

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

THIRD SECTION

CASE OF STAFEYEV v. RUSSIA

(Application no. 32984/06)

JUDGMENT

STRASBOURG

8 December 2020

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



In the case of Stafeyev v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 32984/06) 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 Vyacheslav Vladimirovich Stafeyev ("the applicant"), on 20 June 2006;

the decision to give notice to the Russian Government ("the Government") of the complaints raised in the present application concerning the lack of effective legal assistance in particular on appeal as well as the poor quality of the video link before the Supreme Court and to declare inadmissible the remainder of that application;

the parties' observations;

Having deliberated in private on 17 November 2020,

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

INTRODUCTION

1. The case concerns the lack of an effective legal assistance on appeal.

THE FACTS

2. The applicant was born in 1978 and is detained in Kharp. He was represented by Mr E. Markov, a lawyer practising in Strasbourg, France. On 13 February 2014 the applicant was granted legal aid.

3. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and subsequently by his successor in that office, Mr M. Galperin.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 19 February 2001 the corpses of the Sh. family (a man, his wife and their thirteen-year-old son) were found in their flat and criminal proceedings were opened into this fact. Apparently, the family was killed on 18 February 2001.

I. THE CIRCUMSTANCES OF THE CASE

A. Inquiry into the murder of the Sh. family

6. On 15 November 2004 the applicant was placed in detention following his conviction for another crime.

7. On 16 November 2004 the applicant's fingerprints were included into the database of the Ministry of the Interior.

8. On 8 December 2004 the police officers in charge of investigating the murder of the Sh. family were informed that the fingerprints detected in the family's flat matched the applicant's ones.

9. On 9 December 2004 police searched the applicant's flat and found several objects corresponding to the items stolen from the victims' flat.

10. On 8, 9 and 10 December 2004 the police officers visited the applicant in the detention facility and questioned him informally about murder of the Sh. family.

11. Eventually, the applicant confessed to the murder. According to the applicant, he confessed on 10 December 2004 under duress exercised by the police officers. According to the Government, on 8 December 2004 the applicant made a spontaneous and voluntary admission of his guilt.

12. On 10 December 2004 at 3 p.m. the applicant was informed of his rights. He waived his right to a lawyer.

13. On the same day the applicant was interviewed as a suspect in the absence of a lawyer. He reiterated his previous confession.

14. On 16 December 2004 the applicant was again interviewed as a suspect in the absence of a lawyer, whose services he had waived. He again reiterated the previous confession.

15. On 20 January 2005 in the course of a hearing on the restraint measure the applicant, assisted by a lawyer, retracted his previous confession.

B. The applicant's trial

1. First-instance court proceedings

16. On 15 September 2005 the Sverdlovsk Regional Court declared the applicant's statements given on 10 and 16 December 2004 inadmissible on the ground that they were made in the absence of a lawyer and further retracted at trial. The Regional Court reached a different conclusion as regards the applicant's confession made on 8 December 2004.

17. At trial the applicant denied his guilt and maintained that he indeed had visited the Sh. family but on 16 February 2001 and not on 18 February 2001. He added that his confession had been made under duress.

18. On 14 December 2005 the Regional Court convicted the applicant of three counts of murder, robbery and destruction of property and sentenced

him to life imprisonment. In particular, it based its judgment on the following:

– the expert's conclusion that the applicant's fingerprints were found in the victims' flat;

– the record of the search at the applicant's home where the items subsequently identified as having belonged to the victims were found;

– the statements of the police officers who had visited and spoken to the applicant in the detention facility and according to whom the applicant had first denied his involvement in the murders, but then had voluntarily confessed to the murders after being told that his fingerprints had been found at the crime scene;

– the applicant's confession made on 8 December 2004.

2. Appeal proceedings

19. On 14 November 2005 the applicant's lawyer, who had assisted him at trial, appealed. The appeal claim was seventeen pages long and raised different factual and legal issues.

20. On 30 March 2006 the lawyer was informed that the appeal hearing would take place on 15 May 2006.

21. On an unspecified date the applicant was transported to a detention facility in Moscow in order to participate in the appeal hearing.

22. On 15 May 2006 the applicant's lawyer did not appear at the appeal hearing and the applicant, who was present, requested to be provided with a new lawyer. The Supreme Court of Russia assigned lawyer R. to assist the applicant and adjourned the hearing to 29 May 2006.

23. On 23 May 2006 R. visited the applicant in the detention facility in Moscow. According to the applicant, the authorities of the detention facility limited his communication with R. to fifteen minutes and the guard repeatedly interrupted their communication.

