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

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|  | RF supreme court |  |

**RUSSIAN FEDERATION**

**SUPREME COURT PRESIDIUM**

**RULING**

**To resume proceedings in the criminal case**

**due to new circumstances**

Case No. 141-P13S

Moscow October 23, 2013

Russian Federation Supreme Court Presidium composed of:

Presiding judge – P.P. Serkov,

Presidium members – V.A. Davydov, M.M. Magomedov, V.I. Nechayev, N.V. Timoshin, A.A. Tolkachenko and V.V. Xomchik,

with court clerk S.V. Kepel,

examined RF Supreme Court Chairman V.M. Lebedev’s recommendation to resume proceedings in the criminal case against A.V. Pichugin.

By the March 30, 2005 Moscow City Court jury verdict,

**ALEXEI VLADIMIROVICH PICHUGIN**, born July 25, 1962 in Orexovo-Zuyevo, Moscow Region, no prior convictions,

was convicted under: RF CC Art. 33(3) and Art. 162(2) and sentenced to 5 years in prison; convicted under Art. 30(3), Art. 33(3) Art. 105(2), paras. “б, е, ж, з” and sentenced to 12 years in prison; convicted under Art. 33(3) and Art. 105(2) paras. “а, ж, з, к” and sentenced to 17 years in prison.

Per RF CC Art. 69(3), a final sentence of 20 years in a high-security prison was imposed upon him on the totality of the crimes.

What was to become of physical evidence has been resolved in the case.

The July 14, 2005 RF Supreme Court Judge Panel on Criminal Cases’ cassation ruling affirmed A.V. Pichugin’s verdict.

RF Supreme Court Chairman V.M. Lebedev’s recommendation raised the issue of resuming proceedings in the criminal case against A.V. Pichugin due to new circumstances.

Convicted in the same case was A.V. Peshkun, regarding whom no recommendation was made.

Having heard the report by RF Supreme Court judge S.V. Rudakov, who detailed the circumstances of the criminal case, the content of court decisions, grounds of the [Chairman’s] recommendation; [and having heard] statements by RF Deputy General Prosecutor V.V. Malinovsky and defense counsel K.L. Kostromina, D.V. Kurepin and D.V. Kharitonov, the RF Supreme Court Presidium

established:

Pichugin was found guilty by a court and jury under the circumstances set forth in the verdict. To wit, he was found guilty of: organizing the October 5, 1998 Moscow assault and robbery of V.L. Kolesov, with aggravating circumstances; organizing the November 28, 1998 Moscow attempted murder of O.N. Kostina, with aggravating circumstances, during which [crime] an improvised explosive device was detonated near the apartment door, although the victim and other residents in the building were not harmed; of organizing the November 20, 2002 Tambov murder of the married couple S.V. Gorin and O.M. Gorina, with aggravating circumstances and the use of firearms.

A.V. Pichugin was detained in this case on suspicion of committing a crime under RF CC Art. 33(a) and Art. 105(2)(a).

By the June 21, 2003 Moscow Basmanny District Court judge’s decision, A.V. Pichugin was taken into custody as a measure of restraint.

On July 15, 2003, the Moscow City Court Judge Panel on Criminal Cases issued a cassation decision upholding the above-noted ruling.

By the August 13, 2003 Moscow Basmanny District Court judge’s decision, A.V. Pichugin’s custody term was extended to five months – i.e. until November 19, 2003.

This decision was appealed by cassation procedure and upheld by the September 1, 2003, Moscow City Court Judge Panel on Criminal Cases’ ruling, and the defense attorneys’ cassation appeal was denied.

By the November 12, 2003 Moscow Basmanny District Court judge’s decision, A.V. Pichugin’s custody term was extended by three months to a total of eight months, seven days, i.e. until February 19, 2004.

This decision was upheld by the December 9, 2003 Moscow City Court Judge Panel on Criminal Cases’ cassation ruling.

By the February 12, 2004 Moscow Basmanny District Court decision, A.V. Pichugin’s custody term was extended by two months to a total of 10 months, i.e. until April 19, 2004.

This decision was upheld in cassation procedure by the April 20, 2004 Moscow City Court Judge Panel on Criminal Cases’ ruling.

By the April 13, 2004 Moscow Basmanny District Court decision, A.V. Pichugin’s custody term was extended by two months to a total of twelve months, i.e. until June 19, 2004, inclusively.

This decision was upheld in cassation procedure by the May 20, 2004 Moscow City Court Judge Panel on Criminal Cases’ ruling.

By the June 17, 2004 Moscow City Court judge’s decision, a preliminary hearing was scheduled in the case. The measure of restraint for A.V. Pichugin was left unchanged – custody.

This decision was upheld by the RF Supreme Court Judge Panel on Criminal Cases’ cassation ruling of August 11, 2004.

The July 29, 2004 Moscow City Court judge’s decision denied the defense attorneys’ motions to change A.V. Pichugin’s measure of restraint to a signed promise not to leave [the jurisdiction] or [to release him on] bail.

By the December 9, 2004 Moscow City Court judge’s decision, A.V. Pichugin’s custody term was extended by three months, i.e. until March 11, 2005, inclusively.

