



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

FIRST SECTION

Application no. 29532/05
Andrey Aleksandrovich VAKHRUSHEV
against Russia
lodged on 20 July 2005

STATEMENT OF FACTS

The applicant, Mr Andrey Aleksandrovich Vakhrushev, is a Russian national, who was born in 1958 and lives in Shirokovskiy. He is represented before the Court by Mr A.S. Golovin, a lawyer practising in Perm.

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 conviction

On 23 July 2004 the Perm Regional Court, sitting with jury, found the applicant guilty of organizing a murder of his business partner and sentenced him to sixteen years of imprisonment. The court established that the applicant's co-accused, Mr Per. and Mr Z., had carried out his order which led to the death and robbery of the victim. The Supreme Court of the Russian Federation which heard the case on appeal generally upheld and partly amended the judgment by its final decision on 24 January 2005.

It appears that in convicting the applicant and co-accused the jury relied principally on the oral evidence given by Mr Pet., a prison inmate, to whom Mr Per. had disclosed the involvement of various participants including the applicant.

Apparently, at the pre-trial stage Mr Per. had confessed to having accepted an order from the applicant and carried it out subsequently. At the trial he changed his position and only acknowledged his personal involvement in the murder and robbery without implicating the applicant.

As regards Mr Z. throughout the proceedings, he only acknowledged his involvement in the murder and robbery without implicating the applicant.

The jury also relied on the evidence by various witnesses which explained the context of business relations between the applicant and the deceased.

2. Examination of witnesses at the trial court hearing

The identity of Mr Pet. was classified, and he was examined in front of the jury in conditions excluding both visual and verbal contact between him and parties to the proceedings. After that the applicant's lawyer filed a motion to exclude the record of examination of Mr Pet. from the list of evidence since the case file contained no information as to any threat to this witness. The court dismissed this motion as ill-founded.

The applicant's lawyer filed a motion to examine witnesses Mr Zay. and Mr Zav. on behalf of the applicant. He suggested that they would be able to provide information concerning "the motives of the crime" as well as the applicant's whereabouts at the relevant time. The court dismissed this motion as well.

During the examination of three witnesses who confirmed the business relations between the applicant and the victim: Ms B., Ms V. and Mr Ye., the presiding judge dismissed as irrelevant several questions asked by the applicant's lawyer.

3. The applicant's motions at the trial court hearing

After the examination of the applicant's co-defendant, Mr Per., the prosecutor filed a motion to read out the latter's oral evidence given during the pre-trial investigation. In his complaint, the applicant submits that he objected to it. In the minutes of the hearing it is stated that both the applicant and his lawyer left for the presiding judge to decide whether or not to grant the prosecutor's motion.

The applicant submits that after the oral evidence of Mr Per. was read out, he asked Mr Per. why he changed his position in court. According to the applicant, the presiding judge dismissed these questions. According to the minutes of the hearing, which were not contested by the applicant, these questions were not asked at all.

The applicant filed a motion to exclude from the list of evidence three records of identification parade conducted during the pre-trial investigation.

The applicant filed three other motions to examine material contained in the case file: (a) to read out the pre-trial oral evidence of a witness, Mr K. who described the business relations between the applicant and the victim; (b) to read out confrontation records between him and his co-defendant Mr Per., and between his co-defendants Mr Per. and Mr Z.; (c) to examine the video-recording of one of the interrogations of co-defendant Mr Per. during the pre-trial investigation, who allegedly had been beaten before the interrogation. The latter motion was also made separately by co-defendant Mr Per. and supported by the applicant.

These motions were rejected by the court on the ground that the applicant had an opportunity to examine all these persons at the hearing, and there were no contradictions between various pieces of their oral evidence.

4. The motions of the applicant's co-defendant supported by the applicant

Along with filing motions of his own, the applicant submits that he supported several motions filed by his co-defendant Mr Per.

