



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

FIRST SECTION

Application no. 34296/05
Igor Viktorovich MASLOV against Russia
lodged on 10 August 2005

STATEMENT OF FACTS

The applicant, Mr Igor Viktorovich Maslov, is a Russian national who was born in 1961 and lived before his arrest in Tambov.

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

A. Criminal proceedings on charges of aggravated extortion, manslaughter, robbery and so on

In January 2002 a criminal case was opened against the applicant. Prosecutors believed that he had slaughtered a man in an act of extortion; that he had also unlawfully bought, possessed and carried firearms; that, having broken in a house, he had kidnapped and murdered its owner and that he had committed an aggravated robbery against another person. On 31 January 2002 the applicant was arrested and his remand in custody was authorised. On the following day he was questioned for the first time. It appears that the applicant was afforded assistance by legal aid counsel.

The applicant's detention was extended on a number of occasions with his having only appealed against the extension order of 20 December 2004. On 25 January 2005 the Tambov Regional Court upheld the order in question. The most recent extension of the applicant's detention took place on 18 March 2005, with the applicant having failed to appeal against it.

On 15 January 2004 the Zherdevskiy District Court of the Tambov Region convicted the applicant of aggravated extortion, manslaughter, robbery and unlawful breaking and entry and sentenced him to ten years and six months of imprisonment. At the same time, the District Court acquitted

him of murder and unlawful deprivation of liberty, having found no evidence of the applicant's involvement in those criminal offences.

On 11 March 2004 the Tambov Regional Court, acting on appeal, quashed the District Court's judgment pertaining to the applicant's acquittal, remitted the case, in that part, for a fresh examination by the District Court and upheld the remaining part of the judgment.

On 17 June 2004 the Presidium of the Tambov Regional Court, by way of supervisory-review proceedings, amended the applicant's conviction, having acquitted him of aggravated extortion and having relieved him of the criminal responsibility on the charge of breaking and entering in view of the expiration of the limitation period. Given the amendments, the Presidium decreased the applicant's sentence by nine months.

On 7 October 2004, acting upon the instructions of the Regional Court laid down in the judgment of 11 March 2004, the District Court examined the murder and limitation-of-liberty charges against the applicant and acquitted him, finding no evidence of the criminal conduct.

Having received the applicant's appeal against the judgment of 7 October 2004, on 16 November 2004 the Regional Court, composed of three judges with judge S. acting as the president of the chamber, quashed the judgment and remitted the case for retrial. The Regional Court's reasoning, insofar as relevant, was as follows:

“Having studied the materials of the criminal case file and having discussed the arguments in the prosecutor's appeal statement and the counter-arguments [by the defence], the appeal court considers that the judgment should be quashed and the case should be sent for retrial... as the finding that [the applicant] was innocent of murder and unlawful deprivation of liberty of Ms L. was not based on a thorough assessment of evidence...and was made without a consideration of the information in the case file on the motives of the crime.

At the same time, [the District Court] did not make any assessment of the [applicant's] statements that on 24 January 2002, at 6.00 p.m., he had been released from administrative detention and had stayed at home with his wife and had not met Ms L. either on 24 or 25 January 2002... However, those statements were entirely refuted by the evidence examined in the court hearings: statements by witnesses... [including the applicant's wife]..., written evidence...

The materials of the file show that Ms L. informed the police about [the applicant's] participation in the theft with her and Mr N. Having learned about that fact, [the applicant] together with Mr D. found Ms L.... in the house, broke into the house and forced Ms L. to go with him to Mr V.'s house where, in the presence of Mr and Ms V. and Mr D., forced Ms L. to write a statement saying that she had slandered [the applicant]. At the same time, as follows from Ms V.'s statements, Ms L. was worried and asked [the applicant] not to kill her. [The applicant] told Ms L. to go outside for a talk. Ms L. left the house and she was not seen alive since. In the morning, [the applicant] came back to Mr V.'s house and told him that he had helped Ms L. to take a train, she had left and he had burnt her statement. Ms L.'s close friends and relatives stated that Ms L. had had nowhere to go and they therefore disputed the possibility of her leaving by train, as [the applicant] had claimed. When Ms L.'s body was discovered in the river in April 2004, she was dressed in the same clothes as on the night when she had left Mr V.'s house together with [the applicant].

The court finds that the abovementioned indirect evidence runs contrary to the explanations by a forensic medical expert made in the court hearing that Ms L.'s death could have occurred within a month between 25 January and 25 February 2002. At the same time, the expert opinion should be assessed together with other evidence in the

circumstances of the case. The expert did not exclude that the death had occurred on 25 January 2002, and it was in the night of 25 January 2002 that Ms L. together with [the applicant] had left Mr V.'s house and was never seen alive...

Due to the fact that the [District Court's] judgment did not contain a proper assessment of the abovementioned evidence, it cannot be considered lawful and well-founded."

On 5 May 2005 the District Court convicted the applicant of murder and unlawful deprivation of liberty and sentenced him to ten years' imprisonment. The conviction was based on witness statements, the expert opinions, and material evidence. Taking into account the applicant's conviction of 15 January 2004 the final sentence was determined as fourteen years of imprisonment.

On 12 July 2005 the Regional Court, by a chamber of three judges including Ms S. as the president of the chamber, examined the applicant's appeal statement, heard him in person, and upheld the judgment of 5 May 2005, having endorsed the District Court's reasoning. The appeal court provided a detailed account of evidence showing that the applicant was guilty of murder and unlawful deprivation of liberty. The applicant was not represented by counsel in the course of the appeal proceedings.

B. Criminal proceedings on the charge of aggravated theft

In the meantime, another set of criminal proceedings on a charge of aggravated theft was instituted against the applicant. On 12 July 2002 the Tokaryovskiy District Court of the Tambov Region found him guilty as charged and sentenced to two and a half years of imprisonment. It appears that the judgment was not appealed against and became final.

COMPLAINTS

1. The applicant complained under Article 5 of the Convention that his arrest and pre-trial detention had been unlawful, that he had not been properly informed of the reasons for his arrest, as well as he had not been explained the content of the charges against him.

2. The applicant's further complaints were directed against the proceedings on the charges of manslaughter, murder, extortion and so on. In particular, he complained under Article 6 §§ 1 and 3 (a) – (d) of the Convention that the investigator had denied him an opportunity to effectively participate at the pre-trial stage, that the courts had misinterpreted the witnesses' statements, having erroneously attached particular weight to statements by Ms V. and having ignored statements by other witnesses; that the expert whose opinion had been heard in court had erred in his findings and had committed a number of procedural omissions in the report; that the trial court had presumed the applicant guilty, having insisted on a mercenary motive of the crime; that the investigating authorities had committed a number of procedural omissions while deciding to join the charges, etc.

3. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that he had not been afforded legal assistance in appeal proceedings against the judgment of 5 May 2005.

4. The applicant finally complained under Article 6 § 1 of the Convention that the same presiding judge had participated in the appeal proceedings against the judgments of 7 November 2004 and 5 May 2005. The applicant insisted that the judge had already had a preconceived idea of his guilt and therefore had been unable to act impartially.

QUESTIONS

1. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was the court which dealt with the applicant's case on appeal impartial, as required by Article 6 § 1 of the Convention, given that the same judge presided over the appeal chamber on 16 November 2004 and 12 July 2005?

2. Having regard to the fact that the applicant was not represented at the appeal hearing on 12 July 2005, were the proceedings before the appeal court in the applicant's case compatible with the requirements of Article 6 §§ 1 and 3 (c) of the Convention (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III; *Maxwell v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-C; and, in particular, Article 50 of the Code of Criminal Procedure)?