THIRD SECTION

**CASE OF ATYUKOV v. RUSSIA**

*(Application no. 74467/10)*

JUDGMENT

STRASBOURG

9 July 2019

*This judgment is final but it may be subject to editorial revision.*

In the case of Atyukov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

 Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 18 June 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1.  The case originated in an application (no. 74467/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Gennadiy Nikolayevich Atyukov (“the applicant”), on 9 November 2010.

2.  The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3.  On 2 February 2018 notice of the complaint concerning the national courts’ failure to question witnesses was given to the Government, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4.  The Government objected to the examination of the application by a Committee. Having considered the Government’s objection, the Court rejects it.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1962 and lives in Zemetchino, in the Penza Region.

6.  According to the official version of events, on 29 March 2010 two police officers, Il. and Dem., stopped the applicant’s car because he had gone through a red light. They did not have a video recorder to register the incident and could not give him a ticket. However, they smelt alcohol on the applicant and asked him to take a breath test on the spot. In the presence of two attesting witnesses, the applicant refused and insisted that he should be taken to hospital to have the test. At hospital, the police officers had to dispose of the record of the offence which they had prepared earlier, because the applicant had written something on it. They let the attesting witnesses go and invited two other persons to witness the test being taken. A doctor explained to the applicant how to take the breath test. She specified that he should exhale at length. The applicant did not comply. His exhalation was not strong enough and the device did not respond. After repeated failed attempts by the applicant to exhale properly, the police officers ruled that he had refused to take the test.

7.  According to the applicant, two police officers stopped his car on 29 March 2010 after he had left the hospital where his son was undergoing medical treatment. His wife and son were in the car. The policemen did not explain why they had stopped him. They smelt medication in the car and asked him to go with them. Ye. and Kr. went with them as attesting witnesses. The applicant exhaled into the device, but it did not show that there was any alcohol content in his breath. They did not offer him a blood test or any other test. The police officers then claimed that he had refused to take the test. They returned to the place where he had been stopped, and the police officers let Ye. and Kr. go and found two new attesting witnesses. Only after that did they draw up an administrative-offence record.

8.  On 26 April 2010 T., the justice of the peace of judicial circuit no. 2 of the Zemetchino District of the Penza Region, opened the trial against the applicant. The applicant asked the court to question the police officers who had stopped him on 29 March 2010, six attesting witnesses (A., G., Kr., Kukh., P. and Ye.), and the medical practitioner who had certified that he had refused to take a breath test. The court refused to summon the witnesses, and ordered that they and the medical practitioner should be questioned by the head of the traffic police unit.

9.  On 29 April 2010 the police obtained the following statement from Kr.:

“On 29 March 2010 ... I was present when [the applicant] was asked [by the police] to undergo a medical examination. I was present during the medical examination too. [The applicant] repeatedly took the breath test. I signed the medical examination record. ...”

10.  On 30 April 2010 the police obtained the following statement from Ye.:

“On 29 March 2010 ... I was present when [the applicant] was asked [by the police] to undergo a medical examination ... [The applicant] agreed to undergo the medical examination. During the medical examination in my presence, [the applicant] repeatedly exhaled into the device, although his exhalation was not sufficiently strong. I signed the medical examination record ...”

11.  On the same date the police obtained the following statement from P.:

“On 29 March 2010 ... I was invited by the traffic police to be an attesting witness. I was present when [the applicant] was repeatedly asked [by the police] to undergo a medical examination. [The applicant] refused ... Then [the policemen] took [the applicant] to undergo a medical examination. I signed the medical examination record and the record [confirming that] the medical examination had been ordered.”

12.  On the same date the police obtained the following statement from G.:

“On 29 March 2010 ... I was invited by the traffic police to be an attesting witness ... I was present when [the applicant] was given a temporary driving licence ... I don’t remember which police record I signed. But I will be able to identify my signature. According to the traffic police officers, [the applicant] refused to undergo a medical examination.”

13.  On an unspecified date the police obtained the following statement from the medical practitioner, D.:

“On 29 March 2010 ... Police Officer Il. brought [the applicant] for a medical examination ... No medical examination was performed, given that [the applicant] refused to undergo it.”

14.  On 14 May 2010 the police obtained a new statement from Kr., which was as follows:

“On 29 March 2010 ... I was asked [by the police] to be an attesting witness. I was present when [the policemen] asked [the applicant] undergo a medical examination. [The applicant] agreed ... During the medical examination, the medical practitioners repeatedly told [the applicant] to breathe into the breath test device in a long continuous exhalation. However, [the applicant’s] exhalation was not strong enough and the device did not respond ... After repeated attempts to run a breath test, the medical practitioners concluded that they could construe the [applicant’s] actions as a refusal to undergo a medical examination.”

15.   On 15 May 2010 the police obtained a similar written statement from Ye.

16.  On the same date the police obtained a new written statement from D., the medical practitioner, which was as follows:

“On 29 March 2010 Police Officer Il. brought [the applicant] for the medical examination. I explained to him that he should breathe out in a long continuous exhalation until he heard the signal made by the device. Despite my repeated explanations, [the applicant] interrupted his exhalation, preventing the device from responding. The [applicant’s] conduct was classified as a refusal to take a breath test.”

