



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

FIRST SECTION

Applications nos. 17854/07 and 17855/07
Ibret Ismetovich BAZAYEV against Russia
and Rovshan Davudovich FETILOV against Russia
lodged on 19 March 2007 and 19 March 2007 respectively

STATEMENT OF FACTS

THE FACTS

The applicant in the first case, Mr Ibret Bazayev, is a Russian national, who was born in 1983 and lived before his arrest in Kapir-Kazmalyar, Dagestan. The applicant in the second case, Mr Rovshan Fetilov, is a Russian national, who was born in 1974 and lived before his arrest in Filya, Dagestan.

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

A. Background information and criminal proceedings against the applicants

1. Events of 19 July 2005

On 19 July 2005 the first and second applicants along with the second applicant's brother Mr M.F. went to café 'Dreams' in Krasnodar, in the Stavropol Region. There they had a fight with the café's employees as a result of which two persons, Mr S.P. and Mr S.G., were injured. The latter received a grave bodily injury – basal skull fracture as a result of a single blow by a bat; the other victim suffered from minor injuries.

2. Criminal proceedings against the applicants

On 19 July 2005 the applicants and Mr M.F. were arrested and charged, inter alia, with causing the grave bodily injury to Mr S.G.

The criminal case against the applicants was examined by the Leninskiy District Court of Krasnodar. During the trial statements of victims Mr Kh.Z. and Mr S.P. as well as statements of the key witnesses against the applicants, Ms I.K. and Ms A.B., were read out in spite of the applicants' direct objections to it. The applicants' requests to provide them with the opportunity to question the victims and the witnesses against them were rejected by the court. No explanation for the absence of the victims and the witnesses was given.

On 14 February 2006 both applicants and Mr M.F. were sentenced to ten years' imprisonment each. The applicants' conviction was based on the statements of both victims and several witnesses, including the direct witnesses Ms I.K. and Ms A.B.

On 24 August 2006 the public prosecutor's office of the Zapadniy district in Krasnodar (the prosecutor's office) requested that the Krasnodar Regional Court overruled the applicants' sentence as it had not been based on the circumstances of the case. The prosecutor's office pointed out that according to the sentence, the bat blow to Mr S.G., as a result of which the base of his skull had been fractured, had been administered by all three accused at once, which was impossible during the fight.

On an unspecified date the applicants appealed against the sentence stating, amongst other things, that the sentence was not based on the circumstances of the case and that they had been denied their right to confront the victims and the witnesses in open court.

On 20 September 2006 the prosecutor's office withdrew their request to the Krasnodar Regional Court without explanations.

On the same date, 20 September 2006, the Krasnodar Regional Court upheld the applicants' sentence. The court left without examination their complaint concerning the violation of their right to confront the victims and the witnesses during the trial.

COMPLAINT

The applicants complain under Article 6 § 1 of the Convention of a violation of their right to fair trial. In particular, they allege, that in violation of Article 6 § 3 (d) they were not able to confront in open court victims and witnesses whose statements served as the basis for their conviction

QUESTION

Given that victims Mr Kh.Z. and Mr S.P. as well as witnesses Ms I.K. and Ms A.B. were absent from the applicants' trial and that their pre-trial written statements were read out instead, did the applicants have an effective opportunity to question the victims and the witnesses for the prosecution, as required by Article 6 §§ 1 and 3 (d) of the Convention?