



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

FIRST SECTION

DECISION

Application no. 33389/07
Ivan Vasilyevich KUZNETSOV against Russia
and 35 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 14 January 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above applications lodged on the dates indicated in the appendix,

Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

1. The applicants are Russian nationals living in various regions of the Russian Federation. Their names and dates of birth are tabulated below. The facts of the cases, as submitted by the applicants, may be summarised as follows.

2. On various dates between 2007 and 2012 the applicants were criminally prosecuted and convicted for various offences under the Russian legislation in force.

3. The applicants' convictions were based among other evidence on the statements of one or more prosecution witnesses (including victims in

certain cases), which were made during pre-trial stages of the proceedings and read out in open court while the witnesses were absent from trial.

4. The national courts allowed the pre-trial statements to be read out and admitted these statements as evidence without examination of the witnesses during trials. In doing so the courts either did not specify the reasons for their decision or merely referred to an impossibility of the witnesses' attendance.

5. The applicants appealed against the judgments of convictions arguing *inter alia* that their convictions were unfair due to inability to examine prosecution witnesses. However the judgments of conviction were upheld on appeal and became final. The final judgments' particulars, the initials of the witnesses, whose statements were read out, and the reasons for their absence stated by the domestic courts are tabulated below.

B. Relevant domestic law and practice

1. Code of Criminal Procedure

6. The Code of Criminal Procedure of the Russian Federation of 2001 (CCrP), which entered into force on 1 July 2002, provides that a victim or a witness of a crime shall normally be examined in court.

7. Article 240 of the Code provides as follows:

“1. All the evidence should normally be presented at a court hearing ... The court should hear statements of the defendant, victim, witnesses ... and examine physical evidence ...

2. The reading of pre-trial depositions is only permitted under Articles 276 and 281 of the Code ...”

8. Pre-trial statements of a victim or a witness, who is absent during the trial, may be read out in the court upon the motion of one of the parties or upon the own motion of the court (Article 281 § 1-2). Article 281 § 2 of the Code provides for the list of grounds for pre-trial statements to be read out. In the relevant part it reads as follows:

“2. In case of absence at the court hearing of a victim or a witness the court may upon the motion of a party or upon its own motion decide to read out the previously given statements, in case of:

- 1) death of a victim or a witness;
- 2) grave illness precluding appearance in court;
- 3) refusal of a victim or a witness who is a foreign citizen to appear under the summons of the court;
- 4) natural disaster or other exceptional circumstances precluding appearance in court.”

2. *Supreme Court*

9. The Plenum of the Supreme Court of the Russian Federation has clarified that under Article 281 § 1 of the CCrP the reading out of the pre-trial statements of absent witnesses is in principle possible with the consent of both prosecution and defence. However, in exceptional cases prescribed by Article 281 § 2, the statements may be read out without the consent of both parties (see Decree of the Plenum of the Supreme Court of the Russian Federation of 5 March 2004 No. 1).

3. *Constitutional Court*

10. In its admissibility decision of 27 October 2000 (no. 233-O), the Constitutional Court held that the reading out of pre-trial depositions should be considered as an exception to the court's own assessment of evidence and should not upset the procedural balance between the interests of the prosecution and those of the defence. If a party insists on calling a witness whose testimony may be important to the case, the court should take all available measures to ensure the presence of the witness in court. When that witness is available for questioning, the reading out of his or her deposition should be considered inadmissible evidence and should not be relied upon. However, when the witness is not available for questioning, the defence should still be provided with appropriate procedural safeguards such as a challenge to the read-out deposition, a request for challenge by way of examining further evidence, as well as pre-trial face-to-face confrontation between that witness and the defendant when the latter was given an opportunity to put questions to the former (see also the admissibility decision of 7 December 2006 (no. 548-O)).

COMPLAINTS

11. The applicants complain under Article 6 § 1 and Article 6 § 3 (d) of the Convention that they did not have a fair trial in criminal proceedings against them, since they were unable to obtain the attendance of the witnesses testifying against them and to examine them in court.

12. The applicants further submit a number of accessory complaints concerning various aspects of the criminal proceedings against them under Articles 3, 5, 6, 7, 8, 13, 14, 17 of the Convention and Article 2 of Protocol No. 7.

THE LAW

A. Alleged violation of Article 6 of the Convention

13. The applicants relied on Article 6 of the Convention, which, in its relevant parts, provides as follows:

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

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

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...”

