



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

FIRST SECTION

CASE OF SIDORENKO v. RUSSIA

(Application no. 4459/03)

JUDGMENT

STRASBOURG

8 March 2007

FINAL

08/06/2007

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 Sidorenko v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 4459/03) 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 Vladimir Ivanovich Sidorenko (“the applicant”), on 26 December 2002.

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

3. On 11 October 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1951 and lives in the town of Rostov-on-Don.

5. On 16 May 1997 the Investigation Division of the Novocherkassk Town Police Department instituted criminal proceedings against the applicant on suspicion of arbitrary actions. He gave a written undertaking not to leave the town.

6. The case was referred for trial to the Novocherkassk Town Court. At the hearing on 26 November 1997 the applicant successfully challenged the presiding judge and the registrar. On 22 January 1998 the new presiding judge was assigned to the case. At the first hearing on 16 April 1998 the

Town Court accepted the applicant's request for additional witnesses and adjourned the proceedings until 15 June 1998.

7. Of the seven hearings fixed between 15 June 1998 and 11 January 1999, one was postponed due to the counsel's absence, and five were adjourned because the applicant's co-defendant, Ms F., and witnesses did not attend. On 10 December 1998 the Novocherkassk Town Court ordered the police to bring Ms F. to the hearings.

8. On 12 January 1999 the applicant's lawyer challenged the presiding judge, the registrar and the prosecutor. The Novocherkassk Town Court accepted the motion in respect of the presiding judge and appointed a new judge, B. It appears that the first hearing was fixed for 29 April 1999.

9. On 11 May 1999 the applicant asked the Novocherkassk Town Court to assign another judge. He argued that the presiding judge B. was a close friend of a police officer who had performed the pre-trial investigation in his case. The Novocherkassk Town Court removed judge B., assigned judge M. to the case and fixed the first hearing for 5 June 1999.

10. Of the twenty-one hearings fixed between 5 June 1999 and 25 January 2001, ten were adjourned because Ms F., the victims and witnesses defaulted and eleven were postponed because the accused, including the applicant, their counsel and the witnesses did not attend. According to the Government, the Novocherkassk Town Court issued several decisions authorising the police to ensure Ms F.'s presence at the hearings.

11. On 25 January 2001 the presiding judge M. dismissed himself from the trial. The judge held that he had "formed a negative attitude towards the accused and their counsel" because on numerous occasions they had defaulted and had not notified the reasons for their absence. The judge considered that this could influence his impartiality.

12. On 20 February 2001 judge Z. was assigned to the case. She fixed the first hearing for 22 March 2001.

13. Of the twenty-two hearings listed between 22 March 2001 and 16 April 2002, nine were postponed because the witnesses and victims defaulted and six were adjourned because the accused, the victims and witnesses did not attend.

14. The prosecutor asked the Town Court to remit the case for an additional inquiry to correct certain procedural defects made during the pre-trial investigation. On 19 April 2002 the Town Court accepted the request and returned the case-file to the Novocherkassk Town prosecutor's office. The Rostov Regional Court upheld that decision on 16 June 2002, despite the applicant's protest.

15. The prosecutor re-opened the investigation on 5 September 2002 and on the same day discontinued the criminal proceedings because the statutory limitation period had expired. The investigator withdrew the applicant's written undertaking not to leave the town.

16. On 24 December 2002 the Rostov Regional Court, in the final instance, declared the decision of 5 September 2002 unlawful. It ordered the prosecutor to correct certain procedural defects.

17. The acting prosecutor of Novocherkassk annulled the decision of 5 September 2002 and re-opened the investigation. On 25 December 2002 the proceedings were again closed because there was no indication of a criminal offence and, furthermore, the limitation period had expired.

18. The decision of 25 December 2002 was annulled by the prosecutor of the Rostov Region. An additional investigation was initiated. On 26 May 2003 the investigator discontinued the criminal proceedings. On 17 June 2003 the first deputy prosecutor of the Rostov Region considered that the decision of 26 May 2003 was unlawful and re-opened the investigation.

19. On 30 June 2003 the investigator discontinued the proceedings against the applicant and his co-accused because there was no indication of a criminal offence. He informed the applicant that he had the right to rehabilitation and compensation for damage.