24. On 25 May 2006 the applicant submitted to the authorities of the detention facility in Moscow his request to the Supreme Court to be granted an additional meeting with R., as the time afforded by the authorities of the detention facility was insufficient. According to the Government, the case-file materials do not contain any information that the applicant made the relevant request to the Supreme Court on that date. At the same time the Government submitted a copy of the applicant's request written on the letterhead of the detention facility and dated 25 May 2006, registered by the detention facility as outgoing correspondence on 26 May 2006, and received by the Supreme Court, according to its postmark, on 5 June 2006.

25. On 29 May 2006 the Supreme Court of Russia dismissed the applicant's appeal and upheld the judgment of the Regional Court. R. was present at the hearing. The applicant participated via video link.

26. According to the applicant, in the course of the appeal hearing he asked the Supreme Court to admit his request of 25 May 2006 to the case file, which was refused.

27. According to the Government, on 30 and 31 May 2006 the applicant complained to the Supreme Court about the poor quality of the video transmission and about the insufficient time he had to consult R. on 23 May 2006.

28. According to the certificate issued by the deputy head of the IT department of the Supreme Court on 28 August 2013, no video transmission failures had been recorded in the course of the appeal hearing on 29 May 2006.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

29. The relevant domestic law is summarised in the case of *Ichetovkina and Others v. Russia* (nos. 12584/05 and 5 others, § 11, 4 July 2017), with further references.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 § 3 (C) IN THE APPEAL PROCEEDINGS

30. The applicant complained about the lack of effective legal assistance on appeal in breach of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c), which reads as follows:

> "1. 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:
>
> ...
>
> (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

1. The parties' submissions

31. The Government may be understood as pleading non-exhaustion of domestic remedies. They argued that the applicant did not raise his complaint in due time about insufficient time afforded to consult his new lawyer R. either before or at the appeal hearing. In this regard they indicated that the materials of the appeal proceedings contained no information that

on 25 May 2006 the applicant requested the Supreme Court to provide him with an additional consultation with R. They further indicated that on 3 July 2006 the Supreme Court received the applicant's complaints made on 30 and 31 May 2006, that is after the appeal hearing, requesting an additional consultation with R. The Government further submitted that they could not provide the Court with the record of the appeal hearing before 3 May 2011, domestic law did not provide for a standard issuing of such a document.

32. The applicant maintained that on 25 May 2006 he had submitted through the detention facility to the Supreme Court his request to be provided with an additional consultation with R. He brought his request to the attention of the Supreme Court during the appeal hearing in which he pleaded via video link. On 29 May 2006 he also brought a copy of his request of 25 May 2006 with him and asked the Supreme Court to admit his request into the materials of the appeal hearing, but was denied.

2. The Court's assessment

33. The Court notes that the parties disagree on the precise moment when the applicant complained about insufficient time to prepare his defence. According to the applicant, he submitted his complaint to the Supreme Court through the penitentiary administration on 25 May 2006, which was before the hearing, and also reiterated it at the appeal hearing. According to the Government, the applicant's complaint was only received by the appeal court after the hearing. As regards the hearing itself, they indicated that no record of the appeal hearing was drawn up at that time and consequently it was impossible to ascertain whether the applicant had indeed brought this issue to the attention of the appeal court.

34. The Court observes that the Government submitted a copy of the applicant's request written on the detention facility's letterhead and dated 25 May 2006, registered by the detention facility as outgoing correspondence on 26 May 2006, and received by the Supreme Court, according to its postmark, on 5 June 2006. This document shows that the applicant attempted at least to raise his complaints during the domestic proceedings. However, it is not in itself enough to conclude that the applicant exhausted all domestic remedies.

35. The Court notes that the parties' arguments as set out above are closely linked to the merits of the complaint. Accordingly, it joins the Government's preliminary objection to the merits.

36. The Court also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

37. The applicant reiterated that on 23 May 2006 he had not been afforded sufficient time to consult R. In this respect, he pointed to the complexity of the case and submitted that the case file consisted of seven volumes, that the Government had failed to substantiate how much time R. had spent studying the case file, that he had raised different factually and legally complex issues in his appeal statement, that at the appeal hearing R. had simply supported his appeal statement without adducing any submissions of his own, that he did not have any communication with R. at the appeal hearing and, finally, that his freedom was at stake as he had been sentenced to life imprisonment.

38. The Government submitted that R. had provided legal assistance to the applicant during nine days before the appeal hearing, including studying the seven-volume case file, meeting with the applicant on 23 May 2006, and participating in the appeal hearing on 29 May 2006.

