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

THIRD SECTION

CASE OF FADIN v. RUSSIA

(Application no. 58079/00)

JUDGMENT

STRASBOURG

27 July 2006

FINAL

27/10/2006

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 Fadin v. Russia,

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

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr R. LIDDELL, *Section Registrar*,

Having deliberated in private on 8 September 2005 and 6 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 58079/00) 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 Aleksandr Nikolayevich Fadin ("the applicant"), on 6 January 2000.

2. The Russian Government ("the Government") were represented by Mr Pavel Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the criminal proceedings against him had been unreasonably long and that the supervisory review as conducted in the present case had violated his rights under Article 6 of the Convention and Article 4 of Protocol No. 7.

4. The application was allocated to the Third 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 8 September 2005, the Court declared the application partly admissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1954 and lives in Tula.

8. On 7 May 1996 the applicant was arrested on suspicion of the attempted rape of his flatmate. He was subsequently also charged with attempted murder.

9. On 5 August 1996 the Tula Regional Court convicted the applicant of attempted rape and attempted murder (Articles 15, 103 and 117 of the Russian Soviet Federative Socialist Republic ("RSFSR") Criminal Code).

10. On 31 October 1996, on appeal, the Supreme Court of Russia quashed the conviction and remitted the case for a fresh examination. The Supreme Court instructed the Tula Regional Court to examine certain evidence.

11. On 14 March 1997 the Tula Regional Court ordered a psychiatric expert examination of the applicant.

12. On 5 January 1998 the applicant was diagnosed with schizophrenia.

13. On 24 March 1998 the Tula Regional Court reclassified the charges as attempted rape and attempted murder with aggravating circumstances (Articles 15, 103 and 117 of the RSFSR Criminal Code). It held that, on account of his mental disorder, the applicant was not responsible for the acts he had committed and ordered his compulsory treatment in a psychiatric hospital. The applicant did not appeal.

14. The applicant remained in hospital from 20 April 1998 to 30 January 1999. After being discharged from hospital, he travelled to Belarus.

15. On 20 September 1999 the applicant applied to the Prosecutor-General requesting supervisory review of his criminal case. It appears that it was not his first request for supervisory review. The applicant stated, *inter alia*:

> "...I repeat my request to you:
>
> 1. That the case ... against me be fully re-examined by a court...".

16. On 12 November 1999 the Deputy Prosecutor-General lodged an application for supervisory review of the Tula Regional Court's decision of 24 March 1998.

17. On 7 December 1999 the Supreme Court of Russia quashed the decision of 24 March 1998 under the supervisory-review procedure and remitted the case for a fresh examination. The Supreme Court found that in the trial of 24 March 1998 the Tula Regional Court had failed to comply with the instructions the Supreme Court had given in its decision of 31 October 1996. Furthermore, it had unlawfully held that the applicant had

committed more serious acts than those of which he had initially been convicted on 5 August 1996.

18. On an unspecified date the case was set down for a hearing on the merits on 13 July 2000. It appears that the applicant was duly summoned. However, in a telegram addressed to the court he stated that he could not attend the hearing since he had no money to pay for the journey from Belarus to Russia.

19. On 20 July 2000 the Tula Regional Court found the applicant's failure to appear at the hearing unjustified as he had not appended any evidence of his alleged financial hardship to his telegram. It ordered his arrest.

20. On 26 April 2001 the applicant was arrested in Belarus pursuant to a request of the Russian investigative authorities. He was subsequently extradited to Russia. On 24 August 2001 he was placed in the Tula Remand Prison no. IZ-71/1.

21. On 4 September 2001 the Tula Regional Court ordered a psychiatric expert examination of the applicant.

22. According to the expert report, dated 27 September 2001, an in-patient psychiatric expert examination was required. The examination was ordered on 2 October 2001.

23. On 22 October 2001 a written obligation not to leave his place of residence without permission was imposed on the applicant as a preventive measure.

24. On 28 May 2002 the Tula Regional Court reclassified the charges of attempted rape as charges of disorderly behaviour (Article 213 of the RSFSR Criminal Code) and discontinued the criminal proceedings against the applicant on account of the expiry of the statutory time-limit. It acquitted the applicant of the murder charges.

25. On 2 October 2002 the Supreme Court of Russia upheld the judgment.

II. RELEVANT DOMESTIC LAW

26. Section VI, Chapter 30, of the 1960 Code of Criminal Procedure (*Уголовно-процессуальный кодекс РСФСР*), as applicable at the material time, allowed certain officials to challenge a judgment which had become final and to have the case reviewed on points of law and procedure. The supervisory-review procedure (Articles 371-383) was distinct from proceedings in which a case was reviewed in the light of newly established facts (Articles 384-390). However, similar rules applied to both procedures (Article 388).

(a) Date on which a judgment becomes final

Article 356 of the Code of Criminal Procedure provided that a judgment took effect and became enforceable from the date on which the appellate court delivered its judgment or, if it was not appealed against, once the time-limit for appealing had expired.