This decision was upheld by the RF Supreme Court Judge Panel on Criminal Cases’ cassation ruling of January 31, 2005.

By the March 10, 2005 Moscow City Court judge’s decision, A.V. Pichugin’s custody term was extended by three months, i.e. until June 11, 2005, inclusively.

The RF Supreme Court Judge Panel on Criminal Cases’ ruling of May 13, 2005 terminated cassation proceedings on the defense attorneys’ appeal of the above-noted decision because a guilty verdict had been issued for A.V. Pichugin on March 30, 2005.

The RF Supreme Court Chairman V.M. Lebedev’s recommendation raises the issue of resuming proceedings in the criminal case due to new circumstances because, in its October 23, 2012 judgment in the Application “Pichugin v. Russian Federation,” the European Court of Human Rights [“ECHR”] established violations of Convention for the Protection of Human Rights and Fundamental Freedoms [“the Convention”] Article 5(3), Article 5(4), Article 6(1) and Article 6(3)(d).

In her motion to resume proceedings in the criminal case due to new circumstances, attorney K.L. Kostromina cites the October 23, 2012 ECHR judgment and asks that a recommendation be made to the RF Supreme Court Presidium to overturn the earlier court decisions regarding Pichugin, and to send the criminal case for re-trial from the preliminary hearing stage.

Having examined the RF Supreme Court Chairman’s recommendation to resume proceedings in the criminal case due to new circumstances, the RF Supreme Court Presidium finds that proceedings in the criminal case against A.V. Pichugin are to be resumed on the following grounds:

Per subpara. “б” para. 2 Part 4 Art. 413 RF CPC, ECHR establishing Convention violations in an RF criminal court trial forms grounds for resuming criminal proceedings in the case due to new circumstances in accordance with the procedure set forth in RF CPC Chapter 49.

In its October 23, 2012 judgement in the Application “Pichugin v. Russian Federation,” ECHR established violations of Convention Article 5(3), Article 5(4), Article 6(1) and Article 6(3)(d) during proceedings in the criminal case against A.V. Pichugin, and therefore proceedings in this case are to be resumed. The RF Supreme Court Presidium takes into account [the fact] that, per ECHR’s position, resumption of the criminal trial [sic] is the most appropriate form of compensation for established Convention violations (para. 219 of the judgement).

Per RF CPC Art. 415(5), the RF Supreme Court Presidium, after examining a recommendation by RF Supreme Court Chairman, sets aside or amends court decisions in a criminal case in accordance with the ECHR judgment.

By the meaning of RF CPC Art. 415(5) in conjunction with provisions of RF CPC Art. 297(1) and (2), a decision to set aside a court verdict, ruling or decision is made if a Convention violation established by ECHR evidences that the [relevant] court decision no longer complies with the requirements of lawfulness, foundation and fairness.

In establishing violations of Convention Article 5(3) and Article 5(4) during proceedings in the criminal case against A.V. Pichugin, ECHR noted the following in its judgment[:]

Holding A.V. Pichugin’s in custody was initially justified by the substantiated suspicion of his involvement in murders; however, after a certain time period, such suspicion alone is no longer sufficient [to hold a person in custody]. A.V. Pichugin’s custody term was extended on grounds which, while “significant,” cannot be deemed “sufficient” for the duration of his custody. The

RF Supreme Court Judge Panel on Criminal Cases terminated the examination of the [defense attorneys’] March 10, 2005 cassation appeal on the grounds that Pichugin had already been convicted. However, Russian Federation authorities did not indicate which domestic law provisions allowed termination of the cassation appeal’s examination. The [RF] Supreme Court Judge Panel’s ruling also failed to indicate the legal basis for such a decision.

Under such circumstances, ECHR-established violations of Convention Article 5(3) and 5(4) [must] result in overturning all of the [following] court decisions: The Moscow Basmanny District Court judge’s decisions to extend A.V. Pichugin’s custody dated August 13, 2003, November 12, 2003, February 12, 2004 and April 13, 2004; cassation rulings by Moscow City Court dated September 1, 2003, December 9, 2003, April 20, 2003 and May 20, 2004; Moscow City Court judge’s ruling dated June 17, 2004 regarding the measure of restraint; RF Supreme Court Judge Panel On Criminal Cases’ cassation ruling dated August 11, 2004; Moscow City Court judge’s rulings of July 29, 2004, December 9, 2004 and March 10, 2005; the RF Supreme Court Judge Panel On Criminal Cases’ cassation ruling dated January 31, 2005; and the RF Supreme Court Judge Panel On Criminal Cases’ ruling dated May 13, 2005.

However, the Convention Art. 5(4) violation (expressed in [the fact] that it took 59, 27, 49 and 44 days, accordingly, to examine the cassation appeals against the decisions to take into [sic] custody dated February 12, April 13, June 17 and December 9, 2004 were examined, which, per ECHR’s conclusions, does not correspond to the Convention requirement of “speediness”) does not by itself result in overturning the [corresponding] court decisions, as it is not directly relevant to such aspects of a legal court ruling as its lawfulness, foundation and fairness.

