

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

THIRD SECTION

CASE OF MEDVEDEV v. RUSSIA

(Application no. 5217/06)

JUDGMENT

STRASBOURG

27 June 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Medvedev v. Russia,

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

Helen Keller, *President,*
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 5217/06) 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 Dmitriy Vladimirovich Medvedev ("the applicant"), on 15 December 2005.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg. The Russian Government ("the Government") were represented by Mr A. Fedorov, Representative of Russian Federation to the European Court of Human Rights.

3. On 18 December 2012 the complaint concerning the alleged ineffectiveness of the legal assistance was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and is serving a prison sentence in Astrakhan.

5. In July 2004 the applicant was charged with murder of V. Counsel Sh. was appointed to represent him during investigation and trial.

6. On 10 December 2004 the Astrakhan Regional Court held a preliminary trial hearing. The applicant opted for a jury trial. In support of his request, Sh. stated as follows:

> "[The applicant] has committed a particularly serious offence which might entail a lengthy custodial sentence. ... I support the [applicant's] request."

7. On 18 February 2005 the court completed the examination of evidence. Both prosecution and defence made their closing arguments. In his statement, Sh. called the applicant "a robber and a drunkard". The presiding judge instructed the jury to disregard the counsel's statement as referring to the applicant's character.

8. On 18 February 2005 the jury delivered a guilty verdict.

9. On 21 February 2005 the applicant asked the court to replace counsel Sh. alleging that the defence carried out by him had not been effective. The court dismissed the applicant's request.

10. On the same date the Regional Court found the applicant guilty of murder and sentenced him to fifteen years' imprisonment.

11. On 1 March 2005 the applicant asked the Regional Court to appoint legal counsel to represent him before the appeal court. On 8 March 2005 the court refused to appoint a lawyer referring to the relevant legal provisions that did not provide for a right to have a state-appointed lawyer before the appeal court.

12. On 21 July 2005 the Supreme Court of the Russian Federation upheld the judgment of 21 February 2005 on appeal. According to the official documents, the applicant was not provided with legal assistance.

13. On 6 June 2007 the Presidium of the Supreme Court quashed the appeal judgment of 21 July 2005 by way of supervisory review. The court noted that the applicant had not been provided with legal assistance in the appeal proceedings and remitted the matter for fresh consideration to the appeal court. The applicant did not attend the hearing. He was represented by counsel O.

14. On an unspecified date the applicant was transferred to Moscow. Counsel R. was appointed to represent him. From 1 to 3 August 2007 R. studied the case-file. On 7 and 14 August 2004 he met with the applicant at the remand prison.

15. On an unspecified date the applicant submitted a revised statement of appeal.

16. On 16 August 2007 the Supreme Court held a new appeal hearing. According to the applicant, he participated in the hearing by means of a video link. R. was present in the courtroom. He did not submit a statement of appeal and made oral submissions to the court. Having examined the applicant's appeal, the court upheld, in substance, his conviction. The court also dismissed as unsubstantiated the applicant's complaint about the alleged ineffectiveness of the legal assistance provided by counsel Sh. In this connection, the court noted that the applicant had consented to be represented by Sh. both during the investigation and trial. The court also concluded, on the basis of the trial record, that Sh. had taken an active part in the trial. In his closing argument, Sh. had supported the applicant's non-guilty plea and argued that the applicant had not been proved guilty. Lastly,

the court took into account that, prior to the jury verdict, the applicant had not complained about the quality of the defence provided by Sh.

17. On 18 August 2008 the Supreme Court dismissed the applicant's supervisory review complaint against the judgment of 16 August 2007.