14. The applicants complain that contrary to Article 6 § 3 (d) of the Convention they were unable to obtain the attendance of the witnesses testifying against them and to examine them in court. They point out that the national authorities and courts failed to take proper measures to secure attendance of the witnesses, but allowed reading out of their pre-trial statements during trials without good reasons. The applicants allege that their convictions were based solely or to a decisive degree on the basis of statements of absent witnesses. Therefore the applicants consider that they did not have an overall fair hearing within the meaning of Article 6 § 1 of the Convention.

15. The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the applications to the respondent Government.

B. Other complaints

16. The applicants further submit a number of accessory complaints under Articles 3, 5, 6, 7, 8, 13, 14, 17 of the Convention and Article 2 of Protocol No. 7 concerning alleged ill-treatment by police, conditions of detention, lack of medical treatment, lack of reasons and length of pre-trial detention, length of criminal proceedings, assessment of evidence, bias of the judges, police entrapment, inability to obtain reconsideration of their convictions, defects of legal assistance and other aspects of the criminal proceedings against them.

17. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

18. It follows that these parts of the applications are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints under Article 6 § 1 and Article 6 § 3 (d) of the Convention concerning inability to obtain the attendance of the witnesses testifying against them and to examine them in court;

Declares the remainder of the applications inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth	Represented by	Final judgment	Witness(es) absent from trial
1.	33389/07	04/07/2007	Ivan Vasilyevich KUZNETSOV 05/06/1983		Moscow City Court, 21 March 2007	victim Mr N.
2.	54480/07	15/10/2007	Vladimir Gennadyevich NAGIBIN 07/07/1955	Yelena Pavlovna ARTAMONOVA	Moscow Regional Court, 17 April 2007	victim Mr R. and prosecution witness Mr Aks.
3.	1570/08	09/12/2007	Mikhail Aleksandrovich FIRSTOV 03/07/1971 Dmitriy Vadimovich AREFYEV 24/04/1963		Moscow City Court, 13 June 2007	prosecution witness Mr K.
4.	3975/08	12/12/2007	Dmitriy Grigoryevich ALEJNIKOV 27/11/1970		Moscow City Court, 13 June 2007	prosecution witness Mr K.
5.	10309/08	22/01/2008	Sergey Anatolyevich KURBANOV 01/02/1982		Supreme Court of Khakasiya, 3 October 2007	victim Mr Ch.
6.	10594/08	09/02/2008	Vladimir Yuryevich POSTOVALOV 08/12/1956		Rostov Regional Court, 18 September 2007	prosecution witness Mr F.
7.	18069/08	27/01/2008	Maksim Romanovich ZLOBIN 10/09/1985		Chelyabinsk Regional Court, 27 July 2007	victim Mr N., prosecution witnesses Mr G. and Mr B.

8.	24980/08	17/04/2008	Andrey Mikhaylovich PANCHENKO 09/09/1976		Supreme Court of Bashkortostan, 23 October 2007	prosecution witnesses Mr A., Mr Sh. and Mr Sl.
9.	30066/08	29/05/2008	Sergey Lvovich SANAYEV 11/02/1978		Tula Regional Court, 20 February 2008	prosecution witnesses Mr G. and Mrs Kr.
10.	32015/08	03/06/2008	Roman Yevgenyevich VLASOV 11/09/1979		Chelyabinsk Regional Court, 9 January 2008	prosecution witness Mr K.
11.	33965/08	04/06/2008	Sergey Gennadyevich SAVENKOV 12/10/1981	Radik Rashitovich RAKHMATULLIN	Supreme Court of Bashkortostan, 6 December 2007	prosecution witness Mr T.
12.	40306/08	09/06/2008	Lyubov Vasilyevna AKHTERYAKOVA 22/05/1981		Astrakhan Regional Court, 13 December 2007	prosecution witness Mrs Kaz.
13.	46581/08	26/06/2008	Sergey Alekseyevich KOCHERGIN 01/06/1980		Supreme Court of Bashkortostan, 14 February 2008	prosecution witnesses Mr F. and Mr R.
14.	47599/08	08/08/2008	Yuriy Valeryevich VYDRIN 05/03/1966		Krasnodar Regional Court, 27 February 2008	prosecution witnesses Mr S. and Mr Kos.
15.	48895/08	15/09/2008	Sergey Vladimirovich SLOKHOV 25/06/1966	Tatyana Ivanovna PROTSENKO	Moscow City Court, 8 August 2008	prosecution witnesses Mrs V., Mr M., Mr K., Mr S., Mr Yud., Mr R., Mr Ul., Mr P., Mr Akh.
16.	48905/08	15/09/2008	Gleb Aleksandrovich PAKULO 31/01/1968	Aleksey Mikhaylovich SURIN	Moscow City Court, 8 August 2008	prosecution witnesses Mrs V., Mr M., Mr K., Mr S., Mr Yud., Mr R., Mr Ul., Mr P., Mr Akh.
17.	52304/08	25/09/2008	Aleksandr Eduardovich BLYUMIN 17/11/1964	Aleksandr Vyacheslavovich KOROLEV	Moscow Regional Court, 26 August 2008	victim Mrs Yer.

