



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

FIRST SECTION

Application no. 51264/07
Konstantin Gennadyevich CHERNENKO
against Russia
lodged on 24 September 2007

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Konstantin Gennadyevich Chernenko, is a Russian national who was born in 1978 and lived before his arrest in Khabarovsk region. He is currently serving a prison sentence in Yamalo-Nenetskiy Autonomous region.

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

A. The trial

The applicant and his co-defendant K. stood trial for murders of S. and P. and other criminal offences before the Khabarovsk Regional Court (“the Regional Court”). The applicant was assisted by legal aid counsel Z.

On 31 July 2006 the Regional Court found the applicant and his co-defendant guilty of murdering of S. and P. In addition the Regional Court found the applicant guilty of attempted murder of T., theft and destruction of property and sentenced him to a life imprisonment. The applicant’s co-defendant was also sentenced to a life imprisonment.

By decisions of 1 August and 7 November 2006 the Regional Court recovered from the applicant legal counsel’s fees incurred during the examination of his case in the amount of 21, 450 Russian roubles (“RUB”) and RUB 1,650 respectively.

On 15 March 2007 the head of the detention facility in which the applicant was detained received a notification from which it followed that the applicant’s case would be examined by the Supreme Court of the Russian Federation (“the Supreme Court”) on 5 April 2007. The letter also

explained that the applicant had a right to apply for legal assistance. On an unspecified date that notification was given to the applicant.

B. Appeal hearing of 5 April 2007

In his appeal against the judgment of 31 July 2006 the applicant denied murdering of victims and requested that his conviction for those murders be quashed and the case be remitted to the first-instance court for a fresh examination.

On 5 April 2007 the Supreme Court examined the applicant's appeal. No legal counsel attended the hearing. The applicant participated in the proceedings by video link.

Having studied the materials of the case, the appeal court found in particular that the trial court had correctly assessed witnesses' statements and on the basis of those statements and other evidence had concluded that the applicant had killed S. and P. and attempted to kill T. The appeal court concluded that the trial court had correctly characterised the applicant's actions. However, the appeal court modified the judgment in part concerning the aggravating circumstances. On the same date it upheld the remainder of the judgment of 31 July 2006.

C. Dismissal of the applicant's request for supervisory review

On 3 August 2007 the applicant lodged an application for supervisory review of the appeal decision of 5 April 2007, with the Supreme Court. He complained that he had not been provided with legal assistance for the appeal hearing and requested that the appeal decision be quashed and the case be remitted to the appeal court for a fresh examination.

On 18 October 2007 a judge of the Supreme Court dismissed the applicant's request. He found that on 15 March 2007 the applicant had been informed that the appeal hearing would be held on 5 April 2007 and that he had a right to apply for legal assistance. However, he had not asked to be provided with legal counsel.

D. Quashing of the appeal decision of 5 April 2007 by way of supervisory review

On 12 March 2010 the Deputy Prosecutor General of the Russian Federation applied to the Presidium of the Supreme Court for supervisory review of the appeal decision of 5 April 2007. He submitted in particular that the applicant's right to be defended by legal counsel at that hearing had been violated.

On 27 October 2010 the Presidium of the Supreme Court examined the applicant's case by way of supervisory review. The applicant participated in the hearing and was represented by legal aid counsel A. The Presidium found that the applicant's right to legal assistance had been violated at the hearing of 5 April 2007. It quashed that decision and remitted the case for a new examination on appeal. By the same decision the Presidium held that the applicant and his co-defendant had to remain in detention until 27 January 2011.

By a decision of 27 October 2010 the Presidium recovered from the applicant legal counsel's fees incurred during the examination of his case in supervisory review proceedings in the amount of RUB 2,387. It found that there had been no circumstances which would allow the applicant to be exonerated from the payment of counsel's fees.

E. Appeal hearing of 5 May 2011

The new appeal hearing was set for 16 December 2010. However, on that date the Supreme Court adjourned the case, on the applicant's request in order to give him time to familiarise himself with the materials of the criminal case and to meet his counsel in order to prepare additional grounds of appeal.

On 23 March 2011 the applicant submitted additional grounds of appeal to the Supreme Court.

On 21 April 2011 the Supreme Court again adjourned the case on the applicant's request because the latter had not been provided with a copy of his co-defendant's grounds of appeal of 22 November 2010 and could not submit his comments on them.

On 27 April 2011 the Regional Court extended the applicant's and his co-defendant's detention until 27 July 2011.

On 5 May 2011 the Supreme Court, sitting in Moscow, examined the applicant's case. At that hearing the applicant was represented by legal aid counsel. The applicant participated in the hearing by means of video link.

