[Translation from Russian; pagination per original; bracketed text by translator]



**RUSSIAN FEDERATION**

**SUPREME COURT PRESIDIUM**

**DECISION**

to resume proceedings in the criminal case

due to new circumstances

Case No. 191-P17

Moscow November 8, 2017

Russian Federation Supreme Court Presidium composed of:

Presiding judge – P.P. Serkov,

Presidium members – V.A. Davydov, V.I. Nechayev, T.A. Petrova, S.V. Rudakov, O.M. Sviridenko, A.S. Xarlamov and V.V. Xomchik,

with court clerk S.V. Kepel,

examined Russian Federation Supreme Court [“RF SC”] Chairman V.M. Lebedev’s recommendation to resume proceedings in the criminal case against A.V. Pichugin due to new circumstances.

By the August 6, 2007 Moscow City Court verdict,

**Alexei Vladimirovich Pichugin**, born July 25, 1962 in Orexovo-Zuyevo, Moscow Region, [previously] convicted by the March 30, 2005 Moscow City Court verdict under: RF CC Art. 33(3), Art. 162(2), Art. 30(3), Art. 33(3), Art. 105(2)(б,е,ж,з), Art. 33(3), and Art. 105(2)(а,ж,з,к), and cumulatively sentenced to 20 years in prison,

was convicted under RF CC Art 33(3), Art. 105(2)(а,б,е,з) (per Federal law No. 63-FZ of June 13, 1996) and sentenced to life in prison; convicted under RF CC Art. 30(3), Art. 33(3), Art. 105(а,б,е,з) (per Federal law No. 63-FZ as of June 13, 1996) and sentenced to 15 years in

prison; cumulatively sentenced to life in prison per RF CC Art. 69(3).

Per RF CC Art. 69(5), by absorbing the milder March 30, 2005 Moscow City Court sentence into the stricter sentence under this [August 6, 2007] verdict, A.V. Pichugin received a final cumulative sentence of life in prison, to be served in a special-regime correctional colony.

It was ruled that the sentence shall be calculated from June 19, 2003.

The court has resolved the civil suits filed by A.Yu. Ivanov, E.L. Filippov and F.S. Islamova.

The verdict was affirmed by the January 31, 2008 RF SC Judge Panel on Criminal Cases’ cassation ruling.

RF SC Chairman V.M. Lebedev proposed resuming proceedings in the criminal case against A.V. Pichugin due to new circumstances.

Having heard the report by RF SC judge N.L. Xlebnikov, who detailed the case circumstances, the court decisions’ content and grounds for the [Chairman’s] recommendation to resume proceedings in the criminal case due to new circumstances, and having heard RF Deputy General Prosecutor L.G. Korzhinek’s and defense counsel K.L. Kostromina’s statements, the RF SC Presidium

**established:**

Pichugin was convicted of organizing: the January 21, 1998 murder of V.A. Korneyeva, committed in Moscow; the June 26, 1998 murder of V.A. Petuxov, committed in Nefteyugansk, Xanty-Mansi Autonomous District; the November 24, 1998 attempted murder of E.L. Rybin, committed in Moscow; the March 5, 1999 murder of N.V. Fedotov and attempted murder of E.L. Rybin, A.Yu. Ivanov and E.L. Filippov, committed in Leninsky District, Moscow Region. Circumstances of these crimes are detailed in the court verdict.

In his Application to the European Court of Human Rights (hereinafter “ECHR”), Pichugin noted, in particular, that presumption of innocence was violated, as prosecutorial authorities’ officials made pretrial statements in televised interviews that prompted the public to deem Pichugin guilty of crimes. Pichugin also noted that there was violation of

the adversarial principle, as the court denied the defense’s motion to adduce into evidence a specialist’s opinion into evidence and the defense’s motion to conduct a supplemental handwriting expert analysis.

RF SC Chairman V.M. Lebedev recommends resuming proceedings in the criminal case because ECHR established violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the Convention”) during the examination of the criminal case against Pichugin in a Russian Federation court.

