



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

FIRST SECTION

DECISION

Application no. 16384/08
Andrey Aleksandrovich LOZHKIN
against Russia

The European Court of Human Rights (First Section), sitting on 22 October 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, President,
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, judges,

and Søren Nielsen, Section Registrar,

Having regard to the above application lodged on 21 February 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Andrey Aleksandrovich Lozhkin, is a Russian national, who was born in 1988 and lives in the town of Anzhero-Suzhensk (Kemerovo Region).

2. The respondent Government are represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

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

4. The applicant stood trial for murder. He was a minor at the time of the events which gave rise to the accusation. During the trial the applicant was represented by a lawyer of his own choosing and his father as his statutory

representative. On 5 June 2007 the Yashkinskiy District Court of the Kemerovo Region convicted the applicant of murder and sentenced him to three years and six months' imprisonment.

5. On 14 June 2007 the applicant's lawyer as well as his father lodged appeals before the Kemerovo Regional Court. On 15 June 2007 the applicant lodged his own brief of appeal against his conviction. He made a special request to ensure his participation in the appeal hearing.

6. On 19 July the Kemerovo Regional Court granted the applicant's request for his participation in the appeal hearing which was set for 14 August 2007.

7. On 31 July and 1 August 2007 the applicant lodged written requests with the Kemerovo Regional Court to hold the appeal hearing in his absence.

8. On 14 August 2007 the Kemerovo Regional Court held the appeal hearing. The applicant's lawyer did not appear. The public prosecutor was present and made his oral submissions. The Regional Court examined the appeals lodged by the applicant and his lawyer, held that the applicant should serve a prison sentence in a colony with less stringent conditions of detention than that indicated in the judgment, and upheld the remainder of the judgment. The father's appeal was declared inadmissible because his authority to represent the applicant had expired due to the fact that the latter had reached the age of majority during the trial. It appears that the father was present at the hearing but was not allowed to make submissions on the applicant's behalf.

9. On 9 February 2010 the Leninskiy District Court of Kemerovo granted an application for the applicant's release on probation. On 12 February 2010 the applicant was released.

10. On 6 October 2012, on request by the acting Prosecutor of the Kemerovo Region, the Presidium of the Kemerovo Regional Court, by way of supervisory review proceedings, quashed the appeal judgment of 14 August 2007 and remitted the case for a fresh examination before the appellate court. The Presidium found that, in breach of procedural law, the applicant's right to legal assistance had been infringed, and that the appeal lodged by his statutory representative (father) had not been examined.

11. On 6 November 2012 the Kemerovo Regional Court held a fresh appeal hearing. The statutory representative and a legal-aid defense lawyer participated in the hearing. The applicant did not appear. It follows from the minutes of the hearing that he was summonsed but asked the appellate court to examine the case in his absence. The court studied the case file and heard oral submissions made by the defence lawyer, statutory representative and the public prosecutor. The defence, in particular, pointed to numerous procedural violations, and asked to quash the judgment of 5 June 2007 and to remit the applicant's case to the trial court for a fresh examination. By judgment of the same date, the appellate court upheld the applicant's

conviction and the sentence. According to the minutes of the hearing, the defence raised no objections as regards the conduct of the proceedings.

COMPLAINTS

12. The applicant complained under Article 6 of the Convention that the appeal hearing of 14 August 2007 had been held in his absence.

13. He also complained under Articles 3, 5, 6, 7, 13, 17 and 18 of the Convention about various violations in the course of the preliminary investigation and the court proceedings, in particular, ill-treatment, unlawful detention, procedural irregularities, outcome of the trial, and a lack of effective remedies. In addition, he complained about hindrance to the exercise of his right of individual petition under Article 34 of the Convention. Finally, he complained under Article 2 of Protocol no. 4 about travel restrictions imposed on him during the criminal proceedings, and under Article 2 of Protocol no. 7, that his statutory representative's appeal against the conviction judgment of 5 June 2007 had not been accepted for examination.

THE LAW

14. The applicant complained that he had been unable to participate in the appeal hearing of 14 August 2007. The Court decided to consider this aspect of the case together with the question of legal assistance to the applicant at the appeal hearing. The relevant parts of Article 6 read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing ...”

15. The Government submitted that following the resumption of the proceedings at the national level the alleged violation of Article 6 of the Convention had been remedied by the judicial decisions of 6 October 2012 and 6 November 2012 by the Presidium of the Kemerovo Regional Court and the Kemerovo Regional Court, respectively. The applicant had therefore lost his victim status.

16. The applicant did not submit any specific comments.

17. The Court observes that, as follows from the materials of the case-file, the applicant was indeed absent from the appeal hearing on 14 August 2007. In addition he was not represented in any way. That being said, the Court notes that the applicant obtained a re-hearing of his case by the court of appeal in the presence of his lawyer and statutory representative.

18. The Court reiterates in this respect that by virtue of Article 34 of the Convention, it “may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ...”. The question whether or not the applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Timoshin v. Russia* (dec.), no. 17279/05, 17 May 2011). The Court reiterates that an applicant may lose his victim status if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it. The alleged loss of the applicant’s victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision. The appropriateness and sufficiency of redress depend on the nature of the violation complained of by the applicant (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 67 and 70, 2 November 2010).

19. Turning to the present case the Court observes that by judgment of 6 October 2012, the Presidium of the Regional Court explicitly acknowledged the infringement of the applicant’s right to legal assistance in the appeal proceedings and ordered a fresh appeal hearing. The latter was held on 6 November 2012. The appeal court appointed a defence lawyer whose service was accepted by the applicant. The applicant was also represented by his father as statutory representative. Both of them made their oral submissions. The applicant did not complain before the Court that the legal assistance provided to him at the appeal hearing of 6 November 2012 had been ineffective or otherwise in breach of the Convention. The Court further notes that the applicant had been afforded an effective opportunity to attend the appeal hearings personally.

20. The Court notes that, having examined the applicant’s case anew, the appeal court did not reduce his sentence. Neither did it award the applicant any pecuniary compensation for the breach of his procedural rights in the first appellate hearing. However, the applicant did not argue that this retrial had been an inadequate or insufficient form of redress. The Court, on its part, does not consider that, in the circumstances, any additional redress to the decision to conduct a new trial was needed to compensate the applicant for the breach of his right to legal assistance in the first appellate hearing. The Court stresses that the violation complained of was acknowledged at the domestic level, that it was of procedural character, that its practical

effects are difficult to measure, and that the reasons for the lawyer's absence in the courtroom on that date were unclear. In such circumstances the Court is satisfied that the re-hearing of the applicant's case by the court of appeal with appropriate procedural guarantees provided him with a sufficient redress to deprive him of victim status (see, by contrast, *Sakhnovskiy*, cited above, §§ 99-107).

21. It follows that the applicant can no longer claim to be a "victim" of the alleged violation of Article 6 §§ 1 and 3 (c) of the Convention within the meaning of Article 34 of the Convention and that this part of the application must be rejected pursuant to Articles 34 and 35 §§ 3 (a) and 4.

22. The Court has examined the remainder of the applicant's complaints. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President