



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

FIRST SECTION

CASE OF GOLOVKIN v. RUSSIA

(Application no. 16595/02)

JUDGMENT

STRASBOURG

3 April 2008

FINAL

29/09/2008

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 Golovkin v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 16595/02) 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 Ivanovich Golovkin (“the applicant”), on 3 April 2002.

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

3. On 14 December 2005 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect 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.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, having regard to the subject matter of the application and the Court’s case-law, the Court dismissed the Government’s objection.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Kaliningrad.

6. At the relevant time the applicant was the director of the Kaliningrad branch of a Russian limited company, Uniya. In 1997 and 1998 the company imported several consignments of alcohol from Germany to the Kaliningrad region, acting as a commissioner or, in some instances, as a buyer of that alcohol.

7. On 29 April 1998 the police initiated criminal investigation into the business activities of Uniya (criminal case no. 52012). Within the framework of this investigation the applicant was charged with illegal trading, tax evasion and money laundering (Articles 171, 199 and 174 of the Criminal Code respectively). He was ordered not to leave Kaliningrad without authorisation from the prosecution authorities.

8. In the course of the trial the prosecutor withdrew the accusation under Article 174, but supported the other charges against the applicant. The applicant pleaded not guilty.

9. According to the Government, the time-limits of the investigation were extended several times: on 23 June, 25 July, 14 October 1998 and 19 January 1999. The investigation was completed on 23 April 1999, and the applicant obtained access to the case file. In September 1999 the case was transmitted to the court for examination on the merits.

10. According to the applicant, on two occasions in 2000 hearings had been adjourned due to the absence of the judge and of the public prosecutor. On 24 November 2000 the Baltiyskiy District Court of Kaliningrad fully acquitted the applicant.

11. On 20 March 2001 the Kaliningrad Regional Court, on an appeal by the prosecutor, quashed the acquittal and remitted the case to the prosecution authorities for further investigation, referring to “incompleteness of the pre-trial investigation and trial”. The court of appeal found that the case was not ready for trial and ordered the prosecution authorities to carry out certain additional investigative actions in respect of foreign partners of the company.

12. Following receipt of the case file from the court on 19 April 2001, the prosecution reopened the investigation and extended the time-limit for its completion. In the following years the completion of the investigation was reported several times. Thus, on 3 May 2001 the prosecution extended the time-limit for the investigation referring to the need to carry out additional investigative actions. On 18 July 2001 the time-limit was extended again. According to the Government, it was done in order to obtain new evidence, in particular, to carry out an audit of the business activities of Uniya. On 24 October 2001 the time-limit was extended anew. The prosecution referred to the need to obtain new evidence, to translate and send several requests for legal assistance addressed to the foreign authorities. On 8 February 2002 the time-limit of the investigation was extended with the reference to the need to obtain evidence in Lithuania. On 9 April 2002 the time-limit was extended in order to obtain evidence in

Germany. On 25 July 2002 the time-limits were extended since the prosecution authorities had not received the replies to their requests for legal assistance from Great Britain and Germany. On 17 February, 16 May and 27 August 2003 the time-limit was extended again, in order to complete the investigation. In sum, according to the Government, throughout the investigation the authorities had obtained twelve expert examinations. They had also sent out nine requests to foreign authorities for legal assistance. The materials of the case were contained in fifty-nine case files.

13. The applicant, in his turn, made several attempts to have the criminal proceedings against him terminated. To this end he lodged a number of complaints challenging various decisions of the investigative authorities.

14. Thus, on 25 July 2002 the applicant challenged the initial decision to open the criminal investigation into the allegedly illegal traffic of alcohol. On 31 July 2002 the Leningradskiy District Court of Kaliningrad left that complaint unexamined. The court found that the Code of Criminal Procedure did not provide for judicial control over that kind of decision by the prosecution authorities. On 10 September 2002 the Kaliningrad Regional Court upheld the lower court's view.

15. On an unspecified date the applicant requested the prosecutor in charge of his case to close the investigation. The investigative authorities refused. In July 2002 the applicant challenged the refusal before the court. On 9 August 2002 the Leningradskiy District Court of Kaliningrad rejected his complaint. On 17 September 2002 the Kaliningrad Regional Court, after examining an appeal by the applicant against the decision of 9 August 2002, decided to discontinue its review of the prosecutor's refusal to close the investigation. The court of appeal found that the Code of Criminal Procedure did not provide for judicial review of the refusal of the investigative authorities to close the investigation.

16. In 2002 the applicant challenged the decision to extend the time-limit for the investigation. On 8 August 2002 the Baltiyskiy District Court found that the extension of the time-limit for the pre-trial investigation had been lawful and necessary, because in its decision of 20 March 2001 the court of appeal had ordered additional investigative actions to be carried out abroad, in several European countries. Consequently, the extension of the time-limit had been justified. That decision was upheld by the Kaliningrad Regional Court on 8 October 2002.

