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

THIRD SECTION

DECISION

Application no. 50724/09
Vitaliy Aleksandrovich DUBROVSKIY
against Russia

The European Court of Human Rights (Third Section), sitting on 19 April 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 28 August 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vitaliy Aleksandrovich Dubrovskiy, is a Russian national, who was born in 1980 and lives in Novosibirsk.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is a former investigator of the Federal Drug Control Service (*Федеральная служба по контролю за оборотом наркотиков*). Under the criminal procedure legislation in force at the material time, a

criminal investigation into an investigator's action was possible only after a court had issued a decision stating that an investigator's actions or inaction contained indication of the constituent elements of a crime.

5. Following an application lodged with the court by a district prosecutor, on 8 June and 18 July 2007 the Tsentralniy District Court of Novosibirsk (*Суд Центрального Района г. Новосибирска*) concluded that there had been indication of the constituent elements of crimes, specifically abuse of power, bribery and forgery of official records in the actions of the applicant.

6. On the same date the district prosecutor opened two criminal investigations against the applicant.

7. On 16 January 2008 a supervising prosecutor reversed the decisions to initiate the criminal investigations due to the failure to comply with certain procedural requirements and returned the case file to the district prosecutor for reconsideration.

8. On 24 January 2008 a district prosecutor opened two criminal investigations against the applicant on the same grounds as previously relying, *inter alia*, on the evidence gathered after the reversals of 16 January 2008. On 31 January 2008 the two criminal investigations were joined.

9. On 14 October 2008 during a pre-trial hearing a judge of the Novosibirsk Regional Court (*Новосибирский областной суд*) discontinued the criminal proceedings against the applicant as no new court decision allowing the opening of a criminal investigation had been obtained since the decision of 16 January 2008.

10. On 17 December 2008 the Supreme Court of the Russian Federation upheld the decision on appeal.

11. Following an application by the Deputy Prosecutor General of the Russian Federation, on 3 April 2009 a judge of the Supreme Court of the Russian Federation initiated a supervisory review of the lower court's decision.

12. On 27 May 2009 the Presidium of the Supreme Court of the Russian Federation annulled the decisions of 14 October 2008 and 17 December 2008 since they had been based on a mistaken interpretation of procedural law stating that no new court decision allowing to open criminal investigations had been required.

13. On 14 October 2009 two new criminal investigations were opened against the applicant on the same grounds as previously.

14. The parties did not submit any information on the progress and outcome of these proceedings against the applicant to the Court.

COMPLAINTS

15. The applicant in substance complained under Article 6 of the Convention about the annulment by the Presidium of the Supreme Court of the Russian Federation of the decision to terminate the criminal investigations against him as well as particular irregularities of the supervisory review proceedings.

THE LAW

16. The applicant complained under Article 6 of the Convention that the final decisions of 14 October 2008 and 17 December 2008 had been annulled in supervisory review proceedings by the Presidium of the Supreme Court of the Russian Federation on 27 May 2009. The relevant part of Article 6 of the Convention provides as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

17. The Government in their submission to the Court argued that the applicant's complaints are manifestly ill-founded, since no final decision in the applicant's case had been adopted at the national level and that in any event the annulment had been justified by fundamental flaws in the interpretation of domestic law.

18. The Court notes from the outset that the possibility of reopening a criminal case is as such compatible with the Convention, including the guarantees of Article 6, as long as the actual manner in which this mechanism is used does not impair the very essence of a fair trial. In other words, the power to launch and conduct a supervisory review 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 v. Russia*, no. 50178/99, § 57, ECHR 2004-VIII).

19. The Court is also mindful that while the primary purpose of Article 6 of the Convention as far as criminal matters are concerned is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that it has no application to pre-trial proceedings. On a number of occasions it has previously held that the fair trial guarantees of the Convention may be applicable in interlocutory proceedings or in considerations of purely procedural issues if their outcome was decisive for the determination of a criminal charge within the meaning of Article 6 § 1 of the Convention (see, for example, *Salov v. Ukraine*, no. 65518/01, § 94-97, ECHR 2005-VIII (extracts), and *Korellis v. Cyprus (dec.)*, no. 54528/00, 23 April 2002).

20. Turning to the present case the Court notes that the proceedings, which gave rise to the present application essentially focused not on the possible criminal charge against the applicant as such, but rather on the conditions under which the prosecution authorities had been permitted to criminally investigate the actions of the applicant as a person enjoying special protected status under domestic criminal procedure legislation.

21. The judicial decisions of 14 October 2008 and 17 December 2008 discontinuing the proceedings against the applicant due to the absence of a new judicial authorisation permitting investigation of his actions (see paragraphs 9 and 10 above) did not result either in an acquittal or a conviction. The courts did not consider whether the applicant had carried out the act for which he was charged (*actus reus*), whether the applicant had carried out this act with the requisite *mens rea*, or whether an appropriate punitive sanction could have been imposed on him. Neither did the decisions preclude the re-opening of the same criminal proceedings against the applicant in respect of the same events, on the same grounds and with the same charges. Consequently, the outcome of these proceedings was not decisive for the determination of a criminal charge against the applicant in these or any probable future proceedings (see, conversely, *Salov* and *Korellis*, both cited above). The sole issue considered by the domestic courts in these decisions was whether the prosecution authorities had acted outside of their powers in instituting a new round of the investigation without obtaining a new authorisation.

22. The Court thus concludes that the above decisions to discontinue the proceedings against the applicant were merely the result of a judicial review of the prosecution authorities' formal powers to institute criminal proceedings. Accordingly, as far as the case was argued by the parties and concerns the judicial decisions of 14 October 2008 and 17 December 2008, there was no "trial" of the applicant in which the determination of a "criminal charge" had taken place.

23. In the light of the above conclusions the annulment of the above-mentioned decisions by the Presidium of the Supreme Court of the Russian Federation in supervisory review proceedings could not have impaired the very essence of a fair trial within the meaning of Article 6 of the Convention. Therefore this complaint must be rejected in accordance with Article 35 § 3 (a) and 4 of the Convention.

24. The applicant further complained, under Article 6 of the Convention, of the particular procedural irregularities of the supervisory review proceedings before the Presidium of the Supreme Court of the Russian Federation. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints must similarly be rejected in accordance with Article 35 § 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 May 2016.

Stephen Phillips
Registrar

Luis López Guerra
President