



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

FIRST SECTION

CASE OF OBLOV v. RUSSIA

(Application no. 22674/02)

JUDGMENT

STRASBOURG

15 January 2009

FINAL

15/04/2009

This judgment may be subject to editorial revision.

In the case of Oblov 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,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 22674/02) 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 Sergeyevich Oblov (“the applicant”), on 2 February 2001.

2. The applicant was represented by Ms S. Burayeva, a lawyer practising in Ulan-Ude. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 27 March 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1983 and lives in Sagan-Nur in the Buryatia Republic.

A. First trial

5. On 10 May 1998 the applicant, then fifteen years of age, was arrested. On 12 May 1998 he was charged with causing grievous bodily harm occasioning the death of the victim. On 13 May 1998 the prosecutor refused to admit Ms S as counsel and appointed another lawyer to represent the

applicant. It appears that the applicant pleaded guilty, but later retracted his plea alleging that he had confessed under duress. After an inquiry into the matter, the investigator decided not to prosecute the officers. Apparently, the applicant did not contest this decision.

6. In November 1998 the applicant was charged with murder. After the completion of the preliminary investigation on 13 November 1998, the case was listed for trial before the Mukhorshibirskiy District Court of the Buryatia Republic. On 24 November 1998 the District Court returned the case to the prosecutor for further investigation. On 19 January 1999 the investigation was suspended because a forensic report had been ordered. On the same date, the applicant was released but ordered to remain in town.

7. The preliminary investigation was resumed in June 1999. On 15 July 1999 the prosecutor discontinued the criminal case against the applicant. This decision was quashed on 6 September 1999 and the proceedings were resumed.

8. On 26 November 1999 the District Court again decided to return the criminal case to the prosecutor for further investigation. The applicant was placed in custody. On 11 January 2000 the Supreme Court of the Buryatia Republic quashed the decision of 26 November 1999. It appears that on 1 March 2000 another forensic report was ordered, and the applicant was released but ordered to remain in town. The forensic report was submitted to the trial court on 18 May 2000.

9. On 23 June 2000 the District Court found the applicant guilty of murder and sentenced him to eight years' imprisonment. On the same day he was taken into custody. On 28 August 2000 the Supreme Court upheld the judgment.

B. First supervisory review and retrial

10. On 9 February 2001 the Presidium of the Supreme Court quashed the previous judgments by way of supervisory review because the applicant had not been properly served with a copy of the bill of indictment. A retrial was ordered. On 28 April 2001 the District Court convicted the applicant as charged and sentenced him to eight years' imprisonment. On 19 June 2001 the Supreme Court set this judgment aside on appeal and remitted the case for re-examination by the District Court. The appeal court established that the trial court had not properly assessed the evidence and had erred in its factual findings.

11. On 14 September 2001 the District Court returned the case to the prosecutor for further investigation. It found, *inter alia*, that the prosecutor had unlawfully prevented the applicant's counsel from representing him. It appears that the Supreme Court quashed this decision on 25 October 2001.

12. On 28 November 2001 the District Court found the applicant guilty and sentenced him for a period of time corresponding to the one already

served. The applicant was released on the same day. On 25 December 2001 the Supreme Court quashed the judgment of 28 November 2001 due to certain procedural defects and remitted the case for examination by another district court.

13. On 11 March 2002 the Bichurskiy District Court of the Buryatia Republic found the applicant guilty of murder and sentenced him to six years' imprisonment. The applicant was taken into custody. The Supreme Court upheld this judgment on 18 April 2002. On an unspecified date the applicant was released.

C. Second supervisory review and retrial

14. Upon the applicant's request, on 10 June 2005 the Presidium of the Supreme Court quashed the judgments of 11 March and 18 April 2002 by way of supervisory review for procedural irregularities and remitted the case to the Mukhorshibirskiy District Court.

15. On 18 November 2005 the District Court acquitted the applicant. On 2 March 2006 the Supreme Court quashed the acquittal and ordered a retrial.

16. By a decision of 29 March 2006 the President of the Supreme Court transferred the case for trial by the Tarbagatayskiy District Court of the Buryatia Republic. On 31 May 2006 the District Court discontinued the criminal proceedings against the applicant due to the expiry of the limitation period.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained that the length of the proceedings 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..."

18. The Government submitted that the case had been re-examined several times in the applicant's interest and no significant period of inactivity could be attributed to the investigating authorities or courts. The proceedings had been discontinued in May 2006.

19. The applicant maintained his complaint.

A. Admissibility

20. In so far as the Government can be understood to be arguing that the applicant can no longer claim to be a victim of the alleged violation of the Convention in view of the discontinuation of the proceedings, the Court reiterates that an acquittal or *a fortiori* termination of the proceedings does not in itself deprive the person concerned of victim status in respect of a complaint about the allegedly excessive length of those proceedings (see, among others, *Kobtsev v. Ukraine*, no. 7324/02, § 44, 4 April 2006). Thus, the Government's objection is dismissed.

