CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 66460/01
by Andrey Ivanovich NOVOSELOV
against Russia

The European Court of Human Rights (First Section), sitting on 16 October 2003 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mr G. BONELLO,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 27 November 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Andrey Ivanovich Novoselov, is a Russian national, who was born in 1961 and lives in Krasnodar.

A. The circumstances of the case

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

1. Civil disputes concerning the applicant's property

In 1997 the applicant agreed to sell a part of his house to Mr Ch. Mr Ch. paid an advance and in 1998 moved in with his female partner. However, the entire amount due under the agreement was not paid to the applicant.

Since 1998 the applicant has been trying to evict Mr Ch. and his partner. In 1999 the applicant unsuccessfully brought civil actions against them and in 2000 attempted to initiate criminal proceedings.

In 1999 Mr Ch. requested a court to declare the purchase agreement null and void. On 16 March 2001 the Oktyabrskiy District Court of Novorossiysk invalidated the agreement and ordered the applicant to return the advance to Mr Ch. and compensate Mr Ch. for renovation works in the applicant's house.

It appears that on an unspecified date the applicant also sold another part of his house to Mr V.Ch. This transaction was confirmed by the Oktyabrskiy District Court of Novorossiysk on 24 November 2000. The decision was upheld on the applicant's appeal by the Civil Chamber of the Krasnodar Regional Court on 11 January 2001.

2. Criminal proceedings against the applicant

a. The applicant's conviction of disorderly conduct

On 26 June 1998 the applicant had a loud quarrel with Mr Ch. and assaulted him, both verbally and physically. Mr Ch. complained to the police who initiated a criminal case against the applicant.

On 27 October 1998 the applicant was taken into custody and placed in detention facility no. IZ-18/3 of Novorossiysk (*ИЗ 18/3 г. Новороссийска*, "facility no. 18/3").

On 5 November 1998 the Oktyabrskiy District Court of Novorossiysk found the applicant guilty of disorderly conduct (Article 213 § 1 of the Criminal Code) and sentenced him to six months' imprisonment.

b. First examination of the appeal against conviction

On 10 November 1998 the applicant sent his hand-written grounds of appeal against the judgment of 5 November through the detention facility administration.

On 12 November 1998 Mr L., a lawyer retained by the applicant's mother, submitted grounds of appeal on behalf of the applicant, but without his being aware of it or without giving the applicant an opportunity to review them.

On 23 December 1998 the Criminal Chamber of the Krasnodar Regional Court considered the grounds of appeal submitted by Mr L. and upheld the judgment of 5 November. It appears that the applicant's appeal was not received and/or examined.

On 28 April 1999 the applicant was released from the detention facility, after having served his sentence.

c. Second examination of the appeal against conviction

On 27 November 2000 the applicant submitted additional grounds of appeal and on 23 December 2000 he applied for an extension of the missed deadline for the appeal.

On 19 February 2001 the Oktyabrskiy District Court of Novorossiysk refused to extend the deadline because the applicant had failed to show any valid reasons to justify the extension.

On 16 May 2001 the Criminal Chamber of the Krasnodar Regional Court upheld, on the applicant's appeal, the ruling of 19 February.

At the applicant's request, on 14 November 2001 the president of the Krasnodar Regional Court brought an application for supervisory review of the judgment of 23 December 1998. On 22 November 2001 the Presidium of the Regional Court granted the application and quashed the contested judgment on the ground that the appeal court had failed to consider the grounds of appeal submitted by the applicant.

On 5 December 2001 the Criminal Chamber of the Krasnodar Regional Court held a new appeal hearing. It appears that the summons was sent to the detention facility where the applicant had served his sentence in 1998-1999 and the applicant was not present at the hearing. The Regional Court upheld the conviction of 5 November 1998.

d. Third examination of the appeal against conviction

On 31 May 2002 the applicant lodged a new application for supervisory review.