2. *The Court's assessment*

39. The Court reiterates at the outset that it is of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal (see *Lala v. the Netherlands*, 22 September 1994, § 33, Series A no. 297-A, and *Pelladoah v. the Netherlands*, 22 September 1994, § 40, Series A no. 297-B).

40. Taking into account three factors – (a) the wide powers of the appellate courts in Russia, (b) the seriousness of the charges against the applicants and (c) the severity of the sentence which they faced – the Court has considered in prior cases that the interests of justice demanded that, in order to receive a fair hearing, the applicants should have had legal representation at the appeal hearing. The Court therefore found a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention (see *Shilbergs v. Russia*, no. 20075/03, §§ 120-24, 17 December 2009; and *Shulepov v. Russia*, no. 15435/03, §§ 34-39, 26 June 2008). Moreover, the exercise of the right to legal assistance takes on particular significance where the applicant communicates with the courtroom by video link (see *Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006, and *Shulepov*, cited above, § 35). Also, the mere assigning of counsel does not in itself ensure the effectiveness of the assistance he or she may afford an accused (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 95, 2 November 2010, with further references). In this context, decisive consideration should be given to whether the domestic authorities made sufficient arrangements for contact between the lawyer and the applicant that respected the rights of the defence (ibid., §§ 101 and 107, and *Ichetovkina and Others,* cited above,

§ 30) and whether and how the respective Government explained that it was impossible to make different arrangements (*Sakhnovskiy,* cited above, § 106*).*

41. In the present case, the applicant was tried on serious charges and faced life imprisonment. He participated in the hearing via video link and was assisted by a newly appointed lawyer. The Court is therefore of the view, bearing also in mind the appellate court wide powers in determining his appeal, that the interests of justice required the judicial authorities to ascertain prior to embarking on the merits of the appeal whether the applicant had had adequate time and opportunity to consult his newly appointed lawyer. However, nothing in the case file materials indicates that the appeal court did so (compare and contrast *Sesler v. Russia* (dec.), no. 67772/10, § 22, 1 September 2020). In this context, there is no need for the Court to examine whether the applicant had properly raised his complaints about insufficient time to prepare his defence before the appeal court. The Court considers that his conduct could not of itself relieve the authorities of their obligation to take steps to guarantee him an effective defence (see *Shekhov v. Russia*, no. 12440/04, § 42, 19 June 2014, with further references). The Government's preliminary objection should therefore be rejected.

42. Having regard to its findings above, the Court therefore concludes that the appeal proceedings in question fell short of the requirements of fairness. There has thus been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. Having regard to its finding under Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) (see paragraph 42 above), the Court considers that it is not necessary to examine separately either the admissibility or the merits of the rest of the applicant's complaints under Article 6.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government contested this claim. They considered that the amount of compensation claimed was excessive.

47. The Court recalls that in the present case it found a violation of Article 6 of the Convention on account of the appeal court's omission to ascertain whether the applicant could effectively benefit of his right to legal assistance. Having regard to the fact that domestic law provides that criminal proceedings may be reopened if the Court finds a violation of the Convention, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see *Zadumov v. Russia*, no. 2257/12, §§ 80-81, 12 December 2017, and most recently, *Kumitskiy and Others v. Russia*, nos. 66215/12 and 4 others, § 28, 10 July 2018).

B. Costs and expenses

48. The applicant also claimed EUR 350 for the expenses incurred by him before the domestic courts and the Court, indicating that due to the specific character of the expenses it was not practically possible to provide a full account of such expenses. The applicant did not provide any documents confirming the expenses. He also claimed EUR 2,950 for the legal costs and expenses incurred by his representative before the Court. This sum included, first, EUR 2,800 for the legal costs and the applicant referred to the tariff for lawyers usually accepted by the Court and the hours spent by his representative in preparation of the case, the applicant also submitted that he had not made any down payment to his representative due to lack of funds. The second part of the sum amounts to EUR 150 for the administrative expenses incurred by the applicant's representative. In respect of the latter administrative expenses the applicant's representative indicated that, due to the specific character of the expenses, it was not practically possible to provide a full account of such expenses.

49. The Government replied that the applicant had submitted only several payment receipts and failed to substantiate the reasonableness of the required sums of money.

50. 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's representative in support of the claims on legal costs and other expenses, the Court sees no basis to make an additional award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) of the Convention in respect of the lack of effective legal assistance at the appeal hearing admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) of the Convention in respect of the lack of effective legal assistance at the appeal hearing;

3. *Holds* that there is no need to examine separately other complaints under Article 6 of the Convention;

4. *Holds* that the finding of a violation constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

5. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President