



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

FIRST SECTION

Application no. 16887/07
Aleksey Olegovich TIMOFEYEV
against Russia
lodged on 21 March 2007

STATEMENT OF FACTS

The applicant, Mr Aleksey Olegovich Timofeyev, is a Russian national, who was born in 1974 and lives in Moscow.

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

The applicant stood accused of unlawful trafficking in firearms and aggravated murder. On 28 March 2007 the trial by a jury opened in the Moscow City Court. The clerk reported that the victims Ms Sh. and Ms Ch. did not appear for unknown reasons.

On 10 April 2007 the jury returned a guilty verdict. The twelve jurors held the applicant responsible for the murder by ten votes to two, and for unlawful possession of firearms by nine votes to three.

By judgment of 13 April 2007, the Moscow City Court sentenced the applicant to eighteen years' imprisonment in a high-security correctional colony.

On 18 April 2007 the applicant filed a statement of appeal, in which he mostly challenged the assessment of evidence by the trial court. On 28 April 2007 he filed a supplementary statement of appeal "in connection with newly discovered circumstances". He wrote that he had found out that the presiding judge had entered on several occasions the room where the jurors deliberated and incited them to declare him guilty. The applicant asked the court of appeals to take evidence from the jurors and to quash the conviction.

On 21 May and 31 August 2007 the applicant's representative obtained statements from one juror certified by a notary public. The juror, Mr N.,

stated that during the trial the presiding judge Sht. had often visited the deliberations room, that he had spoken of the applicant's guilt as if it had been already established and that he had given them instructions on how to fill out the questionnaire.

The applicant brought the situation to the attention of the President of the Moscow City Court and the President of the Supreme Court.

On 5 June 2007 the Supreme Court of the Russian Federation upheld the conviction on appeal. It rejected the applicant's complaint about the presiding judge's interference with the jury deliberations in the following terms:

"It follows from the trial record that the defence did not lodge any complaints about the actions by the trial judge or about any breach of confidentiality of jury deliberations.

The convict's argument that those breaches only came to light after the closure of the trial is not a ground for quashing the conviction.

The additional documents submitted by the defence – the statement by one of the jurors certified by a notary public – may only give rise to an application to law-enforcement authorities which would have to decide on the institution of criminal proceedings.

Moreover, the jurors rendered the verdict by a majority vote rather than unanimously ...

Only admissible evidence was examined in the trial ... The defence did not make any objection to the reading-out of the statement by the witness Sh. who did not appear in court on account of her treatment. Neither the convict nor his counsel doubted the authenticity of the medical certificate submitted by Ms Sh.'s counsel and joined to the case-file."

By letter of 16 July 2007, the Moscow city prosecutor's office rejected the applicant's complaint about the actions by the presiding judge, Sht., by reference to the Supreme Court's findings in the judgment of 5 June 2007.

On 31 August 2007 another juror, Mr R., gave a sworn statement before a notary public, in which he confirmed that the presiding judge Sht. had entered the deliberations room on many occasions and stated that he had had no doubts as to the applicant's guilt.

COMPLAINTS

The applicant complains under Article 6 of the Convention that his trial was not fair because the judge had formed a pre-conceived idea of his guilt, because the main witness, Ms Sh., did not attend the trial or give evidence in open court, and because the presiding judge had influenced the jury.

QUESTIONS TO THE PARTIES

1. Having regard to the presiding judge's statements about the applicant's guilt, as they were reported by jurors N. and R., was the trial court "impartial", as required by Article 6 § 1 of the Convention?

2. Having regard to the reports by jurors N. and R. that the presiding judge encouraged them to find the applicant guilty, could the trial court be considered "independent", as required by Article 6 § 1 of the Convention?

3. Were the allegations made by jurors N. and R. investigated by any domestic authority? If so, the Government are requested to produce the findings of any such inquiry. If the allegation of lack of independence or impartiality of the trial court has been proven, was it a ground for setting aside the conviction?

4. Was there a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the trial court's failure to ensure the attendance and examination of witness Ms Sh.?