17.  On an unspecified date the applicant’s case was assigned to M., the justice of the peace of judicial circuit no. 1 of the Zemetchino District of the Penza Region. On 18 May 2010 she heard the applicant’s case. She questioned the applicant’s wife, who confirmed the applicant’s version of events, and Police Officer Il., who confirmed the official version. The justice of the peace found the applicant guilty of an administrative offence –refusing to take a breath test – and suspended his driving licence for one and a half years. In her decision, she relied on Il.’s testimony, written statements made by the attesting witnesses – P., Kr., Ye. – and by D., the medical practitioner, and the administrative-offence record prepared by the police. The justice of the peace found that the applicant’s wife was not impartial and dismissed her testimony. As regards the remaining witnesses, she indicated as follows:

“The court finds the statements made by [Police Officer] Il. and D., the medical practitioner, credible because they testified as to the events which had occurred when they had been on duty. The witnesses P., Kr. and Ye. were ... invited by the police to be attesting witnesses, and had no interest in the outcome of the case.”

18.  On 16 June 2010 the Zemetchino District Court of the Penza Region upheld the judgment of 18 May 2010 on appeal. The court found that there was no need to summon the witnesses.

19.  On 26 July 2010 the President of the Pensa Regional Court upheld the judgments of 18 May and 16 June 2010 by way of supervisory review.

20.  On 1 November 2010 the Supreme Court of the Russian Federation upheld the judgments of the lower courts by way of supervisory review.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

21.  The relevant domestic law and practice as regards the prosecution of administrative offences in the Russian Federation has recently been summarised in the case of *Butkevich v. Russia*, (no. 5865/07, §§ 37-48, 13 February 2018).

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22.  The applicant complained that the administrative proceedings against him had been unfair. In particular, he alleged that he had been unable to confront the witnesses D., P., Kr., Ye., whose testimonies had been decisive for his conviction, and that he had been unable to obtain the attendance of the witnesses A., Dem., G., Kukh. and U. He relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

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

...

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

...

(b)  to have adequate time and facilities for the preparation of his defence;

(c)  to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(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;

...”

23.  The Government contested that argument. They considered that the applicant’s case had been decided by the national judicial authorities in full compliance with the applicable national laws. M., the justice of the peace, had correctly established the facts of the case confirmed by relevant, admissible and sufficient evidence, which included, *inter alia*, the written statements of the witnesses P. and D.

24.  The applicant maintained his complaint.

A.  Admissibility

25.  The Court accepts, and the Government do not argue otherwise, that Article 6 of the Convention applies in the present case under its criminal limb. In this connection, the Court takes into account that the penalty imposed on the applicant in the form of the suspension of his driving licence was punitive and deterrent in nature (compare *Mikhaylova v. Russia*, no. 46998/08, § 64, 19 November 2015).

26.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  General principles

27.  The general principles to be applied in cases where a prosecution witness does not attend trial and statements previously made by him are admitted as evidence are well established in the Court’s case law, and have recently been summarised and refined in the *Schatschaschwili* judgment of the Grand Chamber (see *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 100-31, ECHR 2015).

2.  Application of the principles to the present case

28.  Turning to the circumstances of the present case, the Court observes that the only witness who testified against the applicant in court was Police Officer Il. The same police officer drew up an administrative-offence record and instituted proceedings against the applicant. Both Il.’s testimony and the offence record were evidence which the national judicial authorities relied upon in determining the applicant’s criminal charge.

29.  The Court further observes that in order to verify the policeman’s version of the events, M., the justice of the peace, did no more than refer to the written statements of the attesting witnesses – Kr., P. and Ye. – and D., the medical practitioner. The justice of the peace expressly refused to summon those witnesses to testify in court, and asked the police to question them and prepare their written statements. In such circumstances, the Court considers that there was no good reason for Kr., P., Ye. and D. not to attend court.

30.  The Court also accepts, and the Government do not argue, that the statements made by those witnesses were decisive for the applicant’s case. They had first-hand knowledge of the key facts underlying the charges against the applicant, in a case where the police played an active role in the contested events.

31.  Lastly, the Court finds that there was no effort on the part of the national judicial authorities to make use of any counterbalancing measures to compensate for the difficulties experienced by the applicant on account of the witnesses’ written statements being admitted into evidence.

32.  There has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

33.  As regards the applicant’s allegation that he was unable to obtain the attendance of the witnesses A., Dem., G., Kukh. and U., the Court considers it unnecessary to examine separately whether the fairness of the proceedings was also undermined on that account (compare, for example, *Vladimir Romanov v. Russia*, no. 41461/02, § 107).

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

34.  Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A.  Damage

35.  The applicant claimed 100,000 euros (EUR) in respect of non‑pecuniary damage.

36.  The Government considered the applicant’s claims excessive and unreasonable and not supported by the Court’s case-law. They submitted that there had been no violation of the applicant’s rights in the present case, and argued that no award should be made to him.

37.  Having regard to the nature and scope of the violation found, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B.  Costs and expenses

38.  The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C.  Default interest

39.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the application admissible;

2.*Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

3.  *Holds*

(a)  that the respondent State is to pay to the applicant, within three months, EUR 1,000 (one thousand euros),to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non‑pecuniary damage;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 9 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Alena Poláčková
 Deputy Registrar President