



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

FIRST SECTION

Application no. 29258/06
Vladimir Aleksandrovich TRIFONOV against Russia
and 11 other applications
(see list appended)

STATEMENT OF FACTS

All applicants, save for Mr Khimiy Roman Vasilyevich (application no. 4100/08) and Mr Gabadze Giorgi Leriyeovich (application no. 30762/09) are Russian nationals. Mr Khimiy is a national of Ukraine. Mr Gabadze is a national of Georgia.

The circumstances of the cases

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

1. Application no 29258/06 lodged on 25 May 2006 by Vladimir Aleksandrovich TRIFONOV who was born on 28 September 1953 and lived before his arrest in the town of Perm. He is serving his sentence in the correctional colony in the town of Pechora, Komi Republic.

On 5 September 2005 the Perm Regional Court found the applicant guilty of having organised several counts of aggravated murder and fraud and sentenced him to twenty-five years' imprisonment. The judgment became final on 27 February 2006 when the Supreme Court of the Russian Federation upheld it on appeal. Neither the applicant nor his lawyer attended the appeal hearing.

The applicant's numerous attempts to have the final judgments reviewed given, *inter alia*, a violation of his right to defence in the appeal hearing, were futile until on 21 July 2010 the Presidium of the Supreme Court of the Russian Federation, having noted the absence of the applicant's lawyer in

the appeal hearing on 27 February 2006, quashed the appeal judgment of 27 February 2006 and authorised the new hearing in the case.

On 14 October 2010 the Supreme Court held the appeal hearing and, having quashed the part of the judgment of 5 September 2005 related to the civil claims of the victims' relatives, upheld the conviction with a slight amendment. Despite the fact that the appeal judgment indicated that the Supreme Court "heard statements by [the applicant] and [his] lawyer V.", it appears from a telegram sent from the Supreme Court to the applicant's colony, as well as from a letter of the Perm Regional Prosecutor in response to the applicant's complaints, the applicant had been informed of the hearing but had not been transported to it. The prosecutor attended the appeal hearing and made submissions.

The applicant lodged a supervisory-review complaint with the Presidium of the Supreme Court, having argued that he once again had not been afforded an effective opportunity to defend his interests before the appeal court. He also argued that he had never met lawyer V. and had never communicated with him by other means.

On 25 November 2010 the Presidium refused to institute the supervisory-review proceedings, having noted, in two lines, that there was no evidence that the applicant's defence rights had been violated on appeal.

2. Application no 25433/07 lodged on 2 April 2007 by Emil Ivanovich LYSENKO who was born on 21 December 1984 and lived until his arrest in the village of Kuleshovka, Rostov Region.

On 12 September 2006 the Azov Town Court found the applicant guilty of several counts of attempted drug trafficking and sentenced him to six years of imprisonment. The judgment was upheld on appeal on 21 November 2006 by the Rostov Regional Court, with two applicant's lawyers and a prosecutor having attended the appeal hearing. The Regional Court rejected the lawyers' arguments that the applicant had never sold any drugs and that the sale had been conducted by another person or had been forged by the police. The applicant, who had sought leave to appear before the appeal court, was not brought to the appeal hearing.

On 28 June 2007 the Presidium of the Rostov Regional Court, by way of a supervisory review, amended the judgments of 12 September and 21 November 2006, having afforded a more favourable legal characterisation to the criminal acts of which he had been found guilty, and decreased his sentence to four years and six months of imprisonment. While the prosecutor attended the supervisory-review hearing and made oral submissions, the applicant, as well as his lawyers, was absent.

3. Application no 37061/07 lodged on 19 July 2007 by Yevgeniy Maratovich GAYNIYATOV who was born on 26 January 1978 and lived until his arrest in the town of Izhevsk, Udmurtiya Republic. He is serving his sentence in a correctional colony in the Udmurtiya Republic.

On 19 October 2006 the Oktyabrskiy District Court of Izhevsk found the applicant guilty of aggravated theft and sentenced him to six years of imprisonment. Given that the applicant had committed the offence while being on parole, the total period of the sentence was added to seven years and six months.