The RF SC Presidium finds the recommendation is to be granted.

In its June 6, 2017 judgement in *Pichugin v. Russia*, ECHR established violations of Convention Article 6(2), Article 6(1) and Article 6(3)(d) due to violation of presumption of innocence and violation of equality of arms in assessing and admitting evidence in the case, accordingly.

Per RF CPC Art. 413(4)(2)(b), ECHR establishing Convention violations in a Russian Federation criminal court trial is grounds to resume criminal proceedings in the case due to new circumstances in accordance with the procedure set forth in RF CPC Chapter 49.

As noted in the ECHR judgment, after concluding the investigation in the criminal case, Deputy RF General Prosecutor and an investigator, in their interviews to Russian TV channels, informed the public about events in the applicant’s case, and their statements, which were not made with “*necessary discretion and circumspection*[[1]](#footnote-1),” presented the applicant’s participation and guilt in crimes as an established fact.

ECHR opined that these officials’ statements “*could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law*[[2]](#footnote-2)” and prejudged the assessment of the facts by a competent court, in violation of Convention Art. 6(2).

ECHR also saw a violation of Convention Art. 6(1) and 6(3)(d) in that *“…the court refused to admit [the defense’s N.V. Volodina’s specialist opinion] as evidence*[[3]](#footnote-3)” and in the court’s assessment of an [expert] opinion issued following pretrial

handwriting expert analysis conducted in the case and dated October 7, 2004, which was presented by the prosecution.

Per RF CPC Art. 413(1), a court verdict, decision or ruling may be overturned and proceedings in a criminal case may be resumed due to new or newly revealed circumstances.

Per RF CPC Art. 415(5), the RF SC Presidium, upon examining a recommendation, sets aside or amends final court decisions in a criminal case in accordance with the ECHR judgment.

Taken in conjunction with each other, these provisions of law mean that the RF SC Presidium decides to set aside or amend a final court verdict, ruling or decision if a Convention violation established by ECHR leads [the RF SC Presidium] to conclude that the [relevant] court decisions are unlawful, unfounded or unfair.

In the instant case, ECHR-established violations of Convention Article 6(2), 6(1) and 6(3)(d) do not give rise to setting aside or amending the court decisions issued in the criminal case against Pichugin.

Per RF CPC Art. 14(1), which guarantees the Constitutional principle of presumption of innocence in criminal court proceedings (RF Constitution Art. 49), a defendant is considered innocent until his guilt in committing a crime is proven in accordance with the procedure provided by criminal procedural law and established by a final court verdict.

Per RF CPC Art. 8(2) and Art. 15(3) and 15(4), no one may be found guilty of committing a crime and subjected to criminal punishment except by a court verdict and in accordance with the procedure established by RF CPC; a court is not a criminal prosecution authority, it does not speak for the prosecution or the defense; the prosecution and the defense are equal before the court.

Per RF CPC Art. 73(1), to be proven during criminal proceedings are: the crime event (time, place, manner and other crime commission circumstances), the individual’s guilt in committing a crime, the form of his guilt, the motives, and a number of other circumstances significant to the criminal case.

On the basis of evidence, a court establishes the presence or absence of circumstances provided by RF CPC Art. 73. Each item of evidence is subject to verification and assessment of relevance, admissibility and reliability, and, cumulatively, of the evidence’s sufficiency for resolving a criminal case (RF CPC Arts. 74, 85, 87, 88).

Only the court, in its verdict, resolves the issues listed in RF CPC Art. 299, such as whether it was proven that the defendant committed the crime; whether the act is a crime, and [if so, then] under which RF CC Article, part, paragraph; whether the defendant is guilty of that crime, and how the defendant should be punished.

In this criminal case against Pichugin, the above-noted guarantees of court trial objectivity and fairness were observed.

It is true that on in their July 5, 2011 and September 11, 2005 interviews to Russian TV channels [given] at the conclusion of preliminary investigation, Deputy RF General Prosecutor and RF General Prosecutor’s Office [“GPO”] Senior Investigator for Specially Important Cases, accordingly, opined that Pichugin’s involvement in the acts he is charged with was established.