THE LAW

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

18. The applicant complained under Articles 6 and 13 of the Convention and Article 2 of Protocol No. 7 to the Convention numerous breaches of law allegedly committed by the domestic courts in the course of the criminal proceedings against him. In particular, he alleged that State-appointed lawyers, who had represented him before the trial and appeal courts, had failed to carry out their duties properly. In particular, counsel Sh. (1) had made an affirmative remark about the applicant's guilt during the preliminary court hearing, (2) had referred to the applicant as "a robber and a drunkard" during the closing arguments, (3) had not visited him in prison and (4) had failed to appeal against the guilty verdict in the applicant's case. He further complained that he had not been represented during the appeal hearing of 21 July 2005 and that State-appointed counsel R., who had represented him at the appeal hearing of 16 August 2007, had not provided an effective legal assistance. The applicant also alleged that the prosecution had failed to disclose promptly certain evidence to him, that he had been convicted on the basis of inadmissible evidence, that one member of the jury had been appointed in breach of applicable laws and that he had not been provided with adequate facilities to prepare for his defence. Lastly, he submitted that the supervisory-review hearings had not been unfair. The Court will examine the applicant's grievances from the standpoint of 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 ... hearing ... .
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
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> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
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> (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. ..."

19. The Government considered that the criminal proceedings against the applicant had been conducted in strict compliance with the domestic

rules of criminal procedure and disclosed no violation of the applicant's rights set out in Article 6 §§ 1 and 3 of the Convention. The Government pointed out that the applicant had consented to be represented by counsel Sh. who had conducted his defence during the investigation and trial and that the applicant had not complained about his alleged incompetency during the investigation or trial. He had raised this issue only after the jury had delivered a guilty verdict in his case. The Government admitted that the applicant had not been provided with legal assistance before the appeal court on 21 July 2005. However, on 6 June 2007 the supervisory-review court had expressly acknowledged the violation of the applicant's right to legal assistance, had quashed the judgment of 21 July 2005 and had remitted the matter for fresh consideration to the appeal court. In a new set of appeal proceedings, counsel R. had been appointed to represent the applicant. R. had studied the materials of the case-file, had met with the applicant and had taken part in the appeal hearing. The applicant had consented to be represented by R. The defence carried out by counsel R. had been competent and effective. The mere fact that R. had not filed an additional statement of appeal was not sufficient to disclose a violation of Article 6 of the Convention.

20. The applicant maintained his grievances as regards legal representation provided by counsel Sh. He claimed that he had repeatedly asked the presiding judge to replace counsel Sh., however, the judge had ignored his requests and failed to record them in the trial minutes. As regards the appeal proceedings, the applicant submitted that, despite the quashing of the first appeal judgment and remittal of his case for fresh consideration, he had maintained his victim status. The new appeal hearing had not remedied the deficiencies of the first one. Counsel R. had met with the applicant only briefly and had refused to draft a statement of appeal against the applicant's conviction. The applicant further claimed that he had not consented to be represented by R. and that the written statement to this effect on his behalf had been forged by an officer of the remand prison where the applicant had been detained. Lastly, the applicant argued that he had been unable to communicate with his lawyer given that he had participated in the appeal hearing by means of a video link and the lawyer had been in the courtroom.

A. Admissibility

1. Legal assistance

21. As regards the applicant's complaint concerning the effectiveness of legal assistance, the Government's argument relating to the loss of victim status by the applicant is closely linked to the merits of his complaints under Article 6 §§ 1 and 3 of the Convention. Accordingly, the Court finds it

necessary to join it to the merits of the complaint and will revert to it subsequently (see *Sakhnovskiy v. Russia*, no. 21272/03, §§ 34-36, 5 February 2009).

22. The Court therefore considers that the complaint about the alleged ineffectiveness of the legal assistance 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. It must therefore be declared admissible.

2. Other alleged violations

23. As regards the remainder of the applicant's grievances concerning disclosure and admissibility of evidence, appointment of the members of the jury, lack of adequate facilities to prepare for trial, and alleged unfairness of the supervisory-review proceedings, the Court finds, regard being had to the material in its possession and in so far as these complaints fall within its competence, that there is no appearance of a violation of the rights and freedoms set out in the Convention. 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.

B. Merits

1. General principles

24. 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).
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> 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).
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> ...

> 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).
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> 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)."