The applicant lodged an appeal statement. Some time later he also sought leave to appear before the appeal court.

On 18 January 2007 the applicant received a letter from a judge of the Oktyabrskiy District Court, informing him that his request for presence had been dismissed given that he should have included it in his appeal statement within ten days after the trial court had issued the judgment.

On 25 January 2007 the Supreme Court of the Udmurtiya Republic, in the absence of the applicant or his lawyer, upheld the judgment on appeal. The prosecutor made oral submissions at the hearing.

4. Application no 4100/08 lodged on 22 October 2007 by Roman Vasilyevich KHIMIY who was born on 5 June 1974 and lived until his arrest in the town of Velikiye Luki, Pskov Region. He is serving his sentence in a correctional colony in the Pskov Region.

On 22 January 2007 the Pskov Regional Court found the applicant guilty of unlawful possession of firearms and aggravated murder committed within a criminal group. The applicant was sentenced to fourteen years and six months of imprisonment.

In February 2007 the applicant lodged an appeal statement, having also sought leave to appear.

On 7 May 2007 the Supreme Court of the Russian Federation upheld the judgment on appeal. The applicant's participation in the hearing was ensured by way of videoconference. He was not represented by a lawyer.

5. Application no 23906/09 lodged on 24 March 2009 by Yevgeniy Leonidovich ZHUK who was born on 13 August 1989 and lived until his arrest in the village of Dubentsovskaya, Rostov Region. He is serving his sentence in a correctional colony in the Rostov Region

On 9 September 2008 the Rostov Regional Court, by jury verdict, found the applicant guilty of aggravated robbery, several counts of aggravated murder and an attempted murder. The court sentenced the applicant to nine years of imprisonment.

On 15 January 2009 the Supreme Court of the Russian Federation, having heard a number of the applicant's co-defendants and the prosecutor, upheld the jury verdict. Neither the applicant nor his lawyer was present at the hearing.

6. Application no 30762/09 lodged on 6 May 2009 by Giorgi Leriyeovich GABADZE who was born on 7 October 1961 and lived before his arrest in

the town of Shakhty, Rostov Region. He is serving his sentence in a correctional colony in the Belgorod Region.

On 21 August 2007 the Zheleznodorozhniy District Court of Rostov-on-Don found the applicant guilty of aggravated theft and sentenced him to two years and six months of imprisonment. The judgment was not appealed against and became final.

On 18 August 2008 the Aksakayskiy District Court convicted the applicant of additional twenty-five counts of aggravated fraud, having sentenced him to nine years of imprisonment. The judgment was upheld on appeal by the Rostov Regional Court on 12 November 2008. The prosecutor and the applicant's lawyer attended. The applicant was absent from the hearing.

7. Application no 53048/10 lodged on 6 July 2010 by Igor Viktorovich ISAYKIN who lived until his arrest in the town of Novokuznetsk, Kemerovo Region. He is serving his sentence in the correctional colony in the town of Belovo, Kemerovo Region.

Following the applicant's arrest on suspicion of drug trafficking, on 14 November 2008 he was placed in temporary detention facility no. 70/1 in Tomsk. He remained in that facility until 20 April 2010. The applicant provides the following description of the conditions of his detention. He was detained in cells nos. 91, 1, 7, 55, 4, 56, 51. Each cell measured approximately twenty metres and housed, for the major part of his stay, between 10 and 14 inmates. In the majority of the cells the toilet was merely a hole in the floor. A lavatory pan was installed in three cells, in the corner, and was separated from the living area by a 1.5-metre partition. The applicant was afforded an hour-long walk daily in the recreation yard.

On 30 December 2009 the Leninskiy District Court of Tomsk found the applicant guilty of attempted drug trafficking and sentenced him to nine years and six months.

The applicant's lawyer appealed, having asked the Regional Court to ensure the applicant's presence at the appeal hearing.

The Tomsk Regional Court upheld the conviction on 17 May 2010, having heard a prosecutor and the applicant's lawyer. The applicant was not transported to the hearing.