(b) Grounds for supervisory review and reopening of a case

Article 379
Grounds for setting aside judgments which have become final

"The grounds for quashing or varying a judgment [on supervisory review] are the same as [those for setting aside judgments (which have not become final) on appeal] ..."

Article 342
Grounds for quashing or varying judgments [on appeal]

"The grounds for quashing or varying a judgment on appeal are as follows:

(i) prejudicial or incomplete investigation or pre-trial or court examination;

(ii) inconsistency between the facts of the case and the conclusions reached by the court;

(iii) a grave violation of procedural law;

(iv) misapplication of [substantive] law;

(v) discrepancy between the sentence and the seriousness of the offence or the convicted person's personality."

(c) Authorised officials

Article 371 of the Code of Criminal Procedure provided that the power to lodge a request for a supervisory review could be exercised by the Procurator-General, the President of the Supreme Court of the Russian Federation or their respective deputies in relation to any judgment other than those of the Presidium of the Supreme Court, and by the presidents of the regional courts in respect of any judgment of a regional or subordinate court. A party to criminal or civil proceedings could seek the intervention of those officials to apply for such a review.

(d) Limitation period

Article 373 of the Code of Criminal Procedure set a limitation period of one year during which an application for a supervisory review that might be detrimental to a convicted person could be submitted by an authorised

official. The period ran from the date on which the impugned judgment became enforceable.

(e) The effect of a supervisory review

Under Articles 374, 378 and 380 of the Code of Criminal Procedure, a request for supervisory review was to be considered by the judicial board (the Presidium) of the appropriate court. The court could examine the case on the merits, was not bound by the scope and grounds of the request for supervisory review and was obliged to conduct a full review of the evidence.

The Presidium could dismiss or grant the request. If the request was dismissed, the earlier judgment remained operative. If it granted the request, the Presidium could decide to quash the judgment and terminate the criminal proceedings, remit the case for a new investigation, order reconsideration by a court at any instance, uphold a first-instance judgment reversed on appeal, or vary or uphold any of the earlier judgments.

Article 380 §§ 2 and 3 provided that the Presidium could, in the same proceedings, reduce a sentence or amend the legal classification of a conviction or sentence to the defendant's advantage. If it found a sentence or legal classification to be too lenient, it was obliged to remit the case for reconsideration.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 4 OF PROTOCOL NO. 7 IN RESPECT OF THE SUPERVISORY REVIEW OF THE TULA REGIONAL COURT'S DECISION OF 24 MARCH 1998

27. The applicant complained under Article 6 of the Convention and Article 4 of Protocol No. 7 that he had been tried twice for the same offence. He also complained under Article 6 about the outcome of the criminal proceedings.

Article 6 reads, in so far as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time ... by [a] ... tribunal..."

Article 4 of Protocol No. 7 reads, in so far as relevant, as follows:

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

> 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case."

A. The parties' submissions

1. The Government

28. The Government submitted that the applicant had himself requested the supervisory review and asked for a full re-examination of his criminal case. Accordingly, the supervisory review had been conducted entirely in accordance with the applicant's own request and had significantly improved his situation. The applicant had been acquitted of the murder charges, the charges of attempted rape had been reclassified as charges of disorderly behaviour – a less severe offence – and the criminal proceedings in that regard had been discontinued on account of the expiry of the statutory time-limit. The Government concluded that the applicant could not claim to be a victim of the alleged violation.

2. The applicant

29. The applicant argued that he could still claim to be a victim of the alleged violation irrespective of his requests for supervisory review. Furthermore, he contended that the courts had erred in their findings of fact and law in both phases of the proceedings, that is, before and after the supervisory review.

B. The Court's assessment

30. The Court has previously examined cases raising similar complaints under the Convention in relation to the quashing of a final judicial decision (see *Nikitin v. Russia*, no. 50178/99, ECHR 2004-VIII, and *Bratyakin v. Russia* (dec.), no. 72776/01, 9 March 2006).

31. As regards the applicability of Article 4 of Protocol No. 7 to supervisory review in the *Nikitin* case cited above, the Court found as follows:

> "46. The Court notes that the Russian legislation in force at the material time permitted a criminal case in which a final decision had been given to be reopened on the grounds of new or newly discovered evidence or a fundamental defect (Articles 384-390 of the Code of Criminal Procedure). This procedure obviously falls within the scope of Article 4 § 2 of Protocol No. 7. However, the Court notes that, in addition, a system also existed which allowed the review of a case on the grounds of a judicial error concerning points of law and procedure (supervisory review, Articles 371-383 of the Code of Criminal Procedure). The subject matter of such proceedings

> remained the same criminal charge and the validity of its previous determination. If the request was granted and the proceedings were resumed for further consideration, the ultimate effect of supervisory review would be to annul all decisions previously taken by courts and to determine the criminal charge in a new decision. To this extent, the effect of supervisory review is the same as reopening, because both constitute a form of continuation of the previous proceedings. The Court therefore concludes that for the purposes of the *ne bis in idem* principle supervisory review may be regarded as a special type of reopening falling within the scope of Article 4 § 2 of Protocol No. 7."