The RF Constitution strictly differentiates between prosecutorial and court functions in resolving a criminal case. Per RF CPC Art. 8(1), only the court administers justice in a criminal case in the Russian Federation.

On January 21, 1998, Perovskaya Inter-District Prosecutor’s Office investigator initiated a criminal case on the evidence of crime under RF CC Art. 105(1) upon the discovery that same day of V.A. Korneyeva’s body with a firearm injury to the head in a stairwell landing at Chechulin St. 4, Moscow.

On June 26, 1998, Xanty-Mansi Autonomous District prosecutor’s office senior investigator initiated a criminal case on the evidence of crime under RF CC Art. 105(2)(а,б,з) (Nefteyugansk mayor V.A. Petuxov’s murder and the attempted murder of V.E. Kokoshkin).

On November 24, 1998, Moscow Nikulinsky Inter-District Prosecutor’s Office investigator initiated a criminal case on the evidence of crime under RF CC Arts. 30 and 105(1) (for the attempted murder of E.L. Rybin in

the courtyard of a building of Udaltzov St. in Moscow, where shots were fired at him from a firearm [sic]).

On March 5, 1999, Moscow Region Prosecutor’s Office investigator initiated a criminal case on the evidence of crime under RF CC Art. 105(2)(е) (another attempt to murder E.L. Rybin near Xovanskoye Cemetery, Leninsky District, Moscow Region, where his (E.L. Rybin’s) work vehicle was blown using an explosive device [sic] and then sprayed with automatic gunfire, as a result of which driver N.V. Fedotov was killed and E.L. Rybin’s two bodyguards sustained firearm injuries).

These and other criminal cases were subsequently joined. On July 4, 2005, RF GPO senior investigator for specially important cases served Pichugin with a finalized indictment for crimes under RF CC Art. 33(3), Art. 105(2)(б,ж,з), Art. 33(3), Art. 105(2)(а,б,е,ж,з), Art. 30(3), Art. 33(3), Art. 105(2)(а,б,ж,з), Art. 30(3), Art. 33(3), and Art. 105(2)(б,ж,з).

On March 6, 2006, the criminal case file with the final indictment against Pichugin and other defendants (V.V. Shapiro, G.A. Tzigelnik, E.V. Reshetnikov, M.V. Ovsyannikov and V.V. Levin) was sent to Moscow City Court for examination.

On March 20, 2006, after preliminary hearing, Moscow City Court judge ruled to set the case for trial.

The decision hold a criminal bench trial took into account the defendants’ – including Pichugin’s – motions to that effect. At the preliminary hearing, after being explained the law provisions regarding the particularities of a jury trial, Pichugin stated that he *“…changed his mind”* and wishes *“…the case to be examined by a judge alone.”*

At that [time] Pichugin did not attribute his waiver of a jury trial to any media reports regarding accusations of his involvement in crimes.

Pichugin based his motion for a bench trial on [his allegation] that the jury that found him guilty in another case was not objective and *“…a qualified judge will figure this case out.”*

On February 21, 2007, the cassation court set aside Pichugin’s August 17, 2006 Moscow City Court verdict issued after the first trial. The cassation court noted, in particular, that, in re-examining the criminal case, all necessary measures must be taken to examine case circumstances fully and comprehensively, to prevent violations of procedural law; depending on [retrial] outcome, a court issues a verdict of a type defined in RF CPC Art. 302.

After [the August 17, 2006 verdict] was set aside, a new trial in the criminal case against Pichugin was held, lasting over three months from April 17, 2007 to August 6, 2007. At that trial, examined in court in accordance with the adversarial principle were victims and numerous witnesses, including Shapiro, Tzigelnik, Reshetnikov and Ovsyannikov, who were previously convicted in the case. [Also] examined were records of investigative and procedural actions and other evidence in the case [file].

