

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

THIRD SECTION

CASE OF USPENSKIY v. RUSSIA

(Application no. 50734/12)

JUDGMENT

STRASBOURG

8 March 2022

This judgment is final but it may be subject to editorial revision.



In the case of Uspenskiy v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

María Elósegui, *President,*
Andreas Zünd,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 50734/12) 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") on 24 July 2012 by a Russian national, Mr Viktor Aleksandrovich Uspenskiy, born in 1973 and living in Pyatigorsk ("the applicant") who was represented by Mr Gulyayev, a lawyer practising in Pyatigorsk;

the decision to give notice of the complaints concerning the unfairness and duplication of proceedings to the Russian Government, initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 8 February 2022,

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

SUBJECT-MATTER OF THE CASE

1. The traffic police stopped the applicant's car on 16 November 2011. He had no driving licence or passport on him and appeared to be drunk. He was taken to the local police station, where offence reports were compiled under the Code of Administrative Offences of the Russian Federation (CAO):

(i) Article 12.3: driving a vehicle without a driving licence, documents relating to the vehicle or confirming the right to use it, punishable by a fine of 100 Russian roubles (RUB);

(ii) Article 19.3: disobedience to a lawful request or order from a police officer, punishable by a fine of RUB 500 to 1,000 or detention up to fifteen days;

(iii) Article 12.26: driver's non-compliance with a police officer's lawful order to submit to a medical examination for alcohol intoxication, punishable by suspension of the driving licence for eighteen to twenty-four months.

2. On 22 November 2011 a police inspector found the applicant guilty of the offence under Article 12.3 of the CAO because he had had no driving licence on him on 16 November 2011 (the first set of proceedings). The inspector sentenced him to a fine of RUB 100 (about two euros at the time).

The applicant did not seek judicial review. The decision of 22 November 2011 became final on 2 December 2011.

3. The charges under Articles 12.26 and 19.3 of the CAO were determined by courts in separate sets of proceedings.

4. On 16 November 2011 a justice of the peace convicted the applicant of the offence under Article 19.3 of the CAO and sentenced him to two days of detention (the second set of proceedings). The justice of the peace described the facts held against the applicant as follows:

> "[The applicant] committed disobedience to an order from a police officer, trying to run away, refusing to submit to a medical examination and refusing to get into the police vehicle, while threatening the officers with negative consequences and provoking a fight."

5. The applicant appealed, arguing that a refusal to submit to a medical examination for alcohol intoxication could not be prosecuted under Article 19.3 of the CAO and constituted the subject-matter of a separate offence under Article 12.26 of the CAO.

6. On 26 January 2012 the Pyatigorsk Town Court of the Stavropol Region upheld the judgment of 16 November 2011. The appeal court stated that the applicant had committed disobedience to the order by a traffic police officer in that he had not presented his driving licence and his passport and in that he had refused to get in the police vehicle. The appeal court indicated that it was irrelevant that the applicant was being prosecuted, in separate proceedings, under Article 12.26 of the CAO on account of the refusal to submit to the medical examination.

7. In the third set of proceedings, on 14 March 2012 a justice of the peace heard the applicant's lawyer and convicted the applicant under Article 12.26 of the CAO on account of the refusal to submit to the medical examination on 16 November 2011, and suspended his driving licence for eighteen months. On 12 April 2012 the Predgornyy District Court of the Stavropol Region heard the lawyer (the applicant had waived his right to be present) and upheld the judgment. The appeal court stated that the applicant's prosecution under Articles 12.26 and 19.3 concerned different offences.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

8. The applicant was sentenced to two days of detention and suspension of his driving licence for eighteen months under Articles 19.3 and 12.26 of the CAO respectively. Noting the nature of the first sentence and the length of the second one, the Court dismisses the Government's argument about the lack of a significant disadvantage. This complaint is neither manifestly

ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

9. The relevant principles were formulated in *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, §§ 79-84, ECHR 2009, and *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, §§ 105-34, 15 November 2016; as well as *Mihalache v. Romania* [GC], no. 54012/10, §§ 47-49, 8 July 2019, and *Bajćić v. Croatia*, no. 67334/13, §§ 25-26, 8 October 2020.

A. Whether all three sets of proceedings were "criminal"

10. The second and third proceedings were conducted by courts. In comparable cases in respect of Russia the Court has held that proceedings were "criminal" in nature for the purposes of Article 4 of Protocol No. 7 (see *Sergey Zolotukhin*, cited above, §§ 52-57; *Khmel v. Russia*, no. 20383/04, §§ 58-63, 12 December 2013; and *Korneyeva v. Russia*, no. 72051/17, § 53, 8 October 2019). The Court sees no reason to depart from that conclusion.

11. The first set of proceedings (charge under Article 12.3 of the CAO) was determined – and the fine was imposed – by a non-judicial authority, a traffic police officer, and the outcome could be appealed to a court. That offence was punishable by a fine equivalent to about two euros, and it was the only statutory penalty for that offence. The Court considered that the criminal limb of Article 6 of the Convention was applicable to similar procedures (see *Marčan v. Croatia*, no. 40820/12, §§ 7 and 33, 10 July 2014). The Court considers that those proceedings should be classified as "criminal" for the purpose of Article 4 of Protocol No. 7 too.

