



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

SECOND SECTION

CASE OF SAVINSKIY v. UKRAINE

(Application no. 6965/02)

JUDGMENT

STRASBOURG

28 February 2006

FINAL

28/05/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Savinskiy v. Ukraine,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 31 May 2005 and 7 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 6965/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Andrey Andreyevich Savinskiy (“the applicant”), on 19 May 2001.

2. The applicant was represented by Mrs N. Avramenko, a lawyer practising in the city of Chernigiv, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. The applicant alleged, in particular, a violation of his Convention rights as a result of the re-opening of the criminal case against him under the supervisory review procedure.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 31 May 2005 the Court declared the application partly admissible.

6. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1969 and lives in the village of Ponyatovka, Odessa region, Ukraine.

8. The applicant worked as a customs officer at the Rozdilnyanska Customs Office in the Odessa Region, Ukraine.

9. On 24 July 2000 the applicant was charged with the criminal offences of aiding and abetting in smuggling and tax evasion, abuse of power and fraud. The same day the applicant was arrested. He remained in custody until 6 November 2000.

10. On 6 November 2000 the Novozavodsky District Court of Chernigiv decided the applicant's case. The court established, in particular, that the applicant had certified documents confirming that two vans with goods had left the customs territory of Ukraine, and that the applicant had not checked the actual presence of the vehicles at the customs post. The goods were, however, found and seized by the Security Service somewhere else within the customs territory of Ukraine. The court did not find any proof that the applicant had acted deliberately in order to aid the crime: the applicant denied any criminal intent and no other persons involved in the actual smuggling or tax evasion had been established by the investigation. On the basis of these findings, the court sentenced the applicant to three years' imprisonment for the negligent performance of his professional duties and to a fine of UAH 400¹. At the same time, the court acquitted the applicant of other charges. By the same decision, the applicant was absolved from this sentence under the Amnesty Law of 11 May 2000. This decision was not appealed and became final on 14 November 2000.

11. On an unspecified date, the President of the Chernigiv Regional Court lodged a request for a supervisory review of the judgment of 6 November 2000, on the grounds of an erroneous qualification of the applicant's actions and his unreasonable acquittal on the other criminal charges brought by the prosecution. The President also noted that the sentence was too lenient.

12. On 25 December 2000 the Presidium of the Chernigiv Regional Court allowed the request of its President, quashed the judgment of 6 November 2000, and remitted the case for a fresh consideration. The court instructed the first instance court to examine more thoroughly the existing evidence in the case and to conduct additional, more comprehensive interrogations of the accused and the witnesses.

¹ Around 66 euros ("EUR")

13. On 29 January 2001 the Novozavodsky District Court of Chernigiv considered the case anew and sentenced the applicant to five years' imprisonment, suspended for two years pending probation, and a fine of UAH 1,000¹. The court found the applicant guilty of aiding and abetting in smuggling, an abuse of power and fraud. The court acquitted the applicant of aiding and abetting tax evasion, since all the smuggled goods had been seized by the law enforcement bodies and no profit had been made by anyone selling them.

14. On 1 March 2001 the Criminal Chamber of the Chernigiv Regional Court upheld the decision of the first instance court. The former found that the first instance court had correctly qualified the applicant's actions. This decision was final.

15. On an unspecified date, the President of the Chernigiv Regional Court lodged a request for a supervisory review of the judgments of 29 January and 1 March 2001, on the ground that the courts had not followed the instructions given in the previous decision of the Presidium of the Chernigiv Regional Court of 25 December 2000 about the qualification of the applicant's actions and the severity of the sentence.

16. On 19 March 2001 the Presidium of the Chernigiv Regional Court chaired by the President allowed the request, quashed the decision of 29 January 2001, and remitted the case for a fresh consideration. The Presidium found that the first instance court had not followed the earlier instructions and that the sentence was too lenient.

17. On 2 October 2001 the Novozavodsky District Court of Chernigiv considered the case anew, found the applicant guilty of all charges and sentenced him to five years' imprisonment.