18.	54353/08	18/08/2008	Valentina Mikhailovna URUKOVA 06/06/1961		Supreme Court of Chuvashiya, 28 August 2008	prosecution witnesses Mr Il., Mr B., Mr Akh., Mr Z., Mr P., Mrs M.
19.	7710/09	15/01/2009	Aleksey Aleksandrovich TKACHEV 05/10/1982		Astrakhan Regional Court, 14 August 2008	prosecution witnesses Mr B. and Mr Kh.
20.	10781/09	05/11/2008	Igor Vladimirovich FEDYAYEV 29/07/1968	Aleksandr Petrovich POPOV	Kursk Regional Court, 3 July 2008	prosecution witness Mrs Sh.
21.	11068/09	10/09/2008	Aleksey Nikolayevich KHVALNOV 10/03/1979		Tambov Regional Court, 18 March 2008	prosecution witness Mrs Sem.
22.	12565/09	07/02/2009	Arkadiy Vladislavovich AKLANOV 25/03/1971		Novosibirsk Regional Court, 11 August 2008	prosecution witness Mr Zh.
23.	14252/09	03/02/2009	Ivan Borisovich TELEGIN 27/02/1978	Larisa Nikolayevna YEREMICHEVA	Saint Petersburg City Court, 5 August 2008	victim Mr N.
24.	35051/09	28/05/2009	Valeriy Nikolayevich KANAICHEV 05/04/1964		Moscow City Court, 18 March 2009	prosecution witnesses Mr R., Mr K., Mr F., Mr P., Mr Bozh, Mr Bryz.
25.	35656/09	10/06/2009	Dmitriy Viktorovich DYAGILEV 08/12/1977	Aleksandr Vitalyevich VASILYEV	Moscow City Court, 13 July 2009	prosecution witnesses Mr Sh. and Mr Akh., victim Mr S.
26.	36235/09	02/09/2009	Eduard Anatolyevich DYACHOK 23/10/1968		Krasnoyarsk Regional Court, 2 February 2010	prosecution witness Mr F.
27.	46918/09	20/10/2009	Ivan Vladimirovich RYS 27/09/1984		Supreme Court of the Russian Federation, 5 May 2009	prosecution witness Mrs Sh.

28.	6752/12	26/03/2012	Dinmukhamed Mustapayevich YSAKOV 27/09/1982		Supreme Court of the Russian Federation, 20 October 2011	prosecution witness Mr L.
29.	66754/12	28/09/2012	Aleksandr Aleksandrovich NIKONOV 24/02/1979		Moscow City Court, 14 June 2012	prosecution witness Mr T.
30.	68848/12	12/09/2012	Ruslan Rusamovich GALIYEV 13/02/1979		Supreme Court of Chuvashiya, 7 June 2012	victims Mrs S. and Mrs G.
31.	892/13	12/12/2012	Vitaliy Vladimirovich DASHKOV 27/02/1976	Aleksey Vyacheslavovich SUSHKOV	Supreme Court of the Russian Federation, 27 June 2012	victim Mr T.
32.	5987/13	17/01/2013	Yevgeniy Vladimirovich BELYAEV 04/10/1976		Sverdlovsk Regional Court, 3 August 2012	prosecution witness Mr M.
33.	13105/13	18/02/2013	Zakhar Sergeyeovich BERESTOVOY 10/08/1986	Lina Fedorovna MOTCHENKO	Moscow City Court, 20 August 2012	prosecution witnesses Mrs P., Mr M., Mr N., Mr S., Mrs Av.
34.	13686/13	28/01/2013	Gennadiy Nikolayevich DOROSHCHENKO 07/03/1975		Krasnoyarsk Regional Court, 22 January 2013	victim Mr Er. and prosecution witness Mrs Ver.
35.	14360/13	09/01/2013	Dmitriy Vladislavovich GLAZYRIN 03/10/1970		Supreme Court of the Russian Federation, 18 July 2012	victim Mrs M.
36.	18635/13	25/12/2012	Boymukhamad Saidovich KODIROV 27/07/1967		Supreme Court of Chuvashiya, 28 June 2012	prosecution witness Mr B.