8. Application no 45047/11 lodged on 15 June 2011 by Irina Alekseyevna LYSYAKOVA who was born on 20 February 1951 and lives in Astrakhan.

On 24 February 2010 the Justice of the Peace of 6th Court Circuit of the Sovetskiy District in Astrakhan found the applicant guilty of murder threats, assault and battery. The applicant was sentenced to a conditional sentence of a year and six months.

The Appellate Instance of the Sovetskiy District Court of Astrakhan upheld the judgment.

The applicant and her lawyer appealed. They were informed that the appeal hearing was scheduled for 9.00 a.m. for 13 January 2011.

Both the applicant and her lawyer arrived to the courthouse by 9.00 a.m. on 13 January 2011. However, having receiving no invitation from the court registrar and having waited until 10.00 a.m., both the applicant and her lawyer left the courthouse.

As the applicant learned later, the hearing took place at 10.00 a.m. on 13 January 2011 when the Astrakhan Regional Court, having examined the applicant's and her lawyer's statements of appeal and having heard the prosecutor, upheld the applicant's conviction. The applicant attached a copy of the screenshot from the Astrakhan Regional Court's website in support of her claim that the appeal hearing had not taken place as announced. As follows from the Regional Court's judgment, legal aid counsel, a Mr M., was appointed to represent the applicant's interests at the appeal hearing.

9. Application no 45498/11 lodged on 13 June 2011 by Sergey Viktorovich SKLYAR who was born on 19 June 1975 and lived until his arrest in Novosibirsk. He is now serving his sentence in a correctional colony in Novosibirsk.

On 12 November 2010 the Kalininskiy District Court found the applicant guilty of several counts of aggravated theft and robbery and sentenced him to nine years of imprisonment.

Having heard the applicant and the prosecutor, on 24 January 2011 the Novosibirsk Regional Court upheld the judgment. The applicant was not provided with assistance of a lawyer on appeal.

After the applicant's conviction became final, he was sent to serve his sentence in correctional colony no. 8 in Novosibirsk where he has remained ever since. He submitted that the conditions are appalling. He stressed that he was placed in a dormitory which houses a hundred and twenty inmates and was extremely overcrowded. Healthy inmates are detained together with those suffering from infectious diseases, including tuberculosis. A hundred and twenty inmates share a lavatory room with merely three lavatory pans. Inmates do not get any privacy, as the colony is severely overcrowded. Irrespective of the weather conditions, inmates are taken outside for the daily check-ups. The colony administration seized detainees' warm clothes. Sanitary conditions are extremely poor. Bathing facilities are inadequate.

10. Application no 70306/11 lodged on 5 October 2011 by Vladimir Ivanovich KAYZER who was born on 19 November 1951 and lived until his arrest in the village of Staroshcherbinovskaya, Krasnodar Region. He is serving his sentence in the correctional colony in the town of Klinty, Bryansk Region.

On 9 March 2011 the Shcherbinovskiy District Court of Krasnodar convicted the applicant of several counts of aggravated fraud committed

with an organised criminal group. The applicant was sentenced to seven years of imprisonment and a fine.

Both the applicant and his lawyer appealed.

On 18 May 2011 the Krasnodar Regional Court, having examined the applicant's lawyer's appeal statement and having heard the prosecutor, upheld the conviction. Neither the applicant nor his lawyer was present at the hearing. The applicant also submitted that the Regional Court had failed to examine his appeal statement.

11. Application no 40844/12 lodged on 23 April 2012 by Igor Gennadyevich PONIKAROV who was born on 25 January 1966 and lived until his arrest in the village of Krasnaya Niva, Kurgan Region. He is serving his sentence in the correctional colony in the village of Sorda, Kurgan Region.

On 9 December 2011 the Podolsk Town Court found the applicant guilty of having committed murder in a drunken rage and sentenced him to nine years and eight months of imprisonment. The judgment became final on 31 January 2012 when the Moscow Regional Court, in the absence of the applicant, upheld it on appeal. The applicant's lawyer and the prosecutor attended and made oral submissions.

