



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

FIRST SECTION

Application no. 5217/06
Dmitriy Vladimirovich MEDVEDEV against Russia
lodged on 15 December 2005

STATEMENT OF FACTS

The applicant, Mr Dmitriy Vladimirovich Medvedev, is a Russian national, who was born in 1968 and is serving a prison term in the Astrakhan Region.

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

In July 2004 the applicant and his co-accused, Ms I., were charged with murder. In November 2004 the applicant was given a copy of the bill of indictment. Also, in November 2004 an investigator refused to provide the applicant free of charge with photocopies of the case file material. In the same month, the applicant was transferred from Astrakhan remand centre to a prison in relation to his earlier robbery conviction.

On 8 December 2004 the applicant was taken back to Astrakhan remand centre to stand trial before the Astrakhan Regional Court on the murder charges.

Before and during the trial the applicant was assisted by legal-aid counsel Sh. According to the applicant, counsel did not visit him in the detention facility, did not discuss with him the defence strategy and did not lodge any motions at the trial.

The applicant accepted to be tried by a jury and pleaded not guilty at the trial. At the preliminary hearing before a judge on 10 December 2004 counsel stated that the applicant “had committed a particularly serious criminal offence, entailing long prison terms”. Apparently, counsel raised no issue relating to the admissibility of evidence. Nor did he (or the applicant) ask for an adjournment.

A jury panel was formed. The presiding judge dismissed as unsubstantiated the applicant’s challenge against D., who had allegedly

been subject to criminal prosecution and had been victim of a car theft. So, D. was included in the jury panel.

At this stage of the trial, counsel raised no issue relating to the admissibility of evidence and waived his right to an introductory speech.

At one of the hearings counsel stated in the presence of the jurors that the applicant was “a robber and a drunkard” and continued by adding that, despite the above, he was not a murderer. The presiding judge instructed the jury not to take this statement into consideration.

On several occasions, the applicant sought appointment of another counsel. His requests were dismissed by the presiding judge.

The jury was given the reading of a pre-trial confession statement from Ms I., in which she also incriminated the applicant. At the trial Ms I. revoked her confession alleging that it was untrue and was given without access to legal advice.

On 21 February 2005 the applicant and Ms I. were found guilty of murder. As required by Russian law, the presiding judge issued a summary judgment (without reasons and assessment of evidence) and sentenced the applicant to fifteen years’ imprisonment.

On 2 March 2005 the applicant sought appointment of counsel for appeal proceedings before the Supreme Court of Russia. He received no reply. His renewed request before the regional court on 24 March 2005 was also without reply. The applicant compiled a statement of appeal and lodged it before the Supreme Court. He was then taken to Moscow for the appeal hearing before the Supreme Court. On 22 June 2005 the applicant requested appointment of counsel. Apparently, he received no reply.

On 21 July 2005 the appeal court upheld the jury verdict and the sentence. A lawyer was present at the appeal hearing. Apparently, the applicant participated in the hearing by way of a video link from a detention facility. At this hearing the applicant first learnt that his co-defendant had also lodged a statement of appeal.

The applicant sought supervisory review of the criminal case. In January 2006 a Supreme Court judge dismissed his application for supervisory review. On 29 December 2006 the deputy President of the Supreme Court disagreed with the above judge and issued a decision indicating that the case should be submitted to the Presidium of the Supreme Court. In early June 2007 the applicant was provided with a copy of the decision issued by the deputy President.

On 6 June 2007 the Presidium of the Supreme Court quashed the appeal decision of 21 July 2005 and ordered a fresh appeal hearing because the applicant had not been provided with adequate legal assistance in the appeal proceedings in 2005.

Apparently, the applicant was taken to the new appeal hearing before the Supreme Court on 16 August 2007. Counsel was also present in the courtroom. However, it appears that this lawyer lodged no statement of appeal. It also appears that, despite the applicant’s objection, the appeal court examined the case on the basis of the applicant’s own statement of appeal, which he had lodged in 2005 without the benefit of legal advice.

On 16 August 2007 the appeal court upheld the jury verdict and the sentence. The appeal court stated, *inter alia*, that there had been no complaint against counsel Sh. during the examination of the case at first

instance and that this lawyer had acted in line with the applicant's not-guilty plea. The appeal court also stated that the challenge against D. had been rightly dismissed as unsubstantiated. The court also considered that the applicant's argument relating to the allegedly prejudicial attitude of the jury toward him had not been raised at the trial.

COMPLAINTS

1. Referring to Article 6 and 13 of the Convention, as well as Article 2 of Protocol No. 7, the applicant complains that before and during the trial he was significantly limited in his ability to prepare and put forward his defence (access to the case file, transfer to a prison, legal assistance). The applicant alleges that the assistance provided to him by counsel Sh. was manifestly inadequate, *inter alia*, on account of (i) his failure to visit the applicant in the remand centre and to discuss the defence strategy; (ii) counsel's omission to challenge inadmissible evidence, including Ms I.'s incriminating statements; (iii) the remarks made by counsel before the judge and the jurors and (iv) counsel's failure to lodge a statement of appeal against the jury verdict. The applicant also contends that the above disclosed that the criminal proceedings were not truly adversarial and that the jurors were adversely affected by counsel's remark.

2. Furthermore, the applicant complains that since he had no effective legal assistance in the appeal proceedings in 2005 he was unable to prepare his appeal properly, that he was not given a copy of Ms I.'s appeal statement in advance and could not comment on it. In his subsequent submissions, the applicant also argues that he was not afforded a reasonable opportunity to make submissions before the Presidium court. He also complains that the defence rights were restricted in new appeal proceedings, in particular on account of defective legal assistance.

3. Lastly, the applicant complains that there was a violation of Article 6 of the Convention because D. was included in the jury panel; he was convicted on the basis of inadmissible evidence such as I.'s incriminating statements.

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 § 1 of the Convention? In particular, having regard to the applicant's specific allegations (sections 1 and 2 of "Complaints"):

- Was the applicant afforded adequate legal assistance, as well as adequate time and facilities to prepare his defence, as required by Article 6 § 3 (b)-(c) of the Convention, before and during the trial and on appeal in 2005?

- Has the applicant lost his victim status in respect of the alleged deficiencies relating to the 2005 appeal proceedings (see, for comparison, *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 66-71 and 76-84, 2 November 2010, and *Orlov v. Russia*, no. 29652/04, §§ 101-17, 21 June 2011)?

- Was there any violation of the applicant's right to legal assistance in the new appeal proceedings in 2007? In particular, did the lawyer in the 2007 appeal proceedings submit any statement of appeal or motions on behalf of the applicant? If not, taking into account the specificities relating to an appeal against a jury verdict, did such omission amount to a breach of Article 6 §§ 1 and 3 of the Convention?

- Was the principle of equality of arms and adversarial proceedings respected in the present case?