17. Early in 2003 the applicant challenged the decision of 29 April 1998, which had ordered the investigation of his case to be opened. On 19 May 2003 the court found that everything had been conducted properly in respect of that decision and consequently rejected the complaint. The applicant appealed, claiming that the first-instance court had only examined the formal side of the decision, without assessing whether the criminal prosecution was necessary in the circumstances. On 17 June 2003 the

Kaliningrad Regional Court dismissed the applicant's appeal and upheld the first-instance court's decision.

18. On 29 May 2003 the applicant challenged the decision to prosecute him for the above crimes. On 5 June 2003 the Baltiyskiy District Court replied to the applicant by a simple letter, in which it informed the applicant that the Code of Criminal Procedure did not provide for judicial review of the decision complained of. The applicant appealed. On 16 June 2003 the appeal was returned to him unexamined, because a simple letter of the court was not subject to appeal.

19. On 14 November 2003 the investigation was completed and the accused and his lawyer were given access to the case-file. On 22 December 2003 the criminal case was sent to the Baltiyskiy Transport Prosecutor for referral to the Baltiyskiy District Court of Kaliningrad for examination on the merits. However, according to the Government, for certain procedural reasons the case did not reach the District Court until 15 September 2004.

20. On 31 May 2005 the Baltiyskiy District Court found the applicant guilty of illegal trading. He was acquitted of the other charges. The court sentenced the applicant to two years' imprisonment, but ordered the sentence to be suspended due to the expiry of the statutory time-limit within which a person can be prosecuted for such crimes (*истечение срока давности привлечения к уголовной ответственности*).

21. On 22 September 2005 the Kaliningrad Regional Court, acting on appeal, quashed the judgment of 31 May 2005 and decided to discontinue the proceedings in the applicant's case due to the expiry of the statutory time-limit.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 (LENGTH OF PROCEEDINGS) AND ARTICLE 13 OF THE CONVENTION

22. The applicant complained that the length of the criminal proceedings in his case had been 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..."

23. The applicant further complained under Article 13 that he had no effective remedies in respect of the excessive length of the criminal proceedings. Article 13 of the Convention, in so far as relevant, provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ..."

A. The parties' submissions

24. The Government argued that the applicant had failed to exhaust domestic remedies in respect of his complaint under Article 6 § 1 of the Convention. They stated that the applicant had never challenged the length of the proceedings before the courts, except for one occasion when he had appealed against the decision to extend the time-limit for completing the investigation. Further, he had not raised this complaint in his appeal against the judgments on the merits of his case. Consequently, Article 13 had not been violated either, since the applicant had had domestic remedies but had not used them.

25. The applicant did not submit any comments on this statement.

B. Admissibility

26. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. However, in the present case the Government's objection concerning the non-exhaustion of domestic remedies in respect of the applicant's complaint under Article 6 is intrinsically linked to his complaint under Article 13 of the Convention concerning the alleged lack of effective remedies capable of speeding up the proceedings. Therefore, this objection should be joined to the merits of the case.

27. The Court further notes that these two complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

C. Merits

1. Effective remedies

28. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

29. Turning to the present case, the Court notes that the proceedings in the applicant's case lasted seven years, four months and twenty-six days: they started on 29 April 1998, when the criminal case against the applicant was opened, and ended on 22 September 2005, when the proceedings were discontinued by the court of appeal. The Convention entered into force in respect of Russia on 5 May 1998. Therefore, the overall duration falling within the Court's competence *ratione temporis* is seven years, four months and seven days.

30. The Government referred to two remedies available to the applicant. First, the applicant could have complained about the length of proceedings in his appeal against the judgment in his criminal case. Alternatively, the applicant could have complained about the prolongations of the investigation to the courts in separate proceedings.

31. As to the first legal avenue, indicated by the Government, the Court, in the circumstances, does not regard it as an adequate remedy. The regional court was supposed to examine the lawfulness of the judgment of 31 May 2005, and decide on the subject matter of the accusation against the applicant. As to the length of previous criminal proceedings, it is unclear how the applicant could have obtained relief by complaining about it in his appeal. The Government did not refer to any provision of the domestic law which would empower the regional court to give the applicant redress, in one form or another, for the allegedly excessive length of criminal proceedings, which by that time had lasted more than seven years.

32. The second legal avenue referred to by the Government is more of a preventive nature. In their words, the applicant could have challenged decisions prolonging the criminal investigation in his case. At the same time the Government acknowledged that the applicant had used this avenue at least once, in 2002. He was unsuccessful: on 8 August 2002 the Baltiyskiy District Court found that the extension had been justified because, first, the investigative authorities had acted lawfully (within their procedural and material competence), and second, because they needed to collect additional evidence abroad.

33. However, the Court is not persuaded that this remedy was adequate to deal with the problem of length of proceedings. Thus, from the Government's submissions it is unclear what would have happened to the applicant's case if the court had agreed to his request and ruled that no extension should be granted.

