



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

FIRST SECTION

CASE OF SIDOROVA (ADUKEVICH) v. RUSSIA

(Application no. 4537/04)

JUDGMENT

STRASBOURG

14 February 2008

FINAL

14/05/2008

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 Sidorova (Adukevich) v. Russia,

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

Christos Rozakis, *President*,

Loukis Loucaides,

Nina Vajić,

Anatoli Kovler,

Elisabeth Steiner,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 24 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 4537/04) 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, Mrs Irina Georgiyevna Adukevich ("the applicant"), on 24 December 2003. On 18 August 2004 the applicant changed her name to Valeriya Georgiyevna Sidorova.

2. The applicant was represented before the Court by Mr I. Telyatyev, a lawyer practising in Arkhangelsk. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mrs V. Milinchuk.

3. On 11 September 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Arkhangelsk.

6. On 23 November 2002 the applicant, a taxi driver, had driven Mr P. and Ms I. to their destination. According to Mr P., an argument broke out between him and the applicant upon arrival at the destination and the applicant injured him with her car. According to the applicant, Mr P. assaulted her and attempted to break the car door and windscreen. She denied that she had injured him and claimed that he had been in good health when she had left.

7. On 8 August 2003 the Severodvinsk Town Court of Arkhangelsk Region convicted the applicant of reckless driving resulting in an injury and sentenced her to one year's imprisonment conditional on one year's probation. The court based its findings on the version of events presented by Mr P. and rejected statements by witnesses K., Ko. and S., who had supported the applicant's version of events.

8. On 17 August 2003 the applicant lodged a statement of appeal. She contended, in particular, that the court had not been impartial as it had based its findings only on the contradictory statements of Mr P. and Ms I., and had disregarded her version which was supported by many witnesses' statements.

9. According to the Government, both the applicant and her lawyer were informed of the appeal hearing. The Government submitted the following documents:

(a) a copy of the summons of 20 August 2003 which was addressed to the applicant, the victim, counsel for the applicant and for the victim and to the prosecutor;

(b) an extract from the registry correspondence log, indicating the dispatch of the summons to the applicant's home address;

(c) an extract from the court delivery log, indicating that the summons had been delivered to the advocates' office of which counsel for the applicant was a member.

10. The applicant submitted that she had never received the summons. As regards her counsel, the summons had indeed been received by one of his colleagues but not by him personally.

11. On 9 September 2003 the Arkhangelsk Regional Court examined the case on appeal. The court heard submissions by the judge rapporteur and prosecutor, who asked the court to reject the appeal. Neither the applicant nor her counsel was present at the hearing. The Regional Court upheld the judgment of 8 August 2003.

12. On an unspecified date the applicant asked the District Court to grant her access to the case file. She submitted that on 11 November 2003 a judge of the District Court had refused the request on the ground that the conviction had become final, but she did not provide any documentary evidence in support of this.

II. RELEVANT DOMESTIC LAW

A. The Code of Criminal Procedure

13. Article 373 of the Code of Criminal Procedure (“the Code”) provides an appeal court examines appeals with a view to verifying the lawfulness, validity and fairness of judgments.

14. Under Article 376 § 2 of the Code, parties to the proceedings shall be notified of the date, time and place of an appeal hearing no later than fourteen days beforehand. Article 376 § 4 provides that the parties' failure to appear before the court, if they were duly informed of the date and time of the appeal hearing, is not an obstacle to the examination of the case.

15. Under Article 377 §§ 4 and 5 of the Code, an appeal court can directly examine evidence, including additional material submitted by parties.

16. Article 379 of the Code sets out the grounds for setting aside judgments. In particular, a judgment will be quashed if there is an inconsistency between the conclusions reached by the court in the judgment and the facts established. Article 380 provides that such an inconsistency will occur if, *inter alia*, the court's conclusions are not supported by the evidence examined in the hearing; if the court fails to take into consideration circumstances which could substantially affect its findings; or if, in case of contradictory evidence, the judgment does not specify why some of it is accepted and the remainder is rejected.