12. Application no 59413/12 lodged on 1 December 2011 by Ruslan Ramilovich YAKUPOV who was born on 26 December 1974 and is serving his sentence in a correctional colony in the Republic of Bashkortostan.

On 31 December 2010 the Kumertau Town Court found the applicant guilty of manslaughter and sentenced him to nine years of imprisonment.

The applicant and his lawyer appealed. The applicant also sought leave to appear before the appeal court.

On 2 June 2011 the Supreme Court of the Bashkortostan Republic, in the applicant's absence, upheld the conviction but decreased the sentence by two months. The prosecutor and the applicant's lawyer attended.

COMPLAINTS

The applicants, save for Mr Khimiy and Mr Sklyar (applicants nos. 4100/08 and 45498/11), 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. Two applicants complained about the conditions of their detention either in the temporary detention facility or in the correctional colony. An applicant also complained about lack of representation and inability to attend the supervisory-review hearing.

COMMON QUESTIONS, SAVE FOR APPLICATIONS
NOS. 4100/08 AND 45498/11

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. 37061/07, 4100/08 and 45498/11

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?

Applications nos. 23906/09, 45047/11 and 70306/11

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. 29258/06

Have the applicant been afforded an opportunity to consult lawyer V. prior to the appeal hearing? In the affirmative, the Government are requested to provide the Court with extracts from prison logs recording visits of lawyer V. to the applicant in the correctional colony. If the applicant was not provided with an opportunity to consult lawyer V. before the appeal hearing, was that fact compatible with Article 6 §§ 1 and 3 (c) of the Convention?

Application no. 25433/07

Have the applicant and his lawyers been provided with an opportunity, on the equal footing as the prosecutor, to attend the supervisory-review hearing on 28 June 2007, as required by Article 6 §§ 1 and 3 (c) of the Convention?

Application no. 53048/10

Has there been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in facility no. 70/1 in Tomsk? The Government are requested to produce documentary evidence, including population registers, floor plans, day planning, colour photographs of the sanitary facilities, etc., as well as reports from supervising prosecutors concerning the conditions of detention in that facility.

Application no. 45498/11

1. The Government are requested to comment on all aspects of the conditions of detention which the applicant complained of in respect of correctional colony. In particular,

(a) Was there a sufficient number of sleeping places in the dormitory?

(b) Was the dormitory adequately ventilated?

(c) Was there an adequate supply of drinking water?

(d) Was the number of water taps and toilet pans sufficient to cater adequately to the sanitary needs of the detainees?

(e) Were the sanitary facilities in a good state of repair?

The Government are requested to produce documentary evidence, including population registers, floor plans, day planning, colour photographs of the sanitary facilities, etc., as well as reports from supervising prosecutors concerning the conditions of detention in the colony.

1.1. Having regard to the above questions, were the conditions of the applicant's detention in the colony compatible with Article 3 of the Convention?

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth
1.	29258/06	25/05/2006	Vladimir Aleksandrovich TRIFONOV 28/09/1953
2.	25433/07	02/04/2007	Emil Ivanovich LYSENKO 21/12/1984
3.	37061/07	19/07/2007	Yevgeniy Maratovich GAYNIYATOV 26/01/1978
4.	4100/08	22/10/2007	Roman Vasilyevich KHIMIY 05/06/1974
5.	23906/09	24/03/2009	Yevgeniy Leonidovich ZHUK 13/08/1989
6.	30762/09	06/05/2009	Giorgi Leriyeovich GABADZE 07/10/1961
7.	53048/10	06/07/2010	Igor Viktorovich ISAYKIN
8.	45047/11	15/06/2011	Irina Alekseyevna LYSYAKOVA 20/02/1951
9.	45498/11	13/06/2011	Sergey Viktorovich SKLYAR 19/06/1975
10.	70306/11	05/10/2011	Vladimir Ivanovich KAYZER 19/11/1951
11.	40844/12	23/04/2012	Igor Gennadyevich PONIKAROV 25/01/1966
12.	59413/12	01/12/2011	Ruslan Ramilovich YAKUPOV 26/12/1974