The [March 30, 2005] verdict and the [July 14, 2005] cassation ruling are also not to be overturned on the basis of ECHR-established Convention violations of Art. 6: holding a closed trial in the criminal case against A.V. Pichugin – Art. 6(1), and the Applicant having had no proper and effective opportunity to refute witness K[orovnikov]’s testimony – Art. 6(1) and 6(3)(d).

Per RF Constitution Art. 123(1), all court trials are open. Hearing a case in closed court is permitted in cases provided by federal law.

For criminal proceedings, such instances are provided by RF CPC Art. 241(2). A criminal case examined in closed court [must] correspond to all criminal proceeding norms. A court may decide to examine a part or all of the criminal case in closed court (RF CPC Art. 241(3).

In this criminal case, the judge decided to hold the entire criminal trial in closed court due to the possibility of state secrets being disclosed during trial (RF CPC Art. 241(1) para. 1). Since the criminal case file includes materials containing a state secret, the judge’s decision to restrict openness of the court proceedings complies with the law and does not contradict Convention Art. 6(1), according to which the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

The nature, content and extent of information containing a state secret in this criminal case file allow [the Presidium] to conclude that holding the trial [only] partially closed would not have completely precluded disclosure of information containing a state secret.

Such a conclusion [by the Presidium] has special significance in view of RF CPC Art. 274(1) provisions, according to which the party presenting evidence to the court determines the order in which the evidence is examined. Restricting a trial participant’s right to have the opportunity to have the court examine any evidence the party deemed necessary to present to the court at a specific time and in the specific scope that the party that entered the corresponding motion deemed necessary, would have significantly violated the adversarial principle.

The criminal case file shows that, at trial, neither the defense nor the prosecution ever stated that hearing the criminal case in closed court in any way hampered or restricted their procedural rights.

In view of the [above-]noted, there are no grounds to believe that examining the criminal case against A.V. Pichugin in closed court violated the fair balance between the Applicant’s interests and the need to ensure proper administration of justice.

According to the court transcript, Korovnikov was examined as witness at the trial court, and, in full compliance with RF CPC Art. 278(2), was cautioned of criminal liability under RF CC Art. 307 for deliberately false testimony. The court did not caution Korovnikov of criminal liability under RF CC Art. 308 for refusing to testify.

However, this circumstance alone can have no significance in assessing the witness’ statements from the point of view of their relevance, admissibility and reliability, because during trial Korovnikov did not recant his earlier testimony or his testimony given in court. Korovnikov testified on circumstances in the case, thus [sic] confirming his earlier preliminary investigation statements.

As seen from the trial transcript, the presiding judge did not bar parties from questioning the witness on circumstances he had knowledge of which were significant for resolving the criminal case.

As for the defense’s questions witness Korovnikov refused to answer – those questions were either irrelevant to circumstances to be proven in the criminal case, or were inadmissible due to the special features of this criminal proceeding, examined in a jury trial, or [else] he refused to answer the questions during the [first round of] proceedings where a mistrial was declared because th[at] jury had been disbanded.

Under such circumstances it should be acknowledged that ECHR-established violations of Convention Art. 6 committed during the specific criminal proceeding against A.V. Pichugin are not significant and do not cause the March 30, 2005 verdict or the July 14, 2005 cassation ruling to become unlawful, unfounded or un fair.

A different interpretation in this instance would have meant an unjustified deviation from the generally accepted principle of legal certainty, which presumes stability of final court decisions and impermissibility of their review, including review through a resumption of proceedings in a

criminal case due to new circumstances in the absence of violations of law that influenced the outcome of the criminal case – i.e., influenced the correctness of its resolution on the merits.

On the basis of the foregoing and per RF CPC Art. 407(3-9); Art. 415(5), the RF Supreme Court Presidium

**Ruled**:

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

To overturn the [following] court decisions: The Moscow Basmanny District Court judge’s decisions to extend A.V. Pichugin’s custody dated August 13, 2003, November 12, 2003, February 12, 2004 and April 13, 2004; cassation rulings by Moscow City Court dated September 1, 2003, December 9, 2003, April 20, 2003 and May 20, 2004; Moscow City Court judge’s ruling dated June 17, 2004 regarding the measure of restraint; RF Supreme Court Judge Panel On Criminal Cases’ cassation ruling dated August 11, 2004; Moscow City Court judge’s rulings of July 29, 2004, December 9, 2004 and March 10, 2005; the RF Supreme Court Judge Panel On Criminal Cases’ cassation ruling dated January 31, 2005; and the RF Supreme Court Judge Panel On Criminal Cases’ ruling dated May 13, 2005.

To affirm the March 30, 2005 Moscow City Court jury verdict and the July 14, 2005 RF Supreme Court Judge Panel on Criminal Cases’ cassation ruling for **Alexei Vladimirovich Pichugin.**

Presiding judge /Signature/ P.P. Serkov

Correct: Head of RF

Supreme Court

Presidium Secretariat /Signature/ S.V. Kepel

[Round seal: RF Supreme Court [series of illegible numbers]