



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

FIRST SECTION

Application no. 36040/07
Leonid Alekseyevich IVANNIKOV
against Russia
lodged on 25 July 2007

STATEMENT OF FACTS

The applicant, Mr Leonid Alekseyevich Ivannikov, is a Russian national, who was born in 1985 and is serving a prison sentence in the Tula Region. He is represented before the Court by Mr R. Karpinskiy, a lawyer practising in Moscow.

The circumstances of the case

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

Incident of 28 October 2005

In the late evening of 28 October 2005 the applicant paid a visit to his friend Ch. who worked as a guard at a parking lot. On 29 October 2005 at 3 a.m. Ch., while making a round of the parking lot, discovered N. who was severely beaten up and was lying on the ground. Ch. called the police and the ambulance. The ambulance doctor K., when arrived, pronounced N. dead.

On 2 November 2005 the prosecutor's office opened an investigation into N.'s death. On several occasions it was suspended due to the investigator's failure to identify the perpetrator. Both the applicant and Ch. were questioned as witnesses.

On 29 June 2006 the investigator questioned S.N., granting him anonymity. S.N. submitted that Ch. had told him that it had been the applicant who had beaten up N.

On 25 July 2006 the prosecutor questioned Ch. granting him anonymity. According to Ch., on 29 October 2005 N. showed up at the guard's shack. He wanted to take a shortcut through the parking lot. Ch. refused to open the gate. The applicant swore at N. saying that he would show N. the way

out and would beat him up. The applicant left together with N. Then he returned and told Ch. that he had beaten N. on the stairs and that N. had fallen down. According to the applicant, he had overdone with the beatings. Ch. went to look at N. who was still alive. It took Ch. some time to call the ambulance. The applicant asked him to keep the incident secret.

On the same day the applicant was arrested on suspicion of manslaughter. He remained in custody pending investigation.

On 31 August 2006 the Proletarskiy District Court of Tula opened the trial. The trial judge questioned the applicant's mother S. who submitted that Ch. had told her that policemen had threatened him to make him testify against the applicant. Ch.'s anonymity was lifted and he also testified in court. He confirmed that he had falsely accused the applicant due to the pressure put on him by policemen.

On 11 September 2006 the trial judge questioned anonymous witness S.N. in the presence of the trial secretary in a separate room. Then the judge and the secretary returned to the courtroom where the judge read out S.N.'s testimony. S.N. reiterated the information he had earlier communicated to the investigator. The applicant and his lawyer were allowed to put questions to the witness through the trial secretary.

On 29 September 2006 the court heard I., a friend of the applicant and Ch. She submitted that she had been in the guard's shack with Ch. on 28 October 2005. When N. showed up, the applicant was not there yet.

The trial judge also heard L. and N., the applicant's relatives, and D., Ch.'s mother, who confirmed S.'s testimony.

The other witnesses who testified during the trial were (1) R., Sv. and Z., who had seen N. on 28 October 2005 and confirmed that he had been in an inebriated state on that day, (2) K., the ambulance doctor who had pronounced N. dead and (3) police officer Yu., who had questioned Ch. in the course of investigation. The court also reviewed the crime scene investigation report and the forensic medical report which indicated that N.'s death resulted from a cranio-cerebral injury.

On 31 January 2007 the District Court found the applicant guilty of manslaughter and sentenced him to six years' imprisonment. The court based its findings on Ch.'s testimony given by him as an anonymous witness in the course of the investigation. As regards Ch.'s testimony during the trial, the court considered it unreliable, in view of Ch.'s friendship with the applicant. The court took also into account the fact that the inquiry conducted by the prosecutor's office in this connection found no case to answer against the policemen who had allegedly put pressure on Ch. The court did not consider D., I., L., N. and S. as credible witnesses due to them being the applicant's relatives or friends.

On 30 May 2007 the Tula Regional Court upheld the applicant's conviction on appeal.

COMPLAINTS

In the application form of 25 July 2007, the applicant complains under Article 6 § 1 and of the Convention that his conviction was based on the

circumstantial evidence, in particular on the testimonies of hearsay witnesses. He further complains under Article 6 § 3 (d) he was denied the opportunity to examine an anonymous witness S.N. against him, whose testimony was the decisive evidence in respect of his conviction.

In the application form of 4 December 2009, the applicant complains under Article 6 §§ 1 and 3 (d) of the Convention that his conviction was solely and decisively based on the statements made by anonymous witnesses; that the trial court failed to justify its decision to maintain S.N.'s anonymity and to question him in a separate room in the absence of a sound link; that the domestic courts ignored exculpatory evidence in his case; that investigator B. and prosecutor Zh. who were in charge of his case were not impartial; and that the criminal proceedings against his mother were unlawful.

QUESTIONS TO THE PARTIES

As regards the use by the trial court of the statements made by the anonymous witness S. Nikulin¹, was there a breach of the applicant's right to a fair trial provided for by Article 6 § 1 read with Article 6 § 3 (d) of the Convention? In particular, (1) was it necessary to admit the said witness's statements, (2) were those statements the sole or decisive basis for the applicant's conviction, and (3) were there sufficient counterbalancing factors including strong procedural safeguards to ensure that the trial, judged as a whole, was fair within the meaning of Article 6 §§ 1 and 3(d) (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 152, ECHR 2011)?

¹ Fake name of the witness