2. Application to the present cases

25. The Court notes that the applicant referred to many acts and omissions on the part of the judicial authorities and State-appointed counsel. Having regard to the material submitted by the parties, the Court does not consider it necessary to examine each of the applicant's allegations. In deciding whether the criminal proceedings against the applicant were fair and, in particular, whether the legal assistance provided by State-appointed counsel was effective, the Court will examine the proceedings as a whole and focus its analysis on the issue as to whether the appeal court made reparation for the violation of the applicant's right to effective legal assistance, if any.

26. The Court observes that, according to the applicant, the first appeal hearing of 21 July 2005 fell short of the requirements set out in Article 6 of the Convention.

27. In this connection the Court notes, and it is not disputed by the Government, that the appeal judgment of 21 July 2005 was quashed by way of supervisory review expressly because of the authorities' failure to provide the applicant with legal assistance in the appeal proceedings. However, the Government claimed that the authorities had done everything in their power to ensure that, at the rehearing of the case in 2007, the applicant was duly represented. The Court will, accordingly, examine the second set of appeal proceedings.

28. The Court has considered the arguments furnished by the Government in support of their position and accepts that lawyer R. was a qualified lawyer and that he was prepared to assist the applicant in his defence before the appeal court. However, these arguments are not decisive; the Court must consider whether the arrangements for the conduct of the proceedings and, in particular, for contact between lawyer R. and the applicant respected the rights of the defence (compare *Sakhnovskiy*, cited above, § 101).

29. The Court reiterates that the relationship between a 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 temporal and logistical constraints in respect of meetings between a detained person and his lawyer. 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).

30. The Court's major concern in the present case is that in the course of the appeal hearing the applicant was not in the courtroom and was able to communicate with his lawyer only by means of a video link. The Court has already expressed doubts as to the lack of privacy of communication afforded by means of a video-conferencing system installed and operated by the State (see *Sakhnovskiy*, cited above, § 104). The Court has no reason to reach a different conclusion in the present case. It considers that the applicant might legitimately have felt ill at ease when communicating with State-appointed counsel via a video link. The Government did not explain why it was impossible to provide for different arrangements for the conduct of the appeal hearing. The Court notes that the appeal hearing was held in Moscow. The applicant and counsel R. were also in Moscow. It is obvious that R. would not have encountered any difficulty in being in the same room with the applicant during the appeal hearing. Nor does the Court discern any compelling reasons to justify the authorities' decision to arrange for the applicant's participation in the appeal hearing via a video link rather than ensuring his presence in the courtroom.

31. Regard being had to the above, the Court concludes that the arrangements made by the Supreme Court were insufficient to ensure that the applicant had effective legal assistance during the appeal hearing. Nor can the Court consider that those arrangements have made reparation for the deficiency of the first appeal hearing as regards the applicant's right to effective legal assistance. Accordingly, the applicant 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 and finds that there has been a violation of Article 6 §§ 1 and 3 of the Convention.

32. In the light of the foregoing, the Court does not consider it necessary to examine the remainder of the applicant's allegations concerning the legal assistance provided to him during the investigation and trial.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 91,791 Russian roubles (RUB) and 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage respectively.

35. The Government submitted that there had been no causal link between the violation found and the pecuniary damage alleged. They also considered that the applicant's claim of non-pecuniary damage had been excessive. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

36. The Court firstly notes that in the present case it has found a violation of Article 6 §§ 1 and 3 (c) of the Convention. The Court 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 trial *de novo* or the reopening of the proceedings, if requested (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV, and *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 112, 2 November 2010). The Court reiterates, in this connection, that the Russian Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court finds a violation of the Convention.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed EUR 3,150 (legal fee) and RUB 997.83 (postage) for the costs and expenses incurred before the Court.

39. The Government submitted that the present case had not been particularly complex and the amount claimed in respect of the legal fee appeared to be excessive.

40. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that EUR 850 has already been paid to the applicant by way of legal aid. Having regard to the

documents submitted by the applicant in support of his claims, the Court awards EUR 23 under this head.

C. Default interest

41. The Court considers it appropriate that the default interest rate 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 legal assistance admissible and the remainder of the application inadmissible;

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 the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 23 (twenty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 27 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Helen Keller
Deputy Registrar	President