On an unspecified date the acting president of the Krasnodar Regional Court lodged an application for supervisory review of the appeal judgment of 5 December 2001 on the ground that the applicant had not been duly notified of the hearing and, as a consequence, had not attended it. On 29 August 2002 the Presidium of the Regional Court granted the application and quashed the contested judgment.

On 18 September 2002 the Criminal Chamber of the Krasnodar Regional Court rendered the final appeal judgment whereby it confirmed the applicant's conviction of 5 November 1998. The Regional Court also ordered that the applicant be relieved from punishment because of the Amnesty Act of 26 May 2000. It appears that the Regional Court determined the case on the basis of a report by the judge rapporteur and oral submissions of prosecutor K.

On 1 November 2002 the applicant filed a new application for supervisory review with the Supreme Court of the Russian Federation. The applicant complained, in particular, that he had not been duly summoned to

the hearing on 18 September 2002 and, therefore, he could not attend and plead his case.

3. The applicant's detention and proceedings for compensation

a. The conditions of the applicant's detention in facility no. 18/3

Between 27 October 1998 and 28 April 1999 the applicant was kept in facility no. 18/3, initially during his detention on remand and later while he served the sentence imposed under the judgment of 5 November 1998.

The applicant was kept in cells nos. 11 and 3, each measuring approximately 42 square metres and designed to hold 22 inmates. During the applicant's detention each cell accommodated 42 to 51 inmates. Inmates had to sleep in turns.

No bedding was provided to inmates. For two months in cell no. 11 the applicant slept on a metal plate covering himself with an old, dirty and torn rag.

The ventilation was only switched on when "controllers" visited the facility. Windows were covered with steel plates leaving an open slot of about 10 centimetres. There was no fresh air in the cells.

A lavatory was only separated from the rest of the cell with a bed sheet provided by one of the inmates. Inmates were given one piece of soap per week for the entire cell population. A thick, black and footworn layer of dirt covered the floor. Inmates' clothing swarmed with lice, spiders and other insects.

The administration accepted complaints, requests and letters from inmates once a day, at 4 a.m.

The food ration consisted of bread, millet porridge, boiled pearl barley and no-meat soup. For a period of six months inmates were fed on five occasions with pea soup, soup with pasta and boiled rice.

In March-April 1999 the applicant contracted scabies and he received sulphuric and "white" ointments to treat himself. He was not isolated from other inmates. The applicant's cellmates who contracted scabies and other skin diseases were not taken out of the cell either. The applicant submits that tuberculosis-infected inmates spent, on several occasions, a few days in his cell. The applicant twice fell ill with a high temperature and he was treated with sulphadimisin and aspirin.

By the time of his release, the applicant had lost 15 kilograms in weight, he felt short of breath while walking, tired easily, could not run, and suffered from pustules and itching all over his body.

On 5 May 1999 the applicant was examined in clinic no. 1 of Novorossiysk and issued with a certificate confirming that he suffered from emaciation.

b. The civil proceedings for compensation

On 30 July 2002 the applicant filed a civil action for damages against the treasury of the Russian Federation. He claimed compensation for non-pecuniary damage sustained because of "inhuman and degrading" conditions of detention in facility no. 18/3. He described the conditions of his detention in minute detail and relied, in particular, on Article 3 of the Convention.

On 1 October 2002 the Pervomayskiy District Court of the Krasnodar Region dismissed the applicant's action. The District Court held that the applicant had failed to prove that the officials of facility no. 18/3 had been at fault for moral suffering or other damage caused to him. The court also pointed out that the applicant had served his sentence further to a lawful conviction of the competent court and, therefore, the liability of the treasury was not engaged.

On 14 November 2002 the Civil Chamber of the Krasnodar Regional Court upheld, on the applicant's appeal, the judgment of the District Court.

The subsequent applications for supervisory review lodged by the applicant with the Krasnodar Regional Court and the Supreme Court of the Russian Federation were dismissed on 13 January and 17 March 2003, respectively.