Firstly, Mr Per. asked the court to observe the video-recording of his interrogation during the pre-trial investigation. Allegedly, this recording could demonstrate the bruises on his face, which would explain the difference between various pieces of oral evidence. After the court rejected this motion on the ground various pieces of oral evidence by Mr Per. did not contradict each other, he requested the court to exclude from the list of evidence his record of interrogation given during the pre-trial investigation since the interrogation had taken place during the night-time. The court dismissed this motion as well on the ground that the interrogation in question did not violate the Code of Criminal Procedure.

Secondly, the court dismissed the motion of Mr Per. to read out his record of interrogation that had been made during the pre-trial investigation and videotaped. The court explained that various pieces of oral evidence by Mr Per., given in court and during the pre-trial investigation, did not contradict each other.

5. Questionnaire for the jury

According to the applicant, the presiding judge failed to formulate the questions for the jury correctly.

According to the minutes, the presiding judge invited the parties to correct the questions for the jury and suggest additional questions. Neither the applicant nor his lawyer had any comments on the questionnaire, unlike other parties to the proceedings.

When the jury returned to the courtroom with their verdict the presiding judge read their answers and invited the jury to return to the deliberation room in order to correct the counting mistakes in the results of their vote.

6. Minutes of the court hearing

According to the appeal decision, the applicant did not file objections to the minutes of the trial hearing. In his additional application to the Court the applicant mentions that he could not file them because they were prepared with considerable delay. Nevertheless, the applicant provides no evidence of having raised this issue before the domestic authorities.

B. Relevant domestic law

Under Article 278 § 5 of the Code of Criminal Procedure, “should it be necessary to secure the safety of a witness ... the court can, without disclosing true information concerning his identity, organize his interrogation in conditions excluding the visual observance of the witness by other participants of proceedings, which shall be directed by a court ruling or a court order”.

COMPLAINTS

1. The applicant complained under Article 6 § 3 (d) that he was not able to examine an anonymous witness Mr Pet. who was interrogated by a presiding judge before the jury, in the absence of the applicant and his lawyer.

2. Referring to Article 6 § 1, the applicant complained that the trial court had rejected his objection to the prosecutor's motion to read out co-defendant Mr Per.'s statement given during the pre-trial investigation. After that the court dismissed the applicant's questions to Mr Per. related to his statement read out before the court.

3. Relying on Article 6 § 1, the applicant expressed his dissatisfaction with the fact that the trial court rejected his motion to question witnesses Mr Zav. and Zay., and dismissed his questions addressed to witnesses Ms B., Ms V., and Mr Ye.

4. The applicant complained under Article 6 § 1 that the trial court rejected his motion to exclude from the list of evidence three records of identification parade conducted during the pre-trial investigation.

5. Referring to Article 6 § 1, the applicant complained of the fact that the trial court rejected the following motions of his co-defendant Mr Per. that were supported by the applicant: to observe the video-recording of one of the interrogations of Mr Per. allegedly confirming his ill-treatment; to exclude from the list of evidence the record of interrogation of Mr Per. in which the latter confessed; to read out the record of interrogation of Mr Per. that was given during the pre-trial investigation and was videotaped.

6. Relying on Article 6 § 1, the applicant expressed his dissatisfaction with the fact that the trial court rejected his motions: (a) to read out the oral evidence by a witness Mr K. given during the pre-trial investigation; (b) to read out confrontation records between him and his co-defendant Mr Per., and between his co-defendants Mr Per. and Mr Z.; (c) to examine the video-recording of the interrogation of co-defendant Mr Per. given during the pre-trial investigation, who allegedly had been beaten before the interrogation.

7. The applicant also complained under Article 13 that the presiding judge (a) formulated incorrect questions for the jury; (b) after receiving the verdict suggested that the jury should clarify it, whereas he should have clarified the questionnaire; (c) failed to ask for the parties' opinion on the questions for the jury.

QUESTIONS

Did the applicant have a fair hearing, in accordance with Article 6 § 1 of the Convention? Was he able to examine witnesses against him, as required by Article 6 § 3 (d) of the Convention? In particular, was he able to examine an anonymous witness Mr Pet.? Why was Mr Pet.'s identity classified? What were the procedural safeguards against possible abuse connected with this classification? Did these safeguards prove to be effective?