32. The Court observes that in the present case a final judicial decision had been quashed on the grounds of serious procedural defects and that the case was reconsidered by two judicial instances, which delivered the final judgment. As in the *Nikitin* case cited above, the subject matter of the new proceedings consisted of the same criminal charge and the validity of its previous determination. Having regard to the above findings, the Court concludes that the supervisory review in the instant case constituted a reopening of the case owing to a fundamental defect in the previous proceedings, within the meaning of Article 4 § 2 of Protocol No. 7. Accordingly, the complaint raises no issues under Article 4 § 1 of Protocol No. 7 and falls to be examined solely under Article 6 of the Convention (see *Bratyakin*, cited above, and *Savinskiy v. Ukraine* (dec.), no. 6965/02, 31 May 2005).

33. The Court reiterates that the mere possibility of reopening a criminal case is *prima facie* compatible with the Convention, including the guarantees of Article 6. However, the actual manner in which it is used must not impair the very essence of a fair trial. In other words, the power to reopen criminal proceedings must be exercised by the authorities so as to strike, to the maximum extent 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*, cited above, §§ 54-61). In the specific context of supervisory review, the Convention requires that the authorities respect the binding nature of a final judicial decision and allow the resumption of criminal proceedings only if serious legitimate considerations outweigh the principle of legal certainty (see *Bratyakin*, cited above).

34. Turning to the circumstances of the present case, the Court observes that it was the applicant himself who had solicited the supervisory review of the Tula Regional Court's decision of 24 March 1998. In particular, he asked for his criminal case to be "fully re-examined by a court". It is not disputed between the parties that the application for supervisory review was lodged by the Deputy Prosecutor-General on 12 November 1999, and the decision in issue was quashed by the Supreme Court of Russia on 7 December 1999 in accordance with the applicant's request. Furthermore, the scope of the subsequent re-examination entirely corresponded to the one requested, that is the case was fully re-examined. The Court considers that,

being the initiator of the supervisory review, the applicant cannot claim to be a victim of the alleged breach of the principle of legal certainty.

35. As regards the applicant's complaint about the outcome of the proceedings before the domestic courts, the Court notes firstly that only the resumed proceedings fall within its competence *ratione temporis*, the Convention having entered into force in respect of Russia on 5 May 1998. Furthermore, in so far as this complaint concerns the assessment of the evidence and results of the proceedings before the domestic courts, the Court reiterates that it is not its task to review alleged errors of fact and law committed by the domestic judicial authorities and that, as a general rule, it is for the national courts to assess the evidence before them and to apply domestic law. The Court's task is to ascertain whether the proceedings as a whole were fair (see, *inter alia, Bernard v. France,* judgment of 23 April 1998, no. 22885/93, § 37, ECHR 1998-II).

36. The Court finds that in the present case the domestic courts at two levels of jurisdiction carefully examined the materials in their possession and reached reasoned conclusions concerning the charges against the applicant. The applicant had ample opportunity to state his case and contest any evidence he considered false. There is no evidence of any unfairness within the meaning of Article 6 in this respect.

37. Therefore, the Court finds no violation of Article 4 of Protocol No. 7 and Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE LENGTH OF CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

38. The applicant complained under Article 6 of the Convention about the length of the criminal proceedings against him.

39. The Court notes that only the proceedings following the supervisory review fall within its jurisdiction *ratione temporis*. Thus the period to be taken into consideration began on 7 December 1999, when the criminal proceedings against the applicant were resumed and his case was transmitted for a fresh examination, and ended on 2 October 2002 with a final judgment of the Supreme Court of Russia. They lasted 2 years, 9 months and 26 days for two levels of jurisdiction. The Court observes, however, that it may take into account the period preceding the entry into force of the Convention (see *Ventura v. Italy*, no. 7438/76, Commission decision of 9 March 1978, Decisions and Reports (DR) 12, p. 38).

A. The parties' submissions

1. The Government

40. The Government submitted that the duration of the proceedings had been reasonable, the occasional delays having been caused by the need to conduct psychiatric expert examinations and to ensure the applicant's presence at the hearing of the Tula Regional Court after the supervisory-review procedure.

2. The applicant

41. The applicant maintained that the length of the proceedings had been unreasonable and that the delays had been attributable to the domestic authorities.

B. The Court's assessment

42. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

43. The Court notes that between December 1999 and August 2000 hearings on the merits were adjourned a number of times because the applicant was outside Russia and did not appear before the court. Furthermore, the proceedings involved a psychiatric expert examination. Taking that into account and having regard to the material in its possession, the Court considers that the period in question did not exceed a "reasonable time" within the meaning of Article 6 § 1 and does not find that the conduct of the domestic authorities led to any significant delays in the proceedings.

44. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 6 of the Convention and Article 4 of Protocol No. 7 as regards the supervisory review of the Tula Regional Court's decision of 24 March 1998 and the outcome of the criminal proceedings;

2. *Holds* that there has been no violation of Article 6 of the Convention as regards the length of the criminal proceedings.

Done in English, and notified in writing on 27 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Roderick LIDDELL	Boštjan M. ZUPANČIČ
Registrar	President