4. Administrative arrest for contempt of court and proceedings for compensation

On 7 August 2000 a judge of the Oktyabrskiy District Court of Novorossiysk sanctioned the applicant for contempt of court and ordered him to be arrested for ten days. No ordinary appeal lay against the decision.

The applicant complained against the sanction to a higher court.

On 6 March 2001 the acting president of the Krasnodar Regional Court examined the applicant's complaint and quashed the decision of 7 August 2000.

On 30 March and 22 May 2001 the applicant filed a civil action against the federal treasury and the courts' administration department for compensation for pecuniary and non-pecuniary damage in connection with his unlawful arrest for ten days.

On 7 June 2001 the Pervomayskiy District Court of Krasnodar awarded the applicant RUR 5,000 (approximately EUR 200) in compensation for non-pecuniary damage. The District Court held that the applicant's claim for pecuniary damage was not sufficiently substantiated.

Both parties lodged appeals against the judgment.

On 3 July 2001 the Civil Chamber of the Krasnodar Regional Court examined the appeal and upheld the decision of 7 June in substance. However, the Regional Court decreased the amount of the award to RUR 3,000.

The applicant's subsequent applications for supervisory review were refused by the Supreme Court of the Russian Federation on 19 and 30 November 2001, 31 January and 1 April 2002.

On 18 April 2002 the award under the judgment of 3 July 2001 was credited to the applicant's bank account.

Unhappy about the lengthy non-enforcement of the judgment, the applicant brought a civil action for an increase of the amount awarded taking account of the inflation. His action was dismissed on 10 June 2002 by the Pervomayskiy District Court of Krasnodar; this judgment was upheld on appeal by the Civil Chamber of the Krasnodar Regional Court on 25 July 2002.

B. Relevant domestic law

Procedure for the hearing on appeal

Article 336 of the RSFSR Criminal Procedure Code of 27 October 1960 (in force at the material time) provided that persons who had submitted their points of appeal had to be notified of the date of the appeal hearing. If a person was notified, but failed to appear, the appeal court could proceed with the hearing. Article 338 further required that at the beginning of a hearing the presiding judge had to verify attendance. The court then decided whether to proceed with the hearing.

On 10 December 1998 the Constitutional Court of the Russian Federation declared unconstitutional Article 335 § 2 of the Criminal Procedural Code which allowed appeal courts to reach a final decision on a convicted person's appeal if the convicted person was absent from the hearing and he or she had not been provided with an opportunity to study the materials of the hearing and communicate his or her opinion on the issues raised by the appeal court.

Tort liability of State agencies

Article 1064 § 1 of the Civil Code of the Russian Federation provides that the damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor.

Under Article 1069 of the Civil Code a State agency or a State official shall be liable to a citizen for damage caused by their unlawful actions or failures to act. Such damage is to be compensated at the expense of the federal or regional treasury.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the application and interpretation of the domestic law by the domestic courts, allegedly unreasonable length of the civil proceedings and unsatisfactory findings of the domestic courts in the context of his civil disputes.

2. The applicant complains under Article 6 § 1 of the Convention about the allegedly incorrect interpretation of evidence by the domestic courts in the determination of a criminal charge against him. The applicant complains under Article 2 of Protocol No. 7 to the Convention about a violation of his right to appeal in criminal matters in that the final determination of his appeal took more than three years and that he was not duly summoned to the hearings on 5 December 2001 and 18 September 2002.

3. The applicant complains under Articles 3 and 6 § 1 of the Convention about the conditions of his detention and the refusal of the domestic courts to award him compensation.

4. In respect of the administrative charge imposed on the applicant on 7 August 2000, the applicant complains under Articles 3, 5 §§ 1 and 4, 6 § 1 of the Convention about his unlawful detention between 7 and 17 August 2000, the insufficient amount of compensation awarded by the domestic courts and the refusal of the domestic courts to index-link the award.