18. On 9 July 2002 the Supreme Court allowed the applicant's cassation appeal and changed the decision of the first instance court, sentencing the applicant to two years' imprisonment for the negligent performance of his professional duties. The court noted that no criminal intent in the applicant's actions could be established and, given the lapse of time, it seemed improbable that any other offenders, who had been directly involved in smuggling, could be found. Therefore, the court acquitted the applicant of the other charges (aiding and abetting in smuggling and tax evasion) for a lack of *corpus delicti*. By the same decision, the applicant was absolved from his sentence under the Amnesty Law of 11 May 2000.

II. RELEVANT DOMESTIC LAW

19. At the material time, Chapter 31 of the Code of Criminal Procedure allowed a final and binding judgment to be subject to a supervisory review. The final judgment in a case could be appealed under the supervisory

¹ Around EUR 165.5

review procedure by the President of a Regional Court or the Supreme Court of Ukraine, the Regional Prosecutor or the Prosecutor General of Ukraine or their Deputies (Article 384), and had to be considered by the Regional Court or the Supreme Court (Article 388). Under Article 385, if the appeal against the final judgment was to the detriment of the person thereby convicted or acquitted, it could be lodged only within a year after the impugned judgment had come into force. Otherwise, the supervisory review appeal could be lodged at any time.

The supervisory review procedure was repealed in June 2001.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

20. The applicant's complaint about the supervisory review procedure raised in substance an issue under Article 6 § 1 of the Convention, which provides as relevant:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal..."

21. The Government maintained that the quashing of the final judgments in the criminal case against the applicant under the supervisory review procedure was carried out in order to ensure the effectiveness of the criminal justice system. The reason for the quashing was an incorrect qualification of the applicant's actions by the courts. They further maintained that the applicant had had the necessary procedural safeguards in the criminal proceedings against him. Therefore, in the Government's opinion, there was no violation of Article 6 § 1 of the Convention.

22. The applicant disagreed, stating that the quashing of the final judgments in his case violated the principle of legal certainty, and that the final findings of the Supreme Court in his case confirmed that the requests for supervisory review had been ill-founded.

23. The Court reiterates that, although a mere possibility to re-open a criminal case is *prima facie* compatible with the Convention, including the guarantees of Article 6, certain special circumstances of the case may reveal that the actual manner in which such a review was used impaired the very essence of the right to a fair trial. In particular, the Court has to assess whether, in a given case, the power to launch and conduct supervisory review was exercised by the authorities so as to strike, as far as possible, a fair balance between the interests of the individual and the need to ensure the effectiveness of the system of criminal justice (see *Nikitin v. Russia*, no. 50178/99, §§ 54-57, ECHR 2004-VIII).

24. In the instant case the supervisory review procedure was initiated twice upon the request of the President of the Regional Court. The first time, the final and binding judgment was challenged on the grounds of an allegedly erroneous qualification of the applicant's actions and his unreasonable acquittal on certain criminal charges. The Presidium of the Regional Court insisted that all charges against the applicant be upheld even though, as it appears from the materials in the case, the courts could not find sufficient corroborating evidence to reach the conclusions suggested by the supervisory authorities. After reconsideration of the case by two instances, the finality of the judgment was again challenged, because, in the opinion of the President of the Regional Court, supported by the Presidium, the courts had not followed the latter's previous instructions concerning the qualification of the crimes and severity of the sentence to be imposed on the applicant.

25. The Court notes that the grounds for re-opening the proceedings were based neither on new facts, nor on serious procedural defects, but rather on the personal disagreement of the President of the Regional Court with the assessment of the facts and the classification of the applicant's actions by the lower instances. The Court observes that the latter examined all the charges proffered by the prosecution and their original conclusions do not appear to have been manifestly unreasonable, given that they were upheld by the Supreme Court in 2002. In the Court's view, the grounds for supervisory review given by the President of the Regional Court in the present case were insufficient to justify challenging the finality of the judgment and using this extraordinary remedy. Therefore, the Court considers that the State authorities failed to strike a fair balance between the interests of the applicant and the need to ensure the effectiveness of the criminal justice system.

26. Moreover, the manner in which the President and Presidium of the Regional Court insisted on a particular qualification and sentence in the criminal case against the applicant is in itself incompatible with the fair trial guarantees of Article 6 § 1 (see *Salov v. Ukraine*, no. 65518/01, §§ 84-86, 6 September 2005).

27. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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.”

29. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 28 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President