



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

FIRST SECTION

Application no. 4874/09
Oleg Alekseyevich CHICHKIN against Russia
and 8 other applications
(see list appended)

STATEMENT OF FACTS

All applicants, save for Mr Sergey Maratovich Rodin (application no. 18524/09) and Mr Esenov Sabyrbay Bagibekovich (application no. 38094/09), are Russian nationals. The two applicants, Mr Rodin and Mr Esenov, are nationals of the Republic of Uzbekistan.

The circumstances of the cases

The facts of the cases, as submitted by the applicants, may be summarised as follows.

1. Application no 4874/09 lodged on 5 November 2008 by Oleg Alekseyevich CHICHKIN who was born on 25 April 1976 and lived until his arrest in the town of Inza, Ulyanovsk Region. He is now serving his sentence in a correctional colony in the Ulyanovsk Region.

On 19 March 2008 the Inza District Court of the Ulyanovsk Region found the applicant guilty of battery and manslaughter and sentenced him to eleven years and two months of imprisonment. It appears that the applicant was represented by legal aid counsel during the pre-trial investigation and at the trial.

On 7 May 2008 the Ulyanovsk Regional Court upheld the judgment on appeal. The applicant was not granted legal assistance for the appeal stage and was not brought to the appeal hearing, while both the prosecutor and the victim attended and made oral submissions.

2. Application no 18524/09 lodged on 5 March 2009 by Sergey Maratovich RODIN who was born on 18 June 1968 and lived until his arrest in the town of Karshi, Uzbekistan. He is serving his sentence in the correctional colony in the town of Chelyabinsk, Chelyabinsk Region.

On 9 December 2008 the Sovetskiy District Court of Chelyabinsk convicted the applicant of aggravated robbery and sentenced him to six years' imprisonment. The applicant was represented by legal aid counsel at the trial.

The conviction was upheld on appeal by the Chelyabinsk Regional Court on 10 March 2009. The applicant was not brought to the hearing and was not assisted by legal aid counsel. The prosecutor attended and made oral submissions.

3. Application no. 20343/09 lodged on 2 February 2009 by Oleg Yevgenyevich SIDELNIKOV who was born on 28 September 1968 and lived until his arrest in the village of Zarya, Moscow Region.

On 1 July 2008 the Zheleznodorozhniy District Court of the Moscow Region found the applicant guilty of aggravated rape and sexual assault and sentenced him to ten years and six months' imprisonment. A legal aid lawyer assisted the applicant at the trial. The applicant lodged an appeal. The conviction became final on 26 August 2008 when the Moscow Regional Court, in the prosecutor's presence, upheld it on appeal. The applicant was neither present at the appeal hearing nor afforded legal assistance.

4. Application no 31466/09 lodged on 7 May 2009 by Nikolay Dmitriyevich ZAKHODYAKIN who was born on 7 April 1951 and lives in the town of Vuktyl, the Komi Republic.

Criminal proceedings were instituted against the applicant on suspicion of misappropriation of funds by way of an abuse of a municipal office. At some point in the proceedings the charges were amended and the applicant was accused of abuse of office.

On 26 June 2007 the Vuktyl Town Court found the applicant guilty of abuse of office and sentenced him to a year of imprisonment. However, it relieved the applicant of serving the sentence given the expiration of the limitation period. The applicant retained a lawyer to represent him throughout the proceedings. On 24 August 2007 the Supreme Court of the Komi Republic, in the absence of the applicant and his lawyer, upheld the conviction on appeal.

Following the applicant's complaint, on 8 October 2008 the Presidium of the Supreme Court of the Komi Republic, by way of a supervisory review, quashed the judgment of 24 August 2007. The Presidium noted that the appeal court had examined the case in the absence of the applicant who had not been duly notified of the hearing. The case was sent to the appeal court for re-examination.

On 7 November 2008 the Supreme Court of the Komi Republic, in the presence of a prosecutor, upheld the judgment of 26 June 2007. The applicant and his lawyer were again absent from the hearing.

5. Application no 37609/09 lodged on 15 June 2009 by Yevgeniy Nikolayevich SHTYREV, who lives in the town of Vyksa, Nizhniy Novgorod Region.

On 15 October 2008 the Vyksa Town Court found the applicant guilty of an attempted theft by way of a fraudulent use of office and sentenced him to six months' imprisonment. The applicant was represented by counsel.

Both the applicant and his counsel appealed.

On 16 December 2008 the Nizhniy Novgorod Regional Court, in the absence of the applicant and his lawyer, upheld the conviction. The prosecutor attended the hearing and was heard by the Regional Court.

6. Application no 38094/09 lodged on 26 March 2009 by Sabyrbay Bagibekovich ESENOV who was born on 16 April 1979 and serves his sentence in a correctional colony in the Tver Region.

On 15 January 2009 the Koptevskiy District Court of Moscow found the applicant and his co-defendant guilty of a large-scale drug trafficking and sentenced the former to eight years and the latter to nine years of imprisonment. The applicant was represented by legal aid counsel at the trial. Given that the applicant spoke Russian poorly, he was also provided with assistance of an interpreter.

The applicant lodged an appeal with assistance of his Russian inmates who had helped him to translate the appeal statement.