12. The *ne bis in idem* principle under Article 4 of Protocol No. 7 protects persons who have been "finally acquitted or convicted". Having regard to the Court's case-law (see *Mihalache*, cited above, § 95, and *Tsonyo Tsonev v. Bulgaria (no. 2)*, no. 2376/03, § 54, 14 January 2010) the Court considers that the applicant was "convicted" in the first set of proceedings "in accordance with the law and penal procedure of that State". It became enforceable under Russian law on 2 December 2012, after the statutory ten-day period for seeking judicial review had expired. No ordinary remedies remained available after that date. On that date it became "final" in the meaning of Article 4 § 1 of Protocol No. 7 (see *Mihalache*, cited above, §§ 109 and 115).

B. Whether the applicant was tried and punished for the "same offence" (idem)

13. The applicant was first convicted of driving without a driving licence on 16 November 2011. In subsequent second proceedings, he was convicted under Article 19.3 of the CAO of disobeying the police officer's orders,

which included an order to present a driving licence. The appeal court, which re-examined the case in its entirety, explicitly held the failure to comply with that order against the applicant (see paragraph 6 above). Indeed, as already established in the first proceedings, the applicant was driving without a valid licence. He was already punished for that under Article 12.3 of the CAO. His failure to comply with an order to present his licence to the police officer was linked to and arose from the fact of not being in possession of a licence while driving. Thus the prosecution in the second case included the same fact, which was already examined in the first case, rather than concerned different aspects of the failure to respect road-traffic safety regulations (compare and contrast with *Bajčić*, cited above, § 32).

14. The Court concludes that in the second set of proceedings the applicant was tried and punished on account of the fact, which was at least partially overlapping and being "substantially the same" as that in the first set.

15. Next, in respect of the third set of proceedings, the applicant was convicted under Article 12.26 of the CAO for refusing to submit to a medical examination (see paragraph 7 above). However, the Court notes that the appeal court in the second set of proceedings did not retain against the applicant his failure to comply with an order to submit to a medical examination (see paragraph 6 above). Thus it cannot be said that the prosecution in the third case arose from one of the facts which had already been examined previously, specifically the applicant's refusal to submit to a medical examination. In view of the above, the Court finds that the third set of proceedings, concluded on 12 April 2012, involved a trial for the facts that were not "substantially the same" as the ones examined previously.

C. Whether the applicant was "liable to be tried or punished again" (bis)

16. The applicant's first conviction became final on 2 December 2011. He was then prosecuted under Article 19.3 of the CAO in the second set of proceedings, concluded on 26 January 2012. The Court concludes that the applicant was tried and punished "again" after 2 December 2011.

17. It is undisputed that already in November 2011 the authorities were aware of the essential factual circumstances that could give rise to liability under various Articles of the CAO (see paragraph 1 above). It was open to them to take an informed decision as to the course of action to be taken for prosecuting the applicant, in compliance with the *ne bis in idem* principle as formulated by the Court in 2009 in *Sergey Zolotukhin*.

18. Article 4 § 1 of Protocol No. 7 does not preclude the conduct of dual proceedings, provided that certain conditions are fulfilled (as specified by the Grand Chamber in 2016 in *A and B v. Norway*, cited above, §§ 130-32). It is incumbent on the Government to convincingly demonstrate that those

conditions were fulfilled in a given case (ibid.). In their observations in 2019 the Government did not argue that the dual proceedings in question were "sufficiently closely connected in substance and in time" so as to form a coherent whole, nor that the other conditions mentioned above had been complied with in the present case (compare *Bajćić*, cited above, §§ 39-46). The courts had not delved into those conditions either.

D. Conclusion

19. There has accordingly been a violation of Article 4 of Protocol No. 7 to the Convention in the second set of proceedings (under Article 19.3 of the CAO) with reference to the applicant not being in possession of a driving licence; and no violation of that Article as to the conviction in the third set of proceedings (under Article 12.26 of the CAO) with reference to his refusal to submit to a medical examination.

II. OTHER COMPLAINTS

20. In view of the nature and scope of the findings under Article 4 of Protocol No. 7, it is not necessary to examine the admissibility and merits of the complaints under Article 6 of the Convention concerning the same proceedings under Article 19.3 of the CAO.

21. Lastly, the applicant alleged a violation of Article 6 of the Convention in the third set of proceedings, in particular because the trial court had not re-scheduled the trial hearing, the applicant being away from town. He was represented by a lawyer at it and validly waived his right to be present at the appeal hearing. In the light of all the material in its possession, the Court considers that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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22. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage; EUR 1,900 and 840 for the costs and expenses before the courts and the Court respectively. The Government made no comment.

23. The Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 500 covering costs under all heads, plus any tax that may be chargeable to the applicant. The default interest rate 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 under Article 4 of Protocol No. 7 to the Convention admissible and the complaint under Article 6 of the Convention (as to the case under Article 12.26 of the CAO) inadmissible;

2. *Holds* that there has been a violation of Article 4 of Protocol No. 7 to the Convention on account of the case under Article 19.3 of the CAO and no violation of that Article on account of the case under Article 12.26 of the CAO;

3. *Holds* that there is no need to examine the complaint under Article 6 of the Convention as to the case under Article 19.3 of the CAO;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 8 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	María Elósegui President