rule out the possibility that he had acted in self-defence.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

23. For a summary of the relevant domestic provisions and practice, see the case of *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 31-39, 2 November 2010.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

24. The applicant complained that in the appeal hearing of 24 April 2003 he had not been represented by counsel. As regards the new appeal hearing of 1 October 2008, he alleged that the defence provided by State-appointed counsel had not been effective; that the video link had been of poor quality and he had been unable to hear and to follow the court session. Furthermore, he argued that the fee awarded to counsel by the appellate court had been excessive. The applicant relied on Article 6 of the Convention, which, in so far as relevant, reads 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:
>
> ...
>
> (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."

25. The Government contested that argument. They conceded that in the course of the appeal proceedings which ended on 24 April 2003 the applicant's right to defence had been infringed by the authorities' failure to appoint legal counsel to represent him. However, the applicant could no longer claim to be a victim of the alleged violation. The Supreme Court of the Russian Federation had expressly acknowledged the violation of the applicant's rights and afforded him sufficient redress by quashing the appeal judgment by way of supervisory review and remitting the matter for fresh consideration to the appellate court. As regards the new appeal hearing, the State-appointed lawyer had duly prepared for it and had discussed the line of defence with the applicant in private. The video-link equipment had functioned properly, which fact was confirmed by a certificate issued by the IT department of the Supreme Court of the Russian Federation dated 24 April 2009.

26. The applicant maintained his complaints. He considered that he could still claim to be the victim of the alleged violations. He continued to claim that the quality of the video link had been poor and he had been unable to respond promptly to the arguments of the prosecution. Counsel K.

had demonstrated a slack attitude and the defence he had provided had been ineffective and perfunctory.

## A. Admissibility

27. As regards the question of the applicant's victim status, the Court reiterates that the reopening of the proceedings by supervisory review *per se* may not be automatically regarded as sufficient redress capable of depriving the applicant of his victim status. To ascertain whether or not the applicant retained his victim status the Court must consider the proceedings as a whole, including the proceedings which followed the reopening. This approach enables a balance to be struck between the principle of subsidiarity and the effectiveness of the Convention mechanism. On the one hand, it allows the States to reopen and examine anew criminal cases in order to put right past violations of Article 6 of the Convention. On the other hand, new proceedings must be conducted expeditiously and in accordance with the guarantees of Article 6 of the Convention. With this approach supervisory review can no longer be employed as a means of evading the Court's review, thereby preserving the effectiveness of the right of individual petition (see *Sakhnovskiy*, cited above, § 83).

28. The Court accordingly considers that the mere reopening of the proceedings by way of supervisory review failed to provide appropriate and sufficient redress for the applicant. He may therefore still claim to be a victim within the meaning of Article 34 of the Convention. The Court therefore rejects the Government's objection.

29. The Court considers that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court considers therefore that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

## B. Merits

### *1. General principles*

#### (a) Assistance by counsel and participation in the proceedings by means of a video link

30. The general principles relating to effective participation in criminal proceedings are well established in the Court's case-law and have been summarised as follows (see *Sakhnovskiy*, cited above):

"94. The requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, and therefore the applicant's complaints under paragraphs 1 and 3 of Article 6 should be examined together (see *Vacher v. France*, 17 December 1996, § 22, *Reports of Judgments and Decisions* 1996-VI).

95. The Court reiterates that while Article 6 § 3 (c) confers on everyone charged with a criminal offence the right to 'defend himself in person or through legal assistance ...', it does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Quaranta v. Switzerland*, 24 May 1991, § 30, Series A no. 205). In that connection it must be borne in mind that the Convention is intended to 'guarantee not rights that are theoretical or illusory but rights that are practical and effective' and that assigning counsel does not in itself ensure the effectiveness of the assistance he or she may afford an accused (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37, and *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275).

...

97. An accused's right to communicate with his lawyer without the risk of being overheard by a third party is one of the basic requirements of a fair trial in a democratic society and follows from Article 6 § 3 (c) of the Convention (see *Castravet v. Moldova*, no. 23393/05, § 49, 13 March 2007). If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective (see *inter alia* the *Artico* judgment, cited above, § 33).

98. As regards the use of a video link, the Court reiterates that this form of participation in proceedings is not, as such, incompatible with the notion of a fair and public hearing, but it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and that effective and confidential communication with a lawyer is provided for (see *Marcello Viola*, cited above)."

**(b) Free legal assistance**

31. The Court has previously summarised its findings concerning the right to free legal assistance as follows (see *Orlov v. Russia*, no. 29652/04, 21 June 2011):

"111. ... The Court has considered in the context of Article 6 § 3 (e) of the Convention that the term 'free' has a clear and determinate meaning: 'without payment, gratuitous', 'not costing or charging anything, given or furnished without cost or payment' (see *Luedicke, Belkacem and Koç v. Germany*, 28 November 1978, § 40, Series A no. 29). As to Article 6 § 3 (c), the Court considered in *Croissant v. Germany* (25 September 1992, §§ 33 and 34, Series A no. 237-B) that the right to free legal assistance is not absolute; such assistance is to be provided only if the accused '[does] not [have] sufficient means to pay'. The Court indicated that appointment of counsel under German law had been decided solely in the light of the requirement of the interests of justice rather than any 'means test'. It thus concluded that the

*Croissant* case did not concern the issue of whether Article 6 in all circumstances prevents the State from subsequently seeking to recover the cost of free legal assistance given to a defendant who lacked sufficient means at the time of the trial (paragraph 34 of the judgment).