5. Under various other provisions of the Convention and the Protocols thereto, the applicant challenges the domestic courts' findings in a number of civil actions that he lodged against third parties or brought by other persons against him; he also complains about his inability to initiate criminal proceedings against private persons for the harm allegedly caused to the applicant and/or his property.

THE LAW

1. The applicant complains under Article 6 § 1 about the application and interpretation of the domestic law by the courts in the proceedings concerning his civil claims and about a violation of the "reasonable time" requirement. Article 6 § 1 of the Convention provides, as far as relevant, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

As to the allegedly incorrect interpretation and application of the domestic law, the Court recalls that it is not called upon to examine the alleged errors of facts and law committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. On the basis of the materials submitted by the applicant, the Court notes that within the framework of the civil proceedings the applicant was able to introduce all necessary arguments in defence of his interests, and the judicial authorities gave them due consideration.

As to the compliance with the "reasonable time" requirement, the Court recalls that the reasonableness of the length of proceedings must be considered with regard to the circumstances of the particular case in the light of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case and what was at stake in the litigation for the applicant (see *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 47; *Philis v. Greece (no. 2),* judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35; *Portington v. Greece,* judgment of 23 September 1998, *Reports* 1998-VI, p. 2630, § 21, and *Süßmann v. Germany*, judgment of 16 September 1996, *Reports* 1996-IV, pp. 1172–73, § 48). Moreover, the Court reiterates that only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (see *Papachelas v. Greece* [GC], no. 31423/96, § 40, ECHR 1999-II).

The Court notes that the proceedings in question commenced in early 1999 and ended in mid-2001. The period under consideration thus lasted slightly more than two years. During this period the claims were examined twice by a first instance court and twice by an appeal court. In addition, the Court observes that the issues raised in the proceedings were complex and called for a thorough scrutiny. On balance, the Court does not find that the conduct of the courts led to significant and unreasonable delays in the proceedings as a whole.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains under Article 6 § 1 and Article 2 of Protocol No. 7 to the Convention that the domestic courts have wrongly determined the criminal charge against him because of an incorrect assessment of the evidence, that he could not properly exercise his right to appeal, that the length of the criminal proceedings as a whole could not be considered reasonable, and, finally, that he was not given an opportunity to attend the hearing before the appeal court. Article 6 of the Convention provides in the relevant part as follows:

> "1. In the determination of... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal...

...

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

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

Article 2 of Protocol No. 7 to the Convention reads as follows:

"1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

The Court observes that it is not a court of appeal from the decisions of domestic courts and that, as a general rule, it is for those courts to assess the evidence before them. The Court's task under the Convention is to ascertain whether the proceedings as a whole were fair (cf. *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I; see also, *mutatis mutandis*, *Doorson v. the Netherlands*, judgment of 26 March 1996, *Reports* 1996-II, p. 470, § 67).

As to the complaint about the applicant's absence from the appeal hearing before the Regional Court, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

As to the complaint about the excessive length of the criminal proceedings as a whole, the Court notes that they started in early July 1998 and culminated in the final judgment of 18 September 2002. The period under consideration is thus four years and more than two months. The Court observes, however, that the first judgment of the appeal court was delivered on 23 December 1998, but the applicant did not complain about it until almost two years later, on 27 November 2000. Even assuming that the judgment was not immediately notified to the applicant while in detention, i.e. until 28 April 1999, the applicant had, following his release, ample opportunities to file his complaint on an earlier date and not one and a half years later as in the instant case. The Court considers that this delay is attributable to the applicant's own inactivity. During the remainder of the period under consideration the case was examined three times by the appeal court. Having regard to the principles outlined above, the Court considers

that the complaint about the allegedly unreasonable length of the criminal proceedings is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

As to the applicant's complaint about his alleged inability to exercise his right to appeal enshrined in Article 2 of Protocol No. 7 to the Convention, the Court observes that the applicant was granted an extension of the deadline to appeal his conviction and his grounds of appeal were considered on two occasