



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

FIRST SECTION

Application no. 39644/06
Ilya Petrovich NADEZHKIN
against Russia
lodged on 21 July 2006

STATEMENT OF FACTS

The applicant, Ilya Petrovich Nadezhkin, is a Russian national, who was born in 1987 and lives in the Khabarovsk Region, Russia. He is represented before the Court by Mr Nemerovets, a lawyer practising in Khabarovsk.

The circumstances of the case

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

In late hours of 2 December 2004 the applicant was detained at his home and delivered to the Khabarovskiy district department of the interior (the Khabarovskiy ROVD). At that time he was a minor, aged seventeen years and ten months.

It appears that between 6 and 7 a.m. on 3 December 2004 the applicant was questioned as a witness in relation to murder of A.M.

At 11 a.m. on 3 December 2004 the applicant produced a self-incriminating statement, in which he described A.M.'s murder committed jointly by him and A.K. on 2 December 2004. The document started by saying that he had voluntarily turned up at the Khabarovskiy ROVD at that time.

It appears that the applicant's detention prior to 1 p.m. on 3 December 2004 has not been officially recorded, but no complaints have been brought in this respect.

At 1 p.m. on 3 December 2004 the applicant's lawyer and his mother for the first time talked to the applicant.

On 5 August 2005 jury trial of the Khabarovsk Regional Court found the applicant and A.K. guilty of murder. During the trial the applicant raised the issue of his incriminating statement produced without lawyer and in the absence of his legal representative – his mother. During the trial the applicant insisted that the murder had been committed by A.K. and that when obtaining his signature under the statement on 3 December 2004 the

investigator had promised him that he would be allowed to go home after he signed it. The court found this piece of evidence admissible and rejected the applicant's motion to exclude it from the body of evidence examined by the jury. The applicant was sentenced to ten years imprisonment; the term was to be calculated as of 2 December 2004.

The applicant appealed. In his appeal he again stressed that the incriminating statement of 3 December 2004 has been obtained in breach of the applicable criminal procedural rules and should have been excluded from the body of evidence as neither his lawyer nor his legal representative had been present when he had produced it.

On 14 February 2006 the Supreme Court of the Russian Federation confirmed the sentence on appeal. As regards the admissibility of the self-incriminating statement, the Supreme Court recalled that such statements constituted a "voluntary giving of information about a crime committed by the person", and that the legislation had not set up an obligation to produce such statements in the presence of a lawyer or legal representative. In such circumstances, this piece of evidence remained admissible and could be examined in court. The Supreme Court further noted that the accused's objection to examine this evidence has been dismissed by the trial court, since there was a considerable inconsistency between their statements given in the courtroom and those produced during the investigation. Such possibility was given by Article 276 of the Code of Criminal Procedure. At the same time, the Supreme Court noted that the self-incriminating statement such as produced by the applicant should have been viewed as a mitigating element and reduced his sentence to seven years and six months.

COMPLAINT

The applicant complains under Article 6 of the Convention that his right to fair trial has been violated as the trial court and the cassation court refused to exclude from the body of admissible evidence his incriminating statement produced in the absence of his lawyer or legal representative.

QUESTIONS TO THE PARTIES

1. 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 on 2 December 2004 (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008; *Panovits v. Cyprus*, no. 4268/04, §§ 73 and 75, 11 December 2008)? In particular:

(a) What was the applicant's status in the criminal proceedings concerning murder of A.M. between 11 p.m. on 2 December and 11 a.m. on 3 December 2004? Was there any suspicion against the applicant before the latter date? In other words, was he sufficiently "affected" by the pending criminal proceedings to engage Article 6 prior to 11 a.m. on 3 December

2004 (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 is 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)?

2. 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? Was such information conveyed in a manner which allowed him to understand the scope and significance of these rights? 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?

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

(c) Did the absence or delay of legal assistance prior to mid-day 3 December 2004 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 statement produced in the absence of a lawyer 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?