112. Subsequently, in *Morris v. the United Kingdom* (no. 38784/97, § 89, ECHR 2002-I) the Court found no violation of Article 6 in relation to an offer of legal aid which was subject to a contribution of GBP 240, bearing in mind the applicant's net salary levels at the time. In another case the Court found no violation of Article 6 of the Convention in relation to the appointment of public defence counsel, 'notwithstanding [the applicant's] obligation to pay a minor part of the litigation costs" (see *Lagerblom v. Sweden*, no. 26891/95, § 53, 14 January 2003).

113. The Russian Code of Criminal Procedure did not set up any 'means test' to be employed in order to decide whether free legal assistance should be granted (see *Potapov v. Russia*, no. 14934/03, § 23, 16 July 2009). Rather, this matter is decided with reference to the presence or lack of waiver by a defendant, while accepting cases of mandatory legal assistance. The CCrP considered counsel's fees as 'litigation costs' to be borne, in general, by the party concerned. It thus appears that even if a defendant was provided with 'free' legal assistance he would still be required to pay for that after the trial. However, a total or partial exception remained possible, for instance on account of indigence ... .

114. In this respect the Court considers it admissible, under the Convention, that the burden of proving a lack of sufficient means should be borne by the person who pleads it (see *Croissant*, cited above, § 37). ..."

### *2. Application to the present case*

32. It is not disputed by the Government that the first hearing before the appellate court, held on 24 April 2003, fell short of the requirements of Article 6 § 3 (c) of the Convention. However, they claimed that by ensuring the applicant's representation by State-appointed counsel in the second set of appeal proceedings the national judicial authorities had made reparation for the violation of the applicant's rights. The Court will accordingly focus its analysis on the second set of appeal proceedings, which ended on 1 October 2008.

33. The first appeal judgment was quashed by way of supervisory review by the Supreme Court specifically because of the breach of the applicant's right to legal assistance. The Court concludes accordingly that in the national authorities' view the applicant's case was complex enough to require the assistance of a professional lawyer. In view of the seriousness of the charges against the applicant and the severity of the sentence to which he was liable, the Court sees no reason to disagree with the Russian authorities.

34. State-appointed legal counsel, Mr K., was entrusted with the applicant's defence in the appeal proceedings. However, the Court reiterates that this is not decisive. The Court must consider whether the arrangements for the conduct of the proceedings, and, in particular, for the contact

between counsel K. and the applicant, respected the rights of the defence (see *Sakhnovskiy*, cited above, § 101).

35. The Court emphasises that the relationship between the lawyer and his client should be based on mutual trust and understanding. Of course, it is not always possible for the State to facilitate such a relationship: there are inherent time and place constraints for the meetings between the detained person and his lawyer. Moreover, in exceptional circumstances the State may restrict confidential contacts with defence counsel for a person in detention (see *Kempers v. Austria* (dec.), no. 21842/03, 27 February 1997, or *Lanz v. Austria*, no. 24430/94, § 52, 31 January 2002). Nevertheless, any limitation on relations between clients and lawyers, whether inherent or express, should not thwart the effective legal assistance to which a defendant is entitled. Notwithstanding possible difficulties or restrictions, such is the importance attached to the rights of the defence that the right to effective legal assistance must be respected in all circumstances (see *Sakhnovskiy*, cited above, § 102).

36. In the present case, it is clear that counsel for the applicant was appointed well in advance of the appeal hearing and that counsel studied the file on four dates prior to the hearing (see paragraph 18 above). Furthermore, it appears that the applicant was able to confer with his counsel. He did not allege before the Court that the time allowed for such communication had not been sufficient or that the means of communication had lacked sufficient privacy. Nor did he suggest in this submissions that he had been unable to discuss the case with counsel K. or to make sure that the lawyer had knowledge of the case and prepared arguments on his behalf. Moreover, the Court discerns nothing in the materials in its possession that would corroborate the applicant's allegations that counsel K. had demonstrated a slack attitude and that the defence he had provided had been ineffective or perfunctory.

37. As regards the applicant's participation in the appeal hearing by means of a video link, there is no evidence in the present case that the video-link system malfunctioned or otherwise prevented the applicant from following the progress of the hearing or making oral remarks and putting questions to the participants in the proceedings when necessary. The applicant's allegations to the contrary are not supported by any evidence.

38. The Court concludes, accordingly, that the use of a video link to ensure the applicant's participation in the appeal hearing was not detrimental to the effectiveness of that participation.

39. In so far as the applicant may be understood to complain about his duty to reimburse counsel's fee, the Court observes that the fee of EUR 165.4 awarded does not appear to be particularly high. Furthermore, the applicant did not claim that he was unable to bear such expense, arguing merely that the amount, in his personal view, appeared to be excessive for the five days' work involved.

40. In the circumstances of the case, the Court, accordingly, finds no basis in the material before it that would lead it to conclude that the national authorities' decision ordering the applicant to reimburse counsel's fee was contrary to the standards required by the Convention.

41. In view of the above findings, the Court concludes that the criminal proceedings against the applicant, as a whole, were fair; during the second set of appeal proceedings the authorities complied with their obligation to ensure the applicant's effective legal representation, which remedied the defect in the first set of appeal proceedings, when the applicant had not been present or represented before the appellate court. Accordingly, there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. The applicant made a number of complaints under Articles 3, 5, and 6 of the Convention relating to his detention and the criminal proceedings against him. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the provisions referred to. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's right to effective participation in the criminal proceedings against him as provided for in Article 6 §§ 1 and 3 (c) of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention;

Done in English, and notified in writing on 24 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Søren Nielsen | Nina Vajić |
| Registrar | President |