During trial, the parties were given the necessary conditions for performing their procedural responsibilities and exercising their rights; defendant Pichugin was given the opportunity to communicate to the court his position on the substance of the case, and to make corresponding arguments in support of his position; the defense’s motions were resolved in accordance with criminal procedural law (in particular, motions to read out in court the statements witnesses made during preliminary investigation and at previous trial, and motions to exclude some evidence as inadmissible).

In verifying the criminal case file, no information was discovered that would show that the defense was placed in an unequal position or was restricted in exercising [its] rights to: call for recusal, file motions, present evidence and participate in the examination of that evidence, speak during oral arguments, or present formulations to the court on issues listed in RF CPC Art. 299(1) paras. 1-6.

In its judgment, ECHR pointed out that its objective under the Convention is [“]*to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair[[4]](#footnote-4)*[”, and] *“it is for the national courts to assess the evidence…[[5]](#footnote-5)”*

Per RF CPC Art. 80(3) and Art. 86(2) and 86(3), the defense has the right to obtain an opinion from a specialist and present it to investigative

authorities and to court to be adduced to the criminal case file as evidence.

Per criminal procedural law, a specialist’s opinion is to be verified and assessed in accordance with general rules (for competence, absence of interest in the outcome of the case, substantiation of opinions expressed, etc.), and a court may accept or reject the specialist’s opinion just like any other item of evidence.

In this case, the court examined specialist N.V. Volodina’s July 4, 2006 “consultative opinion” presented by the defense (the specialist prepared the opinion per attorney G.S. Kaganer’s request; the opinion concerned the above-noted forensic expert analyses conducted during preliminary investigation). After assessing the opinion and considering its admissibility, the court rejected it and cited its grounds for doing so.

Criminal procedural law does not require scheduling a forensic examination in the absence of relevant grounds.

According to the criminal case file, the court lawfully denied the defense’s motion to schedule a “comprehensive inter-agency forensic handwriting examination.” According to the [denial] decision, the court established no grounds to schedule another forensic examination on an issue [already] assessed in [previous] forensic handwriting examinations, summarized in expert opinions No. 3/432 dated December 24, 2003 and No. 1882/06 dated October 7, 2004, which are to be assessed in conjunction with other evidence in issuing a final decision in the case.

Per RF CPC Art. 283(4), a court, per parties’ motions or on its own initiative, schedules a new or supplemental forensic examination if there are contradictions between expert opinions that cannot be resolved at trial by questioning the experts.

Grounds for conducting a new or supplemental [forensic] examination assigned to the same or different expert are, accordingly: insufficient clarity or fullness of expert opinion; new issues arising with regard to previously-examined criminal case circumstances (RF CPC Art. 207(1)); doubt regarding expert opinion substantiation; or contradictions in an expert’s or experts’ opinions on the same issues (RF CPC Art. 207(2)).

Accordingly, the court may deny such a motion in the absence of grounds to conduct any of the above-noted expert examinations.

As seen from the criminal case file, on November 18, 2003, RF GPO investigator for specially important cases decided to schedule a forensic handwriting examination in order to establish who wrote the note found in Gorin’s passport cover (Gorin was murdered together with his wife on November 20, 2002 in Tambov’s Raduzhny Village).

This expert examination was assigned to Russian FSB Scientific and Technical Support Administration’s Criminology Institute experts A.P. Korshikov and V.K. Chirkina, who were unable to answer the question [of who wrote the note] due to flaws in handwriting samples of the individual [whose handwriting was] being examined. However, the experts did not exclude Pichugin as a possible writer of the notes presented for examination (opinion No. 3/432 dated December 24, 2003).

Russian Ministry of Justice Federal Forensic Expert Center experts X.A. Kozlova and T.O. Panova (who, for the purposes of the re-examination, were provided with additional materials (nominally unhampered samples of Pichugin’s handwriting)), examined the text written on a 9.2 x 9.2 cm white sheet of paper: *“East Petroleum Handelsges. m.b.h. – Saltztorgasse 2/8 A-1010 Wieh [sic], Austria, Tel. (431) 533-76-20, fax (431) 5337624, Lesteva St. 8, Apt. 1 7449659.”* In their opinion No. 1882/06 dated October 7, 2004, the experts stated the note was written by Pichugin under the influence of “confounding” factors of a permanent nature.

