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

# THIRD SECTION

# DECISION

Application no. 21466/05
Aleksey Yuryevich ZVERKOV
against Russia

The European Court of Human Rights (Third Section), sitting on 28 November 2017 as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 May 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Aleksey Yuryevich Zverkov, is a Russian national who was born in 1984 and is detained in Udachnyy. He was represented before the Court by Mr V.N. Yefremov, a lawyer practising in Irkutsk.

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

### A. The circumstances of the case

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

4. The applicant was born in 1984 and is detained in Udachnyy, Mirninskiy district, Sakha Republic (Yakutia).

*1. The applicant's arrest and the ensuing investigation*

5. On 14 August 2003 a certain Mr G. was killed in his apartment and a large amount of money was stolen from it.

6. On 18 August 2003 the applicant was arrested in relation to those events. It appears that two other persons, Mr Z. and Mr Ch., were arrested together with the applicant on the same charges. The final person to be arrested for alleged participation in the murder, Mr S., was arrested later on an unspecified date.

7. The record of the applicant's arrest was drawn up by the investigator K. and the applicant was informed about his rights, including the right to remain silent and the right to a lawyer.

8. The applicant further signed a waiver of his right to a lawyer. According to the applicant, he signed that document after K. indicated that there were no lawyers in the town available to represent him. The applicant also alleged that he was beaten.

9. Between 10.20 p.m. and 2.40 a.m. the applicant was questioned as a suspect by the same investigator without legal representation and gave a detailed account of the assault. The applicant admitted to taking part in the attack and robbery, to seeing how Mr S. had stabbed the victim and to passing a knife to Mr S. However, he denied any role in the infliction of lethal violence on the victim. He stated that only Mr S. had stabbed the victim.

10. From 22 August 2003 the applicant was represented by Ms V., a lawyer of his own choosing.

11. On 22 August 2003 the applicant confirmed his testimony during the reconstruction of the crime in the presence of a lawyer.

12. On 23 August 2003 the applicant was questioned as an accused and denied being guilty. He specified that he had not stabbed the victim but admitted that he had been in the victim's flat, had seen how Mr S. had stabbed him, had passed a knife to Mr S. and had participated in the robbery. He was assisted by a lawyer.

13. On 3 September 2003 Mr S. was questioned as a suspect and stated that he, the applicant and another person had stabbed the victim.

14. On 22 January 2004 the applicant was questioned again in the presence of a lawyer of his own choosing, Mr. E. He modified his initial statements. While admitting that he had accompanied the other defendants to the victim's apartment, he denied participating in the robbery and indicated that when he had handed a knife to Mr S. he had not known that he would use it to kill the victim. He had spent most of the time in another room. He also stated that the self-incriminating statements he had made on 18 August 2003 had been the result of threats by police officers. He had not complained before about that treatment because he did not know that there was such a possibility.

*2. The applicant's trial*

15. On 17 June 2004 the Supreme Court of the Republic of Sakha (Yakutiya) found the applicant guilty of aggravated murder and robbery committed by a gang and sentenced him to seventeen years' imprisonment. It found established that the victim had been stabbed around forty times, of which twenty five wounds had been inflicted by the applicant. At trial the applicant admitted his guilt as regards the robbery but denied murder.

16. In finding the applicant guilty, the court referred to various pieces of evidence, including the applicant's statements and those made by his fellow defendants, notably those of 18 August 2003 and during their subsequent questioning in the presence of their lawyers. It also referred to forensic examinations and witness statements. In particular, the trial court referred to:

> "(a) the testimony of Ms D., present at the victim's apartment that night but who was not a direct witness of the murder itself;
>
> (b) the results of the search carried out at [the applicant's] and Ms D.'s apartments, where a large amount of money was found; neither denied that the money had been stolen from the victim's apartment after he had been killed;
>
> (c) forensic evidence, such as the traces of blood on the applicant's clothes, which could have belonged to the victim, and the conclusions of the expert, who did not exclude that the victim's injuries could have been inflicted by several people."

17. The trial court rejected the allegations of ill-treatment by the applicant and the other defendants after questioning K. and noted that neither the applicant nor the other defendants had ever complained about such treatment.

18. On an unspecified date the applicant and his co-defendants lodged an appeal, arguing that there had been various procedural irregularities, referring in particular to the use of their statements made under duress shortly after their arrests and without the presence of a lawyer. They further argued that the investigation had failed to look into whether the victim could have been killed by other, unidentified persons after the applicant and his co-defendants had left his apartment.

19. On 1 December 2004 the federal Supreme Court dismissed the appeal, upholding the first-instance court's judgment with minor amendments as to the classification of the charges of assault.

20. On 31 August 2005 the Presidium of the federal Supreme Court quashed that decision following a supervisory review application by the applicant and his co-defendants and remitted the case for fresh examination to the appeal court. The Presidium found that the appeal court had failed to provide detailed reasoning about all the grievances raised in the appeal.

21. On 3 November 2005 the federal Supreme Court again dismissed the applicant's appeal. It endorsed the reasoning of the first-instance court and stated in addition that it had examined the possibility that the victim could have been killed by unidentified persons and had dismissed it.

