



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

FIRST SECTION

Application no. 39350/11  
Vyacheslav Vladimirovich MAKOVCHUK  
against Russia  
lodged on 7 June 2011

**STATEMENT OF FACTS**

THE FACTS

The applicant, Mr Vyacheslav Vladimirovich Makovchuk, is a Russian national who was born in 1975 and lives in Saransk. His application was lodged on 7 June 2011. He was represented before the Court by Mr F.V. Bagryanskiy, a lawyer practising in Vladimir.

**The circumstances of the case**

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

In 1992 Mr Us. and Mr F. created a law firm, “Zakon Ltd.”. In 1994 the applicant started to work in that firm. In 1995 relations between the applicant and Mr Us. deteriorated. The applicant, Mr F. and other staff members of the firm suspected Mr Us. of stealing from the firm. As a result of that conflict, Mr Us. was required to leave and transfer his part of the shares to the applicant. According to the applicant, Mr Us. did not reimburse what he had allegedly stolen, but he also did not receive the price of his shares.

In the meantime the applicant became involved in the car trade. The police suspected that the applicant’s business was criminal, and that he had been in fact a member of an organised criminal group, “Mordva” (i.e. “the mordovians”), involved in a number of crimes, including a killing of colonel L.

On 1999 the applicant was charged *in absentia* with killing colonel L. The charges against the applicant were brought by investigator D. In the



following months Mr D. charged the applicant with other crimes, allegedly related to the criminal activities of “Mordva”. In 2000 Mr D. escaped an attempted murder: a bomb exploded at the entrance of his parent’s flat, but nobody was hurt. Mr D. later declared that he regarded that episode as an attempt of “Mordva” to intimidate him. However, the police was unable to establish who had planted the bomb. Later that year the applicant was arrested. The case against him was transferred to another investigator, who discontinued the proceedings and released the applicant.

In 2004 Mr Us. (the former shareholder of the “Zakon Ltd”) was appointed as a judge of the Supreme Court of the Mordovia Republic.

In 2006 Mr D. (the former investigator and the victim of the *attentat*) was also appointed as a judge of this court.

In 2007 the applicant was arrested again, and charged with several crimes. On 17 June 2010 the Leninskiy District Court of Saransk the applicant was found guilty of money laundering, coercive business transactions, and buying of stolen goods. The applicant was sentenced 5 ½ year’s imprisonment and a fine.

The defence appealed. The appeal was heard by the Supreme Court of the Mordoviya Republic on 8 December 2010. At the appeal hearing the prosecution was represented by Mr M, the son of the vice-president of the Supreme Court of the Mordoviya Republic. The applicant learned about this fact only after the hearing; he suspected that the vice-president might have been involved in the distribution of the cases and could have participated in the selection of the bench for his case.

The court of appeal was composed of three judges: Mr Us. (the president), Mr D., and Ms E. (the judges). At the hearing the applicant challenged Judge Us. and Judge D. He claimed that Judge Us. was biased against him because of the conflict they had had in 1996. Judge Us. refused to withdraw. He did not deny that he knew the applicant, but asserted that he had no negative feelings about him. The court also indicated that the law did not provide for a withdrawal of the judge on the grounds indicated by the applicant. A ruling in similar terms was delivered by the court in respect of Judge D., the former investigator.

On 8 December 2010 the Supreme Court of the Republic of Mordoviya confirmed the judgment of the trial court.

## COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the court of appeal was not an “impartial tribunal”, since there were reasons to believe that two out of three judges felt personal animosity towards the applicant. The applicant also complains that the prosecution at the appeal hearing was represented by the son of the vice-president of the Supreme Court of the Mordoviya Republic, who could have been involved in the selection of the judges for his case.

### **QUESTIONS TO THE PARTIES**

1. Was the court which dealt with the applicant's case in appeal "impartial", as required by Article 6 § 1 of the Convention? Under the Russian procedural law, namely Article 61 § 2 of the Code of Criminal Procedure, what "other circumstances" may lead to the withdrawal of the judge from a case? The parties are requested to give examples of cases where the judge withdrew or his decision was quashed because of the existence of such circumstances.

2. Is it true that the vice-president of the court where the case was heard was the father of prosecutor M., who supported the accusation in the applicant's case? What was the role of the vice-president of the Supreme Court of Mordoviya in this particular case? Was he responsible for allocation of cases to the judges (in general and, in particular, in the applicant's case)? What other powers did the vice-president at that time have in respect of the applicant's case, or in respect of the judges who examined it? Was there any breach of the "impartiality" or "independence" requirement in respect of the link between prosecutor M. and the vice-president of the Supreme Court of Mordoviya?