



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

FIRST SECTION

CASE OF FEDOROV v. RUSSIA

(Application no. 63997/00)

JUDGMENT

STRASBOURG

26 February 2009

FINAL

26/05/2009

This judgment may be subject to editorial revision.

In the case of Fedorov 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 63997/00) 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 Vladimir Aleksandrovich Fedorov (“the applicant”), on 12 November 2000.

2. The applicant was represented by Mr A.V. Kiryanov, Mrs E.V. Kiryanova and Mr K.N. Lugantsev, lawyers practising in Taganrog. 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. The applicant complained, in particular, under Article 6 §§ 1 and 3 (b) and (c) of the Convention about the quashing in supervisory review proceedings of the final judgment in his criminal case held by the Taganrog Town Court on 24 September 1999 and about a violation of his right to defend himself in those proceedings.

4. By a decision of 6 October 2005, the Court declared the application partly admissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1967 and lives in Taganrog, Rostov Region.

6. On 24 September 1999 the Taganrog Town Court convicted the applicant and three other persons of theft of cigarettes from a container in a sea port, an offence provided for by Article 158 § 2 (a) of the Criminal Code. The applicant was sentenced to two years' imprisonment, and released conditionally with six months' parole. The parties did not appeal and the judgment became final seven days later.

7. On an unspecified date the prosecutor of the Rostov Region lodged an application for supervisory review, seeking to have the judgment quashed on the ground that there had been substantial violations of the procedural law by the trial court.

8. On 27 January 2000 the Presidium of the Rostov Regional Court conducted supervisory review proceedings. The prosecutor, but not the applicant or his counsel, was present at the hearing. The Presidium quashed the judgment of 24 September 1999 in the part concerning the applicant on grounds that the trial court had failed to examine and assess the evidence correctly and that its findings were inconsistent with the evidence. These considerations, in the Presidium's view, justified the quashing of the judgment under Article 379 of the Code of Criminal Procedure. The case was remitted for fresh examination by the first-instance court.

9. On 14 February 2000 the Constitutional Court examined another case challenging Article 377 of the Code of Criminal Procedure (see below) and found that provision incompatible with the Constitution in so far as it allowed a supervisory review in a criminal case to the detriment of the acquitted or convicted person.

10. According to the applicant, neither he nor his counsel was informed of the hearing held on 27 January 2000 or of the quashing. He learned about these developments in the case on 13 September 2000, when summoned by the Taganrog Town Court for the fresh examination of his case. Thus, subsequently on an unspecified date the applicant requested the Supreme Court to reverse, by way of supervisory review, the decision of 27 January 2000 in the light of the Constitutional Court's ruling of 14 February 2000. In June 2001 the Deputy President of the Supreme Court informed the applicant that his request was dismissed on the ground that the decision in the applicant's case had been adopted before the Constitutional Court's ruling.

11. The applicant applied to the Constitutional Court requesting that the ruling of 14 February 2000 be extended to his case. On 21 December 2001 the Constitutional Court refused to examine the applicant's complaint as its subject matter was identical to that of the case examined on 14 February 2000. It held that the ruling of 14 February 2000 applied to all persons whose cases had been reopened on the basis of Article 377 of the Code of Criminal Procedure, hence the decision of 27 January 2000 could still be reversed in ordinary proceedings.

12. In the meantime, on 27 December 2000 the Taganrog Town Court, composed of one professional and two lay judges, conducted a fresh examination of the criminal case against the applicant. He was found guilty of theft and convicted under Article 158 § 2 (a) and (c) of the Criminal Code, and given a conditional sentence of two years and six months' imprisonment with six months' parole. With reference to the Amnesty Act of 26 May 2000 the court ordered that the applicant in any event be relieved from serving his sentence. The parties did not appeal and the judgment became final seven days later.

13. On 5 November 2003 the prosecutor of the Rostov Region lodged an application for supervisory review, requesting the Presidium of the Rostov Regional Court to amend the judgment of 27 December 2000 by reclassifying the applicant's actions under Article 158 § 2 (a) of the Criminal Code, and to reduce the sentence to a year and a half of conditional imprisonment. According to the Government, the applicant was informed of the application for supervisory review and of the hearing which was scheduled for 27 November 2003.