20. On 7 July 2003 a deputy prosecutor of Novocherkassk annulled the decision of 30 June 2003 because “certain provisions of the criminal procedural law of the RSFSR had been violated during the investigation”, re-opened the investigation and sent the case-file to the investigation division of the Novocherkassk Town police department. It appears that the criminal case against the applicant is still pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

21. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

22. The Government considered that the complaint about the excessive length of the proceedings was inadmissible under Article 35 § 3 of the Convention. As to the period to be taken into consideration, they argued that the Court had competence *ratione temporis* to examine the period after 5 May 1998. The period ended on 30 June 2003 when the investigator discontinued the criminal proceedings against the applicant.

23. The applicant contested the Government's submissions. He argued that the decision of 30 June 2003 had been annulled in July 2003. The investigation had been resumed and no further decision had yet been taken.

24. The Court observes that the period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

25. The Court agrees with the applicant that the period in question has not yet ended. The applicant provided the Court with a copy of the decision of 7 July 2003 by which the criminal proceedings were re-opened. The Government did not contest the authenticity of that decision and did not inform the Court of any decision which determined the outcome of the criminal proceedings after 7 July 2003. The Court thus considers that the period has lasted so far approximately eight years and eight months.

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The Government argued that the applicant had caused delays by defaulting and challenging the bench, the registrar and the prosecutor. The Town Court could have asked the police to bring him to the hearings or even could have placed him in custody to ensure his attendance. However, it had acted in a "humane" manner and refrained from doing so. The victims, witnesses and the applicant's co-accused had also contributed to the delays by defaulting. The domestic authorities had taken necessary steps to issue objective decisions in the applicant's case. That fact had warranted the remittance of the case for an additional investigation in April 2002.

28. The applicant averred that he could not be blamed for being absent at thirteen hearings because he had not been summonsed. He provided the Registry with copies of lists of summonses issued by the Novochoerkassk Town Court and included in the criminal case-file. He further noted that there was no evidence (copies of summonses, envelopes, acknowledgement of receipt cards, etc.) showing that the summonses had, in fact, been sent to him even when the Town Court's registrar had included them in the lists. The applicant also argued that he had been forced to challenge the composition of the bench because he had had the right to the determination of his case by an impartial tribunal. However, the Town Court had been composed in breach of the Russian law.

29. 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 following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other

authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

30. The Court observes that the parties did not argue that the case had been complex. It thus sees no reason to conclude otherwise.

31. As to the applicant's conduct, the Government argued that he had contributed to the length of the proceedings by failing to attend at least nineteen hearings. The applicant averred that he had not been summonsed to at least thirteen of them. The Court observes that as it appears from the lists of summonses issued by the Novocherkassk Town Court and included in the applicant's memorandum, the applicant was not summonsed to the eight hearings and thus he cannot be held responsible for the delays accrued as the result of their adjournment. However, the Court notes that the aggregated delay incurred through his absence at the hearings to which he had been properly summonsed, amounted to approximately eleven months.

32. The Government further argued that the delays caused by the changes in the composition of the Town Court should be attributed to the applicant because he had successfully petitioned for them. Bearing in mind the prominent place which the right to a fair trial by an independent and impartial tribunal holds in a democratic society (see, *inter alia*, *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, p. 16, § 30), the Court considers that the State should bear the responsibility for a delay incurred through a successful challenge of the trial bench by a party to the proceedings. If a court accepts a party's motion for a change in the composition of the bench, it inevitably means that the fears of that party as to the impartiality and independence of the tribunal were justified. The Court further reiterates that Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide the cases within a reasonable time (see, among other authorities, *Löffler v. Austria*, no. 30546/96, § 57, 3 October 2000). Therefore, the responsibility for an aggregated delay of approximately twelve months caused by the changes in the composition of the Town Court rests ultimately with the State (cf. *Marchenko v. Russia*, no. 29510/04, § 39, 5 October 2006).

33. The Court further observes other substantial periods of inactivity for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. The Court has already noted that at least eight hearings were adjourned because the Town Court had failed to duly summons the applicant (see paragraph 31 above). The Court also observes that on 19 April 2002 the Town Court remitted the case for an additional inquiry to enable the prosecution to correct serious violations of the procedural law. The inquiry was closed and re-opened on several occasions because the investigating authorities had consistently failed to correct the defects. Therefore, the period after 19 April 2002 is attributable to the State. The Court also does not overlook the fact that the Government did not provide any explanation as to the authorities' inactivity after 7 July 2003 when the criminal proceedings against the applicant were

again re-opened. The Court finds it particularly striking that no actions were taken since that date and that the applicant for more than three years is kept in the dark as to the developments in the criminal case against him.