[Regarding] the court’s examination of the expert opinions, the verdict states, in particular, that experts X.A. Kozlova and T.O. Panova who conducted the new examination had sufficient additional materials at their disposal, and their firm conclusion that Pichugin wrote the note is substantiated, convincing, and does not contradict the December 24, 2003 expert opinion.

When reviewing the forensic expert opinions during pretrial proceedings, Pichugin and his defense were explained the right to move to schedule a supplemental or new expert examination (RF CPC Art. 206(1)).

However, according to the July 4, 2005 record of the defendant’s and his counsel’s review of the forensic expert opinions, they filed no such motions.

Nor did they file any motions regarding handwriting expert examinations when reviewing the criminal case file per RF CPC Art. 217.

Experts X.A. Kozlova and T.O. Panova, whose testimony was examined in court, confirmed the conclusions in their October 7, 2004 opinion.

As the ECHR judgment states, *[“]the court questioned the experts in the presence of the applicant and his lawyers who were able to put questions to the experts and to cast doubt on their credibility[”]*[[6]](#footnote-6). Taking this into account, ECHR acknowledged that the defense had the opportunity to contest in court the October 7, 2004 expert opinion which the court cited in its verdict, and to move to conduct *“another*[[7]](#footnote-7)*”* expert examination.

As for the above-noted expert opinion (of October 7, 2004) being assessed in the verdict – the court assessed this opinion, as it did all other evidence examined in court, in accordance with general rules, taking into account criminal procedural law provisions, including the provision that an expert opinion has no pre-established force and takes no precedence over other evidence.

Therefore, the ECHR-established Convention violation in connection with the fact that the October 7, 2004 expert opinion was obtained, as the [ECHR] judgment states, *“…without any participation of the defence*,[[8]](#footnote-8)” in this case cannot be deemed to be significant [enough] to consider the verdict unjust.

The factual circumstances of the crimes, the role and degree of participation in the crimes, as well as Pichugin’s guilt in committing these crimes, including the attempts to murder E.L. Rybin, were established on the basis of the court’s objective and unbiased assessment of the totality of the evidence in the case file.

The court issued the above-noted verdict in accordance with RF CPC Chapter 39, and the verdict complies with legal requirements as to its content.

On the basis of the foregoing and per RF CPC Art. 415(5), the Russian Federation Supreme Court Presidium

**Ruled**:

To resume proceedings in this criminal case against A.V. Pichugin due to new circumstances.

To affirm Moscow City Court’s August 6, 2007 verdict and RF SC Judge Panel on Criminal Cases’ January 31, 2008 cassation ruling with reference to **Alexei Vladimirovich Pichugin**.

Presiding judge /Signature/ P.P. Serkov

Correct: Head of RF

Supreme Court

Presidium Secretariat /Signature/ S.V. Kepel

1. Translator note: June 6, 2017 ECHR judgment para. 41. [↑](#footnote-ref-1)
2. Translator note: June 6, 2017 ECHR judgment para. 41. [↑](#footnote-ref-2)
3. Translator note: June 6, 2017 ECHR judgment paras. 36-38. [↑](#footnote-ref-3)
4. Translator note: June 6, 2017 ECHR judgment para. 31 [↑](#footnote-ref-4)
5. Translator note: June 6, 2017 ECHR judgment para. 31 [↑](#footnote-ref-5)
6. Translator note: June 6, 2017 ECHR judgment para. 35. [↑](#footnote-ref-6)
7. Translator note: June 6, 2017 ECHR judgment para. 35. [↑](#footnote-ref-7)
8. Translator note: June 6, 2017 ECHR judgment para. 34. [↑](#footnote-ref-8)