B. Instruction on the judicial workflow in district courts, approved by Order no. 36 of the Judicial Department of the Supreme Court on 29 April 2003

17. Article 2.13 provides that, summonses and copies of procedural documents shall be sent by registered mail with an acknowledgement of receipt form.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained that the appeal court had held the hearing in her absence, without duly notifying her of the time and date of that

hearing. She relied on Article 6 §§ 1 and 3 (c) of the Convention, which read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal....

3. Everyone charged with a criminal offence has the following minimum rights:

... (c) to defend himself in person or through legal assistance of his own choosing...”

A. Admissibility

19. 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

1. Submissions by the parties

20. The Government maintained that both the applicant and her lawyer had been duly informed of the hearing in the Arkhangelsk Regional Court. They relied on the documents submitted (paragraph 9 above). Examination of the case in the applicant's absence had therefore been compatible with Article 376 § 4 of the Code of Criminal Procedure.

21. The applicant argued that the summons had not been served on her and that the Government had not produced any evidence to the contrary. Moreover, pursuant to the Instruction on the judicial workflow in district courts, approved by Order no. 36 of the Judicial Department of the Supreme Court on 29 April 2003, the summonses had to be sent by registered mail and the acknowledgement of receipt form had to be included in the case file. The applicant further maintained that her presence at the hearing had been crucial as she had sought to challenge the first-instance court's decision to reject her testimony.

2. The Court's assessment

(a) General principles

22. The Court notes at the outset that the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, and therefore the applicant's complaints under Article 6 §§ 1 and 3 should be examined together (see *Vacher v. France*, judgment of

17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2147, § 22).

23. The Court reiterates that the duty to guarantee the right of a criminal defendant to be present in the courtroom – either during the original proceedings or in a retrial – ranks as one of the essential requirements of Article 6 (see *Stoichkov v. Bulgaria*, no. 9808/02, § 56, 24 March 2005). However, the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing as it does for the trial hearing (see *Hermi v. Italy* [GC], no. 18114/02, § 60, ECHR 2006-...). Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appeal court, particularly in the light of the issues to be decided by it (see, among many other authorities, *Metelitsa v. Russia*, no. 33132/02, § 27, 22 June 2006; *Belziuk v. Poland*, judgment of 25 March 1998, *Reports* 1998-II, § 37, and *Botten v. Norway*, judgment of 19 February 1996, *Reports of Judgments and Decisions* 1996-I, § 39). Where an appellate court has to examine a case as to the facts and the law and make a full assessment of the issue of guilt or innocence, it cannot determine the issue without a direct assessment of the evidence given in person by the accused for the purpose of proving that he did not commit the act allegedly constituting a criminal offence (see *Dondarini v. San Marino*, no. 50545/99, § 27, 6 July 2004, and *Hermi*, cited above, § 64).

24. The principle of equality of arms is only one feature of the wider concept of a fair trial, which also includes the fundamental right that criminal proceedings should be adversarial. This latter means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party (see *Vanyan v. Russia*, no. 53203/99, § 62, 15 December 2005, and *Brandstetter v. Austria*, judgment of 28 August 1991, Series A no. 211, p. 27, §§ 66–67).

(b) Application of the above principles to the instant case

25. The Court observes that, in Russia, the jurisdiction of appeal courts is not limited to matters of law but also extends to factual issues. The Arkhangelsk Regional Court thus had the power to review the case both as to facts and as to law. It was also competent to consider additional facts which had not been examined in the first-instance proceedings. Pursuant to Article 380 of the Code of Criminal Procedure (paragraph 16 above), it had to elucidate the first-instance court's findings in respect of any discrepancy between the presented versions of events.