34. It appears that the domestic courts were satisfied with the fact that the investigation had not yet been completed, and that more investigative measures were needed. The courts did not analyse the period preceding the last extension. They did not examine why, after more than four years, the investigative authorities still needed to obtain key evidence. In other words, the courts' analysis of the length of the proceedings was quite limited. The courts did not give, or were unable to give, a proper assessment of the

overall length of the proceedings, as required by Article 13 taken together with Article 6 § 1.

35. In sum, the Government failed to show that the remedy could have expedited the determination of the applicant's case, or provided him with redress for the past delays. The Court further notes that the Government did not refer to any other procedure the applicant had failed to make use of and which could have remedied the alleged violation. On these grounds, the Court rejects the Government's argument as to the non-exhaustion of domestic remedies. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a trial within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

2. Reasonableness of the length of the proceedings

(a) The parties' submissions

36. The overall duration of the proceedings was not disputed by the parties. The Government argued, however, that the length of the proceedings in the applicant's criminal case had been reasonable. They submitted that the case was complex. It had required numerous investigative actions, some of which had to be carried out abroad. Furthermore, the Government contended that some of the delays had been attributable to the applicant, who had lodged many complaints. On some occasions hearings had been adjourned due to the absence of his lawyers. Thus, the length of the proceedings had been accounted for by "objective causes".

37. The applicant maintained his complaints. He argued that there had been no need to order so many expert examinations, as their results had repeated one another. The applicant also contended that the Government had failed to explain why the investigative actions abroad had been necessary. As to the Government's argument about his numerous complaints, the applicant alleged that the authorities had not been prevented from investigating his case at the time when the court had been examining his complaints. He also maintained that he had not contributed to the length of the proceedings.

(b) The Court's assessment

38. 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). Further, an accused person in criminal proceedings should be entitled to have his case conducted with special diligence and Article 6 is, in

criminal matters, designed to avoid a person charged remaining too long in a state of uncertainty about his fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

39. Turning to the present case the Court notes that it was relatively complex. The case concerned multiple financial transactions and involved questioning of witnesses abroad. Several expert examinations had to be obtained. The Court thus accepts that the authorities in the domestic proceedings were faced with some difficulties in obtaining evidence. However, the complexity of the case cannot by itself justify the length of the proceedings. Regard should be had to the other factors.

40. As regards the Government's argument that the delays in the proceedings were attributable to the applicant, the Court observes that Article 6 does not require a person charged with a criminal offence to cooperate actively with the judicial authorities (see, for example, *Dobbertin v. France*, judgment of 25 February 1993, Series A no. 256-D, p. 117, § 43) and that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66). The Court accepts the applicant's argument that the examination of his complaints by the courts did not prevent the authorities from investigating his case. The Court thus concludes that the applicant did not contribute to the length of the proceedings.

41. As to the conduct of the authorities, the Court notes that the domestic courts examined the applicant's case twice at two levels of jurisdiction. In 2001, after the applicant had been acquitted, the appeal court ordered an additional investigation. The court of appeal recognised that the pre-trial investigation had been incomplete. Therefore, although the prosecution considered the case to be ready for trial in 2000, it took almost four more years to complete the investigation and re-submit the case to the first-instance court.

42. The Court notes that during the second round of investigation the prosecution did not stay idle. Thus, the investigator tried to obtain evidence from foreign partners of Uniya. The "international aspect" of the case inevitably made the task of the prosecution more difficult. Furthermore, since the case concerned economic crime, the investigator had to commission a number of audit reports. However, the Government did not explain why that evidence had not been obtained during the first round of the investigation, simultaneously with other investigative actions. Therefore, the fact that the first investigation had been incomplete contributed to the overall length of the proceedings.

43. The Court further notes that the proceedings lasted over seven years, and that the court had finally to drop the charges against the applicant because of the expiration of the statutory time-limit. During all that time the applicant's freedom of movement was seriously limited, which must have

been quite onerous in view of the applicant's occupation. Furthermore, the length of the proceedings could have affected his economic interests and the reputation of his company. In such circumstances the Court finds that the authorities were under an obligation to act with special diligence in order to avoid such consequences. However, the facts of the case show that this obligation was not complied with.

44. Having regard to its case-law on the subject, the Court considers that notwithstanding the complexity of the case the length of the proceedings in the applicant's case was excessive. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. The applicant complained that all charges against him had been ill-founded and that the prosecution authorities had failed to inform him of the nature and cause of the accusation against him. He also complained that he had been unable to have the proceedings terminated by way of judicial review.

46. Having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 1,000,000 United States dollars in respect of non-pecuniary damage.

49. The Government contested the claim as unsubstantiated and excessive.

50. 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, the Court awards

the applicant 5,600 euros (EUR) plus any tax that may be chargeable on that amount.

B. Costs and expenses

51. The applicant did not claim reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

52. 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. *Joins to the merits* the Government's objection as to the non-exhaustion of domestic remedies and rejects it;
2. *Declares* the complaints concerning the excessive length of the proceedings and the alleged absence of effective remedies in this respect admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings;
5. *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, EUR 5,600 (five thousand six hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

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

Søren Nielsen
Registrar

Christos Rozakis
President