



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

FIRST SECTION

Application no. 43713/06
Aleksandr Pavlovich KORABLEV
against Russia
lodged on 12 July 2006

STATEMENT OF FACTS

The applicant, Mr Aleksandr Pavlovich Korablev, is a Russian national, who was born in 1960. At present the applicant is detained at IK-23, Revda, Murmansk Region, Russia.

A. The circumstances of the case

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

1. The applicant's arrest and pre-trial investigation

At the relevant time the applicant permanently resided in Murmansk. On 27 March 2002 the applicant was detained in the Belgorod Region, by a group of investigators from Murmansk and Belgorod. He submits that immediately after arrest he has been placed into the temporary detention facility of Belgorod and there, within two following days, he produced self-incriminating statements («явка с повинной») about premeditated murder and robbery committed in Murmansk in January 2002, together with another person.

On 2 April 2002 the applicant was placed in pre-trial detention in Murmansk.

In July 2004 and at another unspecified date the applicant confirmed his confessions in writing.

It also appears from the applicant's submissions that at some point during the investigation he asked the prosecutor to exclude the initial confession from the case file, since it had been produced under pressure and while he had suffered from a psychiatric disorder.

It follows from the trial court judgment that between July 2002 and November 2005 the applicant underwent several psychiatric expert examinations. No copies of these documents have been submitted, but, as cited in the judgment (see below), the expert reports found that the applicant had no chronic or temporary psychiatric disorders and that he was fully cognisant of his actions.

2. Trial court and review

On 29 December 2005 the Murmansk Regional Court found the applicant guilty of premeditated murder, robbery and unlawful handling of firearms. The trial court examined evidence pointing to the applicant's ownership of the weapon and ammunition used for the murder, witness statements of his common law wife to whom he had told about the murder on the day of its occurrence, other relevant evidence.

The applicant asked to exclude his confession produced within the first days of detention from the body of evidence, since it had been made without the lawyer's assistance. The trial court then questioned the police officers who had detained the applicant and found that there were no reasons to exclude it since there was no obligation in the national law to be assisted by a lawyer when producing a confession.

The applicant changed his previous statements in the trial court and argued that the murder had been committed by his accomplice, whom he, for personal reasons, had wanted to protect from criminal responsibility. The trial court examined and discarded that possibility. It follows from the documents that the accomplice had absconded and that the criminal proceedings against him were pending as the subject of a separate criminal investigation.

On 19 July 2006 the Supreme Court confirmed the sentence. The applicant was sentenced to 18 years of imprisonment.

B. Relevant domestic law and practice

1. Arrest and suspect's procedural rights

Article 46 of the Code of Criminal Procedure of the RSFSR (CCrP), in force at the relevant time, provided a number of procedural rights from the moment of arrest of a suspect (*задержание подозреваемого*), including the following rights: to be informed of the suspicion against him; to receive a copy of the decision to initiate criminal proceedings against him or a copy of the arrest record; to make a deposition in relation to the suspicion against him or to remain silent; to have legal assistance from the moment indicated in Article 49 § 3 (2) and (3) of the Code; and to have a confidential meeting with counsel before the first interview.

According to Article 49 of the CCrP, counsel had to participate in a criminal case from the initiation of criminal proceedings against an identified person, from the time of the arrest of a suspect in situations described in Articles 91 and 92 of the Code, or when detention of the suspect had been ordered under Article 100 of the Code.

Article 49 also provided that an advocate could be admitted as counsel in a criminal case from the moment when a suspect was apprehended with due regard to Article 91 and 92 of the Code, or when he was remanded in custody under Article 100 of the Code.

It followed from Article 50 of the CCrP that a suspect could retain counsel or have it appointed by the investigating or prosecuting authority. Under Article 51 participation of counsel was mandatory unless the suspect waived his right to legal assistance. It was mandatory in cases concerning an eventual sentence beyond fifteen year's imprisonment. In such a situation counsel should be retained by the suspect or appointed by the investigating or prosecuting authority, following the procedure under Article 49 of the Code.

Article 92 of the CCrP required that after the suspect had been arrested he should be brought (*доставление*) before an investigating authority or a prosecutor. No later than three hours after this an arrest record should be compiled together with a notice that the suspect had been informed of his rights under Article 46 of the Code. The suspect should be interviewed, and before such interviews, he should, if requested, be afforded an opportunity to have a meeting with counsel.

2. Investigation of allegations of criminal offences

Article 144 of the CCrP provided that an investigator or a prosecutor was required to deal with a complaint alleging a criminal offence or a voluntary and spontaneous confession (*«явка с повинной»*). Such procedure led to a decision to institute or not to institute criminal proceedings (Article 145).

When criminal proceedings were instituted, the investigating or prosecuting authority was required to open a preliminary investigation and was empowered to carry out various investigative measures indicated in Article 150-226 of the CCrP, such as search and seizure, telephone tapping, interrogation, confrontation or identification.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention that he had no legal assistance in the first two days after his arrest and that during that period he had produced a self-incriminating statement.

2. The applicant also complained under Articles 2, 3 and 6 § 3 (d) of the Convention about ill-treatment upon arrest and about the trial court's failure to call a witness.

QUESTION TO THE PARTIES

Was there a violation of Article 6 §§ 1 and 3 of the Convention on account of the alleged violations of the applicant's right to legal assistance after his arrest in March 2002 (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008)? In particular:

(a) What was the applicant's status in the criminal proceedings concerning murder and robbery of G. before 27 March 2002? Was there any suspicion against the applicant before that date? In other words, was he sufficiently "affected" by the pending criminal proceedings to engage Article 6 before and on 27 April 2002 (see *Aleksandr Zaichenko v. Russia*, no. 39660/02, §§ 42 and 43, 18 February 2010)?

(b) Did the applicant waive his rights to legal assistance and/ or the privilege against self-incrimination and the right to remain silent in a manner effective for Convention purposes, that in an unequivocal manner and attended by minimum safeguards commensurate to its importance (see *Savaş v. Turkey*, no. 9762/03, §§ 66-67, 8 December 2009; *Nechto v. Russia*, no. 24893/05, § 110, 24 January 2012)?

In particular, when was the applicant first informed of his rights not to incriminate himself and to legal assistance? Was it before or after he made self-incriminating statements? What was the exact scope of these rights at the relevant stage of proceedings? What was the exact wording by which such information was conveyed to the applicant? Noting the cross-references between Articles 46, 49, 91, 92 and 100 of the CCrP in the relevant parts, was such information conveyed in a manner which allowed him to understand the scope and significance of these right? Was any such waiver recorded in the presence of a lawyer or after the applicant had access to legal advice on the question whether or not he should waive his right?

When did the applicant get a council? When did he first communicate with his counsel?

(c) Did the absence or delay of legal assistance in March 2002 entail "irretrievable" damage to the defence, thus leading to a violation of Article 6 of the Convention (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008, and *Mehmet Şerif Öner v. Turkey*, no. 50356/08, §§ 21-23, 13 September 2011)? Did the domestic courts' admission of statements obtained in the absence of a lawyer in March 2002 impair the applicant's right to a fair hearing? Was his conviction based, solely or to a decisive extent, on evidence obtained during time when the applicant had no legal assistance?