On 25 March 2009 the Moscow City Court, acting on appeal, upheld the judgment of 15 January 2009. The applicant who did not have a representative at that stage of the proceedings was not brought to a hearing. The prosecutor and the lawyer of the applicant's co-defendant attended and made oral submissions. The applicant argued that the position of his co-defendant had run contrary to his own interests.

7. Application no 58626/09 lodged on 30 July 2009 by Yuriy Nikolayevich AFANASYEV who was born on 1 January 1971 and lived until his arrest in the village of Lukino, Moscow Region. He is serving his sentence in the correctional colony in the town of Murmansk, Murmansk Region.

On 1 April 2009 the Vidnoye Town Court of the Moscow Region found the applicant guilty of murder, aggravated robbery, car hijacking and unlawful possession of firearms and sentenced him to fourteen years' imprisonment. The applicant was represented by a lawyer of his choice in the course of the pre-trial investigation and at the trial.

On 4 June 2009 the Moscow Regional Court upheld the judgment. While the prosecutor, the applicant's lawyer, the victim and her lawyer attended the hearing, the applicant's presence was not ensured.

8. Application no 65993/10 lodged on 28 October 2010 by Nikolay Yuryevich VAKHTEROV who was born on 15 August 1987 and lived until his arrest in the village of Vadino, Smolensk Region. He is represented before the Court by Ms O. Preobrazhenskaya.

On 29 April 2010 the Desnogorsk Town Court found the applicant guilty of manslaughter and sentenced him to seven years' imprisonment. A retained lawyer represented the applicant before the trial court.

On 1 July 2010 the Smolensk Regional Court upheld the judgment on appeal, in the presence of a prosecutor and the applicant's lawyer. The applicant was not brought to the hearing.

9. Application no 64633/11 lodged on 10 October 2011 by Valeriy Yakovlevich MILOVANOVA who was born on 25 April 1961 and lived until his arrest in the town of Volgograd, Volgograd Region. He is serving his sentence in the correctional colony in Volgograd.

On 24 January 2011 the Olkhovskiy District Court of the Volgograd Region found the applicant guilty of murder and sentenced him to seven years' imprisonment.

On 12 April 2011 the Volgograd Regional Court upheld the judgment on appeal. Both the prosecutor and the applicant's lawyer attended. However, the Regional Court dismissed the applicant's leave to appear given that he had missed the ten-day time-limit for lodging it.

COMPLAINTS

The applicants complained under Article 6 of the Convention that they had not been afforded an opportunity to attend the appeal hearing. Some of them also raised a complaint about a lack of legal assistance on appeal or the authorities' failure to call counsel of their choice to the appeal hearing.

COMMON QUESTIONS

1. Given that the applicant was not brought to the appeal hearing in the criminal case against him while the prosecutor attended and made oral submissions, was the applicant able to defend himself, as required by Article 6 §§ 1 and 3 (c) of the Convention (see *Metelitsa v. Russia*, no. 33132/02, §§ 30-35, 22 June 2006)?

2. The Government are asked to outline, in detail, the procedure to follow if a defendant wishes to lodge an appeal against the conviction and to appear before an appeal court. In particular, with a reference to specific legal provisions, they are requested to comment on the following aspects:

- (a) Should a defendant lodge a written leave to attend ?
- (b) If so, to which court should a leave be lodged?

- (c) What is the time-limit for lodging a leave to appear?
- (d) Do courts exercise discretion in accepting the leave to attend?
- (e) Is there a procedural obligation for a prosecutor to attend an appeal hearing? If not, does a prosecutor have to lodge a leave to attend?

CASE SPECIFIC QUESTIONS

Applications nos. 4874/09, 18524/09, 20343/09, 38094/09

Did the interests of justice require that the applicant be provided with free legal representation at the appeal hearing in the criminal proceedings against him (see *Shilbergs v. Russia*, no. 20075/03, 17 December 2009)? In the affirmative, was the fact that the applicant was not provided with legal aid counsel compatible with Article 6 §§ 1 and 3 (c) of the Convention?

Application nos. 31466/09 and 37609/09

Having regard to the fact that the applicant's lawyer was not present at the appeal hearing, 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

Application no. 31466/09

Was the length of the criminal proceedings in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth
1	4874/09	05/11/2008	Oleg Alekseyevich CHICHKIN 25/04/1976
2	18524/09	05/03/2009	Sergey Maratovich RODIN 18/06/1968
3	20343/09	02/02/2009	Oleg Yevgenyevich SIDELNIKOV 28/09/1968
4	31466/09	07/05/2009	Nikolay Dmitriyevich ZAKHODYAKIN 07/04/1951
5	37609/09	15/06/2009	Yevgeniy Nikolayevich SHTYREV
6	38094/09	26/03/2009	Sabyrbay Bagibekovich ESENOV 16/04/1979
7	58626/09	30/07/2009	Yuriy Nikolayevich AFANASYEV 01/01/1971
8	65993/10	28/10/2010	Nikolay Yuryevich VAKHTEROV 15/08/1987
9	64633/11	10/10/2011	Valeriy Yakovlevich MILOVANOV 25/04/1961