



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

FIRST SECTION

Application no. 35045/04
Oleg Viktorovich GAZENBUSH against Russia
lodged on 1 September 2004

STATEMENT OF FACTS

The applicant, Mr Oleg Viktorovich Gazenbush, is a Russian national who was born in 1965 and lives in Novoaltaysk, Altay region.

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

In 2001 criminal proceedings were instituted against the applicant and four other persons: Z., T., B. and M. All of them were suspected of being involved in a murder of S., director of a poultry farm, and were detained on remand. At some point of the pre-trial proceedings B. was released under bail.

In the course of the proceedings B. died and proceedings against him were discontinued.

The applicant stood trial for murder of S. together with Z., T. and M.

On 8 December 2003 the jury found the applicant guilty of having been a member of a criminal gang organised by his co-defendant Z. and of having killed S. together with his co-defendants Z. and T.

On 24 December 2003 the Altay Regional Court sentenced the applicant to eleven years' imprisonment.

In his grounds of appeal the applicant complained, among other things, that his conviction had been based on inadmissible evidence, namely, statements by witness B. who had died.

On 6 July 2004 the Supreme Court of the Russian Federation upheld the applicant's conviction. Regarding the statement by witness B., the appeal court held that B. had given his testimony in the presence of counsel and there was no evidence of any pressure put on him by the investigator. His statements had been read out in trial in accordance with law.

COMPLAINTS

The applicant complains under Article 6 of the Convention that criminal proceedings against him were unfair. In particular, he complains that:

(a) the trial court accepted as evidence and read out in the trial statements by witness B., who had died before the trial started and whom the applicant had not opportunity to confront;

(b) the presiding judge did not discharge some jurors of their functions despite the fact that there had been grounds to doubt their impartiality;

(c) the trial court accepted inadmissible evidence into the case file and violated the equality of arms;

(d) his presumption of innocence was violated because a number of newspapers and TV programmes had declared him and his co-defendants guilty of murder of S.

(e) in his direction to the jury the presiding judge gave wrong interpretation to witness statements.

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 §§ 1 and 3 (d) of the Convention? In particular:

Was the applicant able to examine the witness against him Mr B.?

What importance did the statements by deceased witness B. have for the decision to indict the applicant and eventually for his conviction? Was the applicant's conviction in murder of S. based solely or decisively on B.'s statements? If so, were there sufficient counterbalancing factors in place, including strong procedural safeguards, to compensate for the difficulties to the defence which resulted from the admission of B.'s statements (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 147 and §§ 152-165, 15 December 2011)?

The Government are requested to provide copies of the following documents:

- bill of indictment and other documents from the case file which had laid foundation for charging and indicting the applicant;
- statements by witness B. which were read out to the jury;
- entire record of the court hearing before the jury;
- questions put to the jury by the trial court in respect of the applicant and in respect of his co-defendants.