21. 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

22. The Court reiterates that the period to be taken into consideration begins on the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term. It ends on the day on which a charge is finally determined or the proceedings are discontinued (see *Kalashnikov v. Russia*, no. 47095/99, § 124, ECHR 2002-VI). The period to be taken into consideration in the present case began on 10 May 1998, when the applicant was arrested and taken into custody, and ended on 31 May 2006. The Court observes, however, that it is appropriate to take into account only the periods when the case was actually pending before the courts, that is, the periods when there was no effective judgment in the applicant's case and when the authorities were under an obligation to determine the charge against him within a "reasonable time" (see *Rokhlina v. Russia*, no. 54071/00, § 82, 7 April 2005). Accordingly, the period from 28 August 2000, when the applicant's first conviction became final, to 9 February 2001, when it was quashed, is not taken into account. The same applies to the period from 18 April 2002 to 10 June 2005. It follows that the total length of the proceedings to be taken into consideration amounted to approximately four years and five months.

23. 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).

24. In that connection, it is observed that an accused in criminal proceedings, especially when he is a minor or remains in detention pending investigation and/or trial, should be entitled to have his case conducted with

special diligence and Article 6 is, in criminal matters, designed to avoid that a person charged should remain too long in a state of uncertainty about his fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006, and *Taylor v. the United Kingdom* (dec.), no. 48864/99, 3 December 2002). The Court considers that much was at stake for the applicant in the present case, bearing in mind that he risked imprisonment and was detained several times pending the proceedings.

25. The Court considers on the basis of the information submitted by the parties that the case was not particularly complex and that no significant delays can be attributed to the applicant.

26. As to the conduct of the authorities, the Court observes that the District Court started to deal with the case only in 2000, after nearly two years of preliminary investigation. A considerable part of that period the applicant spent in detention. In particular, the Court observes that the preparation of the first forensic report took nearly five months. However, there is no indication that that length was due to the complexity of the issues put before the expert or to other circumstances of the case. The Court reiterates in this respect that the principal responsibility for delay due to expert opinions rests ultimately with the State (see *Marchenko v. Russia*, no. 29510/04, § 38, 5 October 2006, with further references). Accordingly, these periods are imputable to the State.

27. The Court also notes that the length of the proceedings was also due to the fact that the criminal case against the applicant was re-examined several times, including twice following a reopening by way of supervisory review. The Court does not lose sight of the fact that the procedure for reopening proceedings in 2005 was set in motion by the applicant. The Court reiterates, however, the principle according to which an applicant cannot be blamed for taking full advantage of the resources afforded to the defence by national law (see *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66). The same applied to the supervisory-review procedure, although it is not normally taken into consideration as a remedy under Article 35 § 1 of the Convention (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II (extracts)). Although the mere possibility of reopening a criminal case is *prima facie* compatible with Article 6 of the Convention, the Convention requires that the authorities allow the resumption of criminal proceedings only if serious legitimate considerations outweigh the principle of legal certainty (see *Bratyakin v. Russia* (dec.), no. 72776/01, 9 March 2006). Once such a reopening is allowed, the ensuing proceedings should be completed within a “reasonable time”, regard being had to all pertinent factors (see, *mutatis mutandis*, *Ivanov v. Ukraine*, no. 15007/02, § 74, 7 December 2006, and *Henworth v. the United Kingdom*, no. 515/02, § 29, 2 November 2004).

28. Although the Court is not in a position to analyse the juridical quality of the domestic courts’ decisions, it considers that, since the remittal

of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Yurtayev v. Ukraine*, no. 11336/02, § 41, 31 January 2006; *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006; and *Maruseva v. Russia*, no. 28602/02, § 32, 29 May 2008). It is incumbent on respondent States to organise their legal systems in such a way that their courts can meet the requirements of Article 6 of the Convention, including the obligation to hear cases within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006).

29. Thus, although the overall length of the proceedings was not particularly long, the Court considers that the “reasonable time” requirement was not complied with, having regard to the circumstances of the case, in particular the applicant’s age at the relevant time and the re-examination of the case on several occasions. There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. The applicant complained under Article 3 of the Convention that in 1998 the police officers had beaten him up and forced him to confess. He further complained, under Article 6 § 3 (b) and (c) of the Convention, about the restrictions on his right to defend himself through legal assistance of his own choice. He also complained, under Article 6 § 3 (d), of the Convention that the court did not hear the defence witnesses until two years after the criminal proceedings had been instituted.

31. The Court has examined those complaints, as submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court 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

32. 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

33. The applicant claimed compensation in respect of non-pecuniary damage, leaving the determination of its amount to the Court’s discretion.

34. The Government argued that the applicant had not substantiated his claims and that the Court should not therefore make any award. In any event, in the present case a finding of a violation would constitute sufficient just satisfaction.

35. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,700 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The applicant made no claims for the costs and expenses incurred before the domestic courts and the Court.

37. Accordingly, the Court does not award anything under this head.

C. Default interest

38. 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 length of the criminal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 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, EUR 2,700 (two thousand seven hundred euros) in respect of non-pecuniary damage, plus any tax that

may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(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.

Done in English, and notified in writing on 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President