

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

THIRD SECTION

# CASE OF ABINYAKIN v. RUSSIA

*(Application no. 4695/19)*

JUDGMENT

STRASBOURG

27 October 2022

*This judgment is final but it may be subject to editorial revision.*



**In the case of Abinyakin v. Russia,**

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

Darian Pavli*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 6 October 2022,

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

# PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 January 2019.

2. The applicant was represented by Ms I.A. Voronova, a lawyer practising in Yekaterinburg.

3. The Russian Government ("the Government") were given notice of the application.

# THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the unfair trial in view of restrictions on the right to examine witnesses.

# THE LAW

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

6. The applicant complained of the unfair trial in view of restrictions on the right to examine witness Zh. He relied on Article 6 §§ 1 and 3 (d) of the Convention, which reads, in so far as relevant, as follows:

> ""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 ...
>
> ...
>
> (d) to examine or have examined witnesses against him ..."

7. The general principles to be applied in cases where a prosecution witness did not attend the trial and his statements previously made by him were admitted as evidence are well-established in the Court's case law (see *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 100-31, ECHR 2015). In *Schatschaschwili*, the Court found a violation on account of the authorities' failure to provide the applicant with an opportunity to have the two key prosecution witnesses examined at any stage of the proceedings (ibid., §§ 161-65).

8. Turning to the circumstances of the present case and having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Even leaving open the question as to whether there were good reasons for the key witness's non-attendance, it considers that the fact that the applicant was not provided with an opportunity to cross-examine that witness weighs heavily in the balance in the examination of the overall fairness of the criminal proceedings against him. While it is true, that the domestic courts took steps to assess the credibility of the witness and took into account the contradictions in her statements, in view of the importance of her statements to the offence of which the applicant was convicted, the Court considers that the counterbalancing measures taken were insufficient to permit a fair and proper assessment of the reliability of the untested evidence.

9. These complaints are therefore admissible and disclose a breach of Article 6 §§ 1 and 3 (d) of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. 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."

11. Regard being had to the documents in its possession and to its case-law (see, in particular, *Zadumov v. Russia,* no. 2257/12, § 81, 12 December 2017), the Court considers that the finding of a violation constitutes sufficient just satisfaction in the present case.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 6 §§ 1 and 3 (d) of the Convention concerning the unfair trial in view of restrictions on the right to examine witnesses;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction.

Done in English, and notified in writing on 27 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Viktoriya Maradudina<br>Acting Deputy Registrar | Darian Pavli<br>President |

# APPENDIX

## Application raising complaints under Article 6 §§ 1 and 3 (d) of the Convention (unfair trial in view of restrictions on the right to examine witnesses)

| Application no.<br>Date of introduction | Applicant's name<br>Year of birth | Representative's name and location | Final domestic decision<br><br>Charges convicted of | Witness absent from trial (indicated by initials)<br><br>Summary of the nature of the witness evidence | Reasons for absence | Steps taken to compensate for the witnesses' absence |
|---|---|---|---|---|---|---|
| 4695/19<br>09/01/2019 | **Vitaliy Vladimirovich ABINYAKIN**<br>1971 | Irina Anatolyevna Voronova<br>Yekaterinburg | Sverdlovsk Regional Court<br><br>15/08/2018<br><br>fraud on a large scale, Art. 159 of the Criminal Code of Russia | Zh.<br><br>As indicated by the trial court, it was the only witness whose statement showed that the applicant acted knowingly (with an intent to defraud). It was crucial for distinguishing between non-fulfilment of civil obligations and fraud. Her two pre-trial statements were read out, though they significantly contradicted each other. The applicant had no chance to question her in court or during the pre-trial investigation. | mother of a new-born, still nursing the baby | courts paid attention to the contradictions, noted that the witness explained them at the pre-trial stage, in particular, she claimed to have felt unwell during her first questioning |