14. On 27 November 2003 the Presidium of the Rostov Regional Court granted the prosecutor's application and amended the judgment of 27 December 2000 accordingly. The court ordered that the applicant be relieved from serving the sentence due to the Amnesty Act of 26 May 2000 remained in force.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

Article 158

...

2. Theft committed

(a) by a group of persons acting in conspiracy;

(b) with unlawful entry of premises or other storage;

(c) with causing substantial damage to an individual;

...

is punishable by a fine ..., or community works ..., or correctional works ..., or imprisonment of up to five years.

B. Code of Criminal Procedure

15. Section VI, Chapter 30, of the 1960 Code of Criminal Procedure (*Уголовно-процессуальный кодекс РСФСР*), as in force at the material time, allowed certain officials to challenge a judgment which had become effective and to have the case reviewed on points of law and procedure. The supervisory review procedure (Articles 371-83 of the Code) is distinct from proceedings in which a case is reviewed in the light of newly established facts (Articles 384-90). However, similar rules apply to both procedures (Article 388).

1. Date on which a judgment becomes effective

16. Under the terms of Article 356 of the Code of Criminal Procedure, a judgment takes effect and is enforceable from the date on which the appeal court renders its decision or, if no appeal has been lodged, once the time-limit for appeal has expired.

2. Grounds for supervisory review

17. Relevant provisions of the Code of Criminal Procedure read as follows:

Article 379

Grounds for setting aside judgments which have become effective

“The grounds for quashing or varying a judgment [on supervisory review] are the same as [those for setting aside judgments (which have not taken effect) 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.”

3. Authorised officials

18. 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 Prosecutor-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 solicit the intervention of those officials for a review.

4. Limitation period

19. Article 373 of the Code of Criminal Procedure set a limitation period of one year during which a request calling for the supervisory review of an acquittal could be brought by an authorised official. The period ran from the date on which the acquittal took effect.

5. The effect of a supervisory review

20. 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.

21. 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.

22. 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.

23. Under Article 377 of the Code the public prosecutor took part in a hearing of a supervisory review. A convicted person and his or her counsel could be summoned if a supervisory review court found it necessary. If summoned, they were to be given an opportunity to examine the application for supervisory review and to make oral submissions at the hearing.

C. Case-law of the Constitutional Court

24. In Ruling no. 2-P of 14 February 2000, the Constitutional Court declared Article 377 incompatible with the Russian Constitution to the extent that it had permitted the supervisory review hearing to decide on an application for supervisory review which was to the detriment of the convicted or acquitted person. The Court held that such a person and his or her counsel should be able to study the application, they should be notified of the date and place of the hearing and given an opportunity to present their position on the arguments in the application.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

25. The applicant complained under Article 6 §§ 1 and 3 (b) and (c) of the Convention about the quashing of the final judgment of 24 September 1999 in his criminal case and the failure of the Presidium of the Rostov Regional Court to notify him of the application for supervisory review of his case and of the hearing on 27 January 2000. Article 6, in so far as relevant, reads:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law. ...

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

(b) to have adequate time and facilities for the preparation of his defence;

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

A. The parties' submissions

26. The Government pointed out that according to the Court's judgment in the case of *Ryabykh* higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX). The quashing of the judgment in the applicant's case was justified by substantial circumstances provided for by Article 342 of the Code of Criminal Procedure. As regards the applicant's complaint about the supervisory review hearing *in absentia*, the Government stated that Article 377 § 3 of the Code of Criminal Procedure provided that convicted persons and their counsels could be summoned to a supervisory review court's hearing only where necessary. Therefore, the

parties' presence at the hearing before the Rostov Regional Court was not compulsory. The Government underlined that the decision of the Constitutional Court of 14 February 2000, which declared Article 377 § 3 of the Code of Criminal Procedure incompatible with the Constitution, was adopted after the supervisory review court's decision of 27 January 2000 in the applicant's case. In the course of new supervisory review proceedings the applicant was informed of the hearing on 27 November 2003 and served with a copy of a decision to initiate the proceedings. The Government concluded that the complaints should be rejected as manifestly ill-founded.