### B. Relevant domestic law

22. Chapter 16 of the Code of Criminal procedure ("CCP") lays down the procedure by which the acts or decisions of a court or public official involved in criminal proceedings can be challenged. The acts or omissions of a police officer in charge of an inquiry, an investigator, a prosecutor or a court may be challenged by "parties to criminal proceedings" or by "other persons in so far as the acts and decisions [in question] touch upon those persons' interests" (Article 123). Those acts or omissions may be challenged before a prosecutor (Article 124). Decisions by police or prosecution investigators or other prosecutors not to initiate criminal proceedings, or to discontinue them, or any other decision or failure to act capable of impinging upon the rights of "parties to criminal proceedings" or of "hindering an individual's access to court" can be subject to judicial review (Article 125).

## COMPLAINT

23. The applicant complained under Articles 6 and 13 of the Convention that his initial questioning on the criminal charges against him had been conducted without a legal representative and that his statements made during that questioning had served, among other evidence, as a basis for his conviction.

## THE LAW

24. The applicant complained that the proceedings which had resulted in his conviction had been unfair on account of the use of the self-incriminating statements he had made on 18 August 2003 after he had been forced by the investigator to waive his right to legal assistance. He referred to 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 ... 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 ..."

25. The Government rejected the allegation, stating that the applicant had voluntarily waived his right to a lawyer on 18 August 2003. As regards the overall fairness of the proceedings, they submitted that the applicant had taken part in the trial in person, had also been represented by counsel of his

own choosing, who had participated in the proceedings from 22 August 2003, and had not been in any way restricted in adopting a defence strategy.

26. The applicant disagreed, arguing that the domestic courts' conclusion that he had inflicted injuries on the victim that had resulted in his death had been based on assumptions and contradictory evidence as well as on his and his co-defendants' initial statements, which had been obtained under duress and in the absence of a lawyer. As regards the police ill-treatment, he referred to a complaint he had prepared on 4 May 2005 in accordance with Article 125 of the Code of Criminal procedure, in which he had disagreed with the refusal to initiate a criminal investigation into his allegations. Finally, he argued in substance that the domestic courts had failed to establish to the required standard of proof that he was the person who had stabbed the victim to death.

27. As the Court has held many times, the requirements of Article 6 § 3 of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention (see, among many other authorities, *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 94, 2 November 2010, and *Schatschaschwili v. Germany* [GC], no. 9154/10, § 100, ECHR 2015). The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case. The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, § 250, ECHR 2016, with further references).

28. As regards the applicant's allegations concerning unjustified restrictions of his right of access to a lawyer, the Court considers that there is no need to examine the circumstances in which the applicant waived that right on 18 August 2003 because in any event he did not explain in either his observations or his original application to the Court whether and how any such statements had impaired the overall fairness of the proceedings against him. The Court observes that on 18 August 2003 the applicant stated that he had accompanied his friends to the victim's apartment on the night of the murder but denied any guilt for his murder. When questioned on 22 January 2004 in the presence of a lawyer, the applicant reiterated in substance his initial statements made on 18 August 2003, that is he admitted having accompanied his friends to the victim's apartment and denied having used lethal violence on the victim (see *Moroz v. Ukraine*, no. 5187/07, § 72, 2 March 2017, with further references). It results from the materials available to the Court that the applicant never denied being present in the victim's apartment on the night of the murder, while his presence there was in any event confirmed by an eyewitness, D. Rather, he challenged the domestic courts' conclusion that he was one of the people who had stabbed the victim to death. However, the domestic courts came to that conclusion on the basis of other material, including traces of the victim's blood on the applicant's clothes. In the absence of a more detailed explanation by the

applicant on the role his initial statement to the police played in that regard, the Court does not consider that its use irretrievably prejudiced his defence rights. Nothing in the material available to the Court indicates that the applicant, who took part in the trial in person and was also represented by counsel, was in any way restricted in adopting a defence strategy at variance with his statements of 18 August 2003 (compare and contrast with *Shamardakov v. Russia*, no. 13810/04, §§ 155 and 156, 30 April 2015).

29. There are also insufficient elements to consider that the applicant was coerced into giving his statement on the day of his arrest. The only element provided by the applicant in support of his allegations of ill-treatment is a copy of his complaint drawn up on 4 May 2005 in accordance with Article 125 of the Code of Criminal procedure and submitted to the Court in July 2011. That document cannot, however, be considered as enough to corroborate his allegations because there are no indications that it was ever submitted to the domestic courts. Finally, the Court does not disregard the fact that when questioned on 22 January 2004 in the presence of his lawyer the applicant offered another version of the ill-treatment he had allegedly sustained on 18 August 2003. Unlike his submissions to the Court, in which he complained about physical violence allegedly used against him on that day, he only mentioned that he had been threatened by the investigator. In the absence of any further documents and details concerning notably the nature and the circumstances of the applicant's ill-treatment, the Court cannot consider it as an established fact.

30. Having assessed the above facts in the light of the principles established in its case-law (see *Loboda v. Ukraine*, no. 8865/06, § 43, 17 November 2016, with multiple further references), the Court considers that the applicant has failed to provide the necessary substantiation for his allegation that the use of the statement he made on 18 August 2003 irretrievably prejudiced the overall fairness of his trial.

31. Given that finding, the Court does not consider it necessary to examine any other arguments submitted by the parties and concludes that it is appropriate to dismiss the present complaint as manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 21 December 2017.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President