34. The Court furthermore notes that the conduct of the applicant's co-accused, the victims and witnesses was one of the reasons for the prolongation of the proceedings. The Court reiterates that the delay occasioned by their failure to attend at least twenty-five hearings and the Town Court's failure to discipline them is attributable to the State (see *Kuśmierek v. Poland*, no. 10675/02, § 65, 21 September 2004). On several occasions the Town Court authorised the police to bring the co-accused to the hearings. However, there is no indication that those orders were, in fact, complied with. Furthermore, the Town Court did not take any steps to ensure the victims' and the witnesses' presence.

35. Having examined all the material submitted to it and taking into account the overall length of the proceedings, the Court considers that in the instant case the length of the proceedings is excessive and fails to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. The applicant further complained that in Russia there is no authority to which application could be made to complain of the excessive length of proceedings. This complaint falls to be examined under Article 13 of the Convention which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

37. The Government, without providing further details, submitted that on several occasions the applicant had successfully applied to the Novochoerkassk Town Court which had considered his motions and requests. Furthermore, the Government argued that after the proceedings had been discontinued the applicant could have lodged an action for compensation for damage caused by the wrongful institution of the criminal proceedings.

A. Admissibility

38. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

39. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Klyakhin v. Russia*, no. 46082/99, §§ 100-101, 30 November 2004). In particular, the Government did not explain how the motions to the Novochoerkassk Town Court made in the course of the criminal proceedings could have expedited those proceedings or how the applicant could have obtained relief – either preventive or compensatory – by having recourse to a judicial authority with a tort action if the prerequisite for lodging such an action was a final decision on the discontinuation of the proceedings. No such decision has yet been taken in the applicant's case.

40. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF THE PROCEEDINGS

41. Invoking Article 6 §§ 1, 2 and 3 (a) of the Convention, the applicant further complained that he had not understood the charges against him as they had been based on a very confusing set of facts, that he should have been acquitted and that the domestic authorities had committed serious errors of facts and law.

42. The Court, however, considers that it is not called upon to decide whether the facts alleged by the applicant disclose any appearance of a violation of the invoked Convention provision. The Court reiterates that it can only assess the fairness of the criminal proceedings when it is able to consider them in their entirety. Until the proceedings have terminated, it is not possible to determine whether Article 6 has been complied with (see *Nowojski v. Poland*, no. 26756/95, Commission decision of 29 November 1995). The criminal proceedings in the applicant's case are still pending and therefore the present complaints are premature.

43. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4

44. The applicant complained under Article 2 of Protocol No. 4 that he had been unable to move freely because he had given a written undertaking not to leave the town while the criminal proceedings had been pending.

45. The Court reiterates that the rule on non-exhaustion contained in Article 35 § 1 of the Convention affords the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Thus the complaint to be submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits.

46. The Court observes that on 16 May 1997 the investigator applied a restriction, in the form of a written undertaking, on the applicant's right to move freely. On 5 September 2002 the written undertaking was annulled. The Court observes that the applicant did not raise the issue of the alleged violation of his rights guaranteed by Article 2 of Protocol No. 4 before any Russian court. He neither challenged the investigator's decision to apply the restriction nor lodged an action before a competent court claiming compensation for allegedly unlawful restriction of his freedom of movement. The applicant did not dispute that those avenues were open to him. The Court further notes that the applicant did not argue that there had been special circumstances which had absolved him from the obligation to exhaust domestic remedies at his disposal.

47. Therefore the Court considers that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

48. The applicant finally complained under Article 5 of the Convention that the domestic authorities violated his right to liberty.

49. The Court observes that the applicant was not arrested or detained. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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.”

51. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing

together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

52. On 24 January 2006 the Court invited the applicant to submit his claims for just satisfaction. He did not submit any such claims. Accordingly, the Court considers that there is no call to award the applicant any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings and the absence of effective remedy admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 8 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President