27. The applicant maintained his complaints. He submitted that the quashing of the final judgment of 24 September 1999 violated the principle of legal certainty because he was committed to trial again and had to endure anxiety about his fate. Furthermore, the quashing of the judgment was groundless. The applicant emphasised that had it not been for the quashing of the judgment of 24 September 1999, his original conviction would have been annulled on the expiration of the six-month probation period on 1 April 2000 and he would have retained his right to benefit from an application of the amnesty act, as is possible once during a lifetime. The applicant also complained that the Presidium of the Rostov Regional Court did not inform him or his counsel about the application for supervisory review or the hearing of 27 January 2000.

B. The Court's assessment

28. 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*, 17 December 1996, § 22, *Reports of Judgments and Decisions* 1996-VI).

29. The Court has previously examined cases raising complaints under the Convention in relation to the quashing of a final judicial decision (see *Nikitin v. Russia*, no. 50178/99, ECHR 2004-VIII; *Bratyakin v. Russia* (dec.), no. 72776/01, 9 March 2006; *Fadin*, no. 58079/00, §§ 30-37, 27 July 2006; and *Radchikov v. Russia*, no. 65582/01, §§ 54-55, 24 May 2007). It 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).

30. The Court notes that the Presidium of the Rostov Regional Court granted the prosecutor's application for supervisory review and quashed the judgment of 24 September 1999 on the grounds of the wrong assessment of evidence and disagreement with the court's conclusions on the merits of the case. It follows that the grounds for reopening the proceedings were based neither on new facts nor on serious procedural defects, but rather on disagreement with the assessment given by the lower instance.

31. The Court also notes that the prosecutor brought the request for supervisory review having previously dispensed with an ordinary cassation appeal that could be lodged on grounds identical to those for an appeal under the domestic law (see paragraph 17 above). The Court has already found such an arrangement in itself to be conducive to the protection of legal certainty, as it may in certain cases lead to a situation where the supervisory review court fails to consider the implications of its decision for legal certainty by dealing with the prosecutor's arguments as if in ordinary appeal proceedings and reopening finalised proceedings on vaguely formulated and evanescent grounds (see *Radchikov*, cited above, §§ 48-49).

32. Accordingly the Court finds that the quashing of the Taganrog Town Court's judgment of 24 September 1999 was not intended to correct a fundamental judicial error or a miscarriage of justice but was used merely for the purpose of obtaining a rehearing and a fresh determination of the case. Therefore, the Court considers that the State authorities failed to strike a fair balance between the interests of the applicant and the need to ensure the effectiveness of the criminal justice system.

33. In addition to that the Court notes that the applicant had not been apprised of the application for supervisory review, was not given a chance to lodge objections to having the case reopened and could not participate in the Presidium's hearing, unlike the prosecutor.

34. In view of the above considerations, the Court concludes that there has been a violation of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant requested the Court to make an award of 5,000 euros (EUR) for non-pecuniary damage.

37. The Government considered that any finding of a violation by the Court would constitute sufficient just satisfaction in the present case.

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

B. Costs and expenses

39. The applicant also claimed EUR 1,600 for the costs and expenses incurred before the Court, which included the translator's and the lawyers' fees. He provided the copies of relevant contracts and payment receipts.

40. The Government contested the claims on the grounds that these expenses were not necessary, in particular that the applicant's representation by three counsel had not been justified; moreover the applicant had not provided the power of attorney in respect of Mrs E.V. Kiryanova and Mr K.N. Lugantsev.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court, having regard to the certificates provided by the applicant, notes that the legal fees have indeed been paid to the three lawyers. However, given that the overall amount did not exceed what would appear reasonable in the circumstances it does not consider that the arrangement by which the work was shared between several lawyers should by itself prevent the Court from making the award. The Court accordingly awards the sum of EUR 1,600 covering costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

42. 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. *Holds* that there has been a violation of Article 6 of the Convention;
2. *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 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 1,600 (one thousand six hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;
 - (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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President