26. The applicant denied the facts upon which the charge against her was founded and maintained that the first-instance court had attached undue weight to the victim's testimony. Thus, for the appeal court the crucial

question concerned the credibility of the statements of the persons on trial; it was called upon to examine the case as to the facts and the law and to make a full assessment of the applicant's guilt or innocence. In those circumstances the court could not, if the trial were to be fair, determine the applicant's case in her absence (see, *mutatis mutandis*, *Vanyan*, cited above, § 67, and *Belziuk*, cited above, § 38).

27. Against this background the Court will not speculate on whether the applicant's lawyer received the summons. It notes that it was the applicant who appealed against the judgment and that her lawyer had not submitted any statement of appeal. In previous cases the Court has found a violation of the applicant's right to be heard in person in the appeal proceedings, even where the applicant was in fact represented by a defence counsel in the appeal court, but the issues to be determined required his or her personal presence (see, among others, *Sigurþór Arnarsson v. Iceland*, no. 44671/98, §§ 31-38, 15 July 2003; *Pobornikoff v. Austria*, no. 28501/95, § 29-33, 3 October 2000; and *Dondarini*, cited above, § 27). In the present case the issues to be determined by the Regional Court were predominantly factual in nature and therefore required an assessment of the evidence given by the applicant in person. Thus, it was incumbent on the domestic authorities to ensure the applicant's presence at the hearing.

28. The Court notes that the summons was not sent to the applicant by registered mail or in any other traceable manner, and the Government did not indicate why they believed that the applicant had received the summons (see *Sukhorubchenko v. Russia*, no. 69315/01, § 46, 10 February 2005; *Guțu v. Moldova*, no. 20289/02, § 52, 7 June 2007; *Strizhak v. Ukraine*, no. 72269/01, § 39, 8 November 2005; and *Metelitsa*, cited above, § 34). The Court finds that, whereas the State was under a duty to ensure the applicant's presence in the Arkhangelsk Regional Court, the applicant had not been duly summoned to the appeal hearing.

29. Furthermore, the Court observes that the Arkhangelsk Regional Court heard the opinion of the prosecutor to whose comments the applicant had had no opportunity to reply.

30. In view of the above considerations the Court finds that the proceedings before the Arkhangelsk Regional Court did not comply with the requirements of fairness. There has therefore been a breach of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant further complained under Article 6 of the Convention that the domestic courts had assessed the evidence in an arbitrary manner and had failed to resolve contradictions in the testimonies. She also complained under Articles 8 and 34 of the Convention that she had been

refused access to her criminal case file after the conviction had become final.

32. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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.”

A. Damage

34. The applicant maintained that her conviction without being given an adequate opportunity to defend herself had caused her suffering and anxiety. She had had to leave her job due to its dangerousness and lack of protection by the State. She therefore claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

35. The Government considered the claim completely unsubstantiated and excessive. In the Government's view, the finding of a violation would constitute sufficient just satisfaction in the present case.

36. The Court finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. However, the amount claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, it awards the applicant EUR 1,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

37. The applicant claimed 32,000 Russian roubles (RUB) in respect of her representation in the proceedings before this Court.

38. The Government argued that the applicant's claim had not been duly substantiated.

39. The Court reiterates that, in order for costs and expenses to be awarded under Article 41, it must be established that that they were actually and necessarily incurred in order to prevent or obtain redress for the matter

found to constitute a violation of the Convention and are reasonable as to quantum (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII). It notes that the costs and expenses claimed by the applicant were supported by appropriate evidence and did not appear disproportionate to the amount of work performed in the case. However, a certain reduction is to be applied as some of the applicant's complaints were declared inadmissible (see *Shofman v. Russia*, no. 74826/01, § 57, 24 November 2005). Making its assessment on the basis of the available information, the Court awards the applicant EUR 850, plus any tax that may be chargeable on that amount.

C. Default interest

40. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the absence of the applicant at the hearing in the appeal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 850 (eight hundred and fifty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President