Having examined the materials of the case, the Supreme Court excluded from the judgment of 31 July 2006 the applicant's conviction for theft as time-barred and upheld the remainder of the judgment.

The applicant submitted that he was provided with a copy of his co-defendant's grounds of appeal only an hour before the appeal hearing and therefore did not have sufficient time to prepare his comments on them. He also submitted that the quality of the videoconference had been very poor and he could not hear what the judges and the prosecutor had said.

COMPLAINTS

A. Complaints lodged on 24 September 2007

The applicant complained under Articles 6 and 13 of the Convention that criminal proceedings against him had been unfair. In particular, he complained that:

- (a) he had not been provided with legal assistance for the appeal hearing of his criminal case;
- (b) the domestic courts had wrongly assessed the evidence in the case and had given a wrong legal qualification to his actions;
- (c) the copy of the appeal decision which had been sent to the applicant had not been signed by all three judges who had heard the case.

B. Complaints lodged on 2 March, 1 June and 19 September 2011

1. The applicant complained under Article 6 § 3 (c) that he had not been provided with a free legal assistance during examination of his case since the domestic courts had recovered from him legal counsel's fees.

2. The applicant complained under Article 4 of Protocol no. 7 to the Convention that by quashing the appeal decision of 5 April 2007 and by sending his case for a fresh appeal hearing the Supreme Court had subjected him to a new criminal prosecution.

3. The applicant complained under Article 6 that the appeal proceedings of 5 May 2011 had been unfair. In particular:

(a) he had been provided with a copy of his co-defendant's grounds of appeal only an hour before the appeal hearing and had not have sufficient time to prepare his comments on them;

(b) the quality of video link during the hearing was very poor and he could not hear what judges and prosecutor had said and the hearing lasted only twenty minutes;

(c) the appeal court did not take into account that he and his counsel had been informed of the appointment of expert studies post factum and therefore, he could not put his questions to experts.

(d) the appeal court did not change his sentence.

4. The applicant further complained under Articles 5 and 6 that on 24 January 2011 his detention had been extended in his absence and that on 27 April 2011 domestic court had refused to release him until new appeal hearing.

QUESTIONS TO THE PARTIES

1. Were the appeal proceedings before the Supreme Court of the Russian Federation ("the Supreme Court") which ended on 5 May 2011 and which were conducted by way of videoconference compatible with the requirements of Article 6 §§ 1 and 3 (c) of the Convention? In particular:

(a) Did the applicant benefit from effective legal assistance during the appeal proceedings which ended on 5 May 2011? How much time did his newly appointed counsel have at his disposal to familiarise himself with the case-file, the grounds of appeal and to prepare for the hearing? When did he receive a copy of the case-file? Did he prepare his own grounds of appeal? What arrangements were made by the Supreme Court to ensure that the applicant and his lawyer had a possibility to meet in private and to discuss the case? When, where, in which conditions and for how long the applicant met his counsel/communicated with him in confidentiality prior to the hearing? What arrangements were made to ensure the applicant's communication in confidentiality with his counsel during the appeal hearing of 5 May 2011?

(b) Was the applicant able to participate effectively in the hearing of 5 May 2011 and to present his case under the same conditions as the prosecution? Did the quality of the videoconference allow the applicant to hear what the judges, the prosecutor and his co-defendant said? What arrangements were put in place to control the quality of the transmission and to allow the applicant to inform the court and prison authorities of technical problems with transmission? Did the Supreme Court keep the record of the appeal hearing of 5 May 2011 in any form?

(c) Did the applicant receive free legal assistance, given that the domestic courts ordered the applicant to pay the legal-aid lawyer's fees? In particular, did the domestic courts consider whether after his conviction the applicant had sufficient means to pay for the service provided by legal-aid counsel during the criminal proceedings against him?

(d) Did the applicant have the opportunity to familiarise himself with the grounds of appeal lodged by his co-defendant K. on 22 November 2010, to discuss them with his lawyer and to submit his comments on them to the appeal court? If not, was there a breach of the applicant's right to adversarial proceedings and equality of arms enshrined in Article 6 § 1 of the Convention?

2. In the light of the answer to question no. 1 above, may the applicant still claim to be a victim of a violation of Article 6 §§ 1 and 3 of the Convention, within the meaning of Article 34? If so, was there violation of these provisions in the criminal proceedings against the applicant taken as a whole, which ended with the decision of 5 May 2011 (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 99-109, 2 November 2010)?

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

- grounds of appeal lodged by the applicant and his former counsel Z.
- grounds of appeal lodged by the applicant's co-defendant K. on 22 November 2010
- record of the appeal hearing of 5 May 2011 before the Supreme Court of the Russian Federation, if such record exists.