

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

THIRD SECTION

CASE OF KONDRASHEV v. RUSSIA

(Application no. 45497/18)

JUDGMENT

STRASBOURG

27 October 2022

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



In the case of Kondrashev 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 15 September 2018.

2. The applicant was represented by Ms L. Alferova, a lawyer practising in Perm.

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 OF THE CONVENTION

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

8. Turning to the circumstances of the present case, the Court observes that the applicant was charged with having committed sexual acts against minors and having involved minors in drinking alcohol. As regards the first charge, the Court considers that, in the light of the principles established in the case-law as indicated above, the national courts' decision to rely on the witnesses' statements did not undermine the overall fairness of the criminal proceedings against the applicant (for further details see the appended table). This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

9. As to the applicant's conviction of having involved minors in drinking alcohol, having examined the materials before it, the Court is unable to conclude that there were any counterbalancing factors in place to compensate for the witnesses' absence at the trial and for the difficulties caused to the defence by the admission of the untested statements as evidence. The statements made by the minors to whom the applicant provided alcohol were sole and decisive evidence against him and without it the chances of a conviction would have significantly receded. Apart from those statements, none of the witnesses examined in the course of the criminal proceedings against the applicant provided any information that would directly link the latter to the crime he was charged with. Nor did any of the documents admitted as evidence implicate the applicant in the commission of that offence. In such circumstances, the Court considers that the fact that the applicant was not provided with an opportunity to cross-examine those witnesses at least during the pre-trial stage weighs heavily in the balance in the examination of the overall fairness of the criminal proceedings against him. The absence of such opportunity, in view of the importance of the statements of the only eyewitnesses to the offence of which the applicant was convicted, has rendered the trial as a whole unfair.

10. This complaint is therefore admissible and discloses a breach of Article 6 §§ 1 and 3 (d) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. 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."

12. 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 a sufficient just satisfaction in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints about the unfair trial in the part concerning the charge of having involved minors in drinking alcohol admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a breach of Article 6 §§ 1 and 3 (d) of the Convention insofar as the applicant had been unable to confront witnesses against him in relation to his defence against the charge of having involved minors in drinking alcohol;

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.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	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. Date of introduction	Applicant's name Year of birth	Representative's name and location	Final domestic decision Charges convicted of	Witness absent from trial (indicated by initials) Summary of the nature of the witness evidence	Reasons for absence	Steps taken to compensate for the witnesses' absence
45497/18 15/09/2018	**Sergey Yuryevich KONDRASHEV** 1971	Alferova Larisa Valentinovna Perm	Kungurtskiy Town Court of Perm Region 02/03/2018 Sexual acts with minors Involvement of minors in drinking alcohol	K.R, P.M, B.K, R.N, S.D - victims The applicant's conviction is substantially based on victims' testimonies, then reproduced by their legal representatives in the court. None of the victims were present, even the one (S.D) who could've been brought to the court according to the psychological examination.	minor age, victim of a sex crime	The applicant was able to present his version of the events and challenged the evidence presented by the prosecution. He chose to use this opportunity in respect of the charge of having involved minors in drinking alcohol. As regards the charge of sexual acts with minors, the applicant admitted his guilt and did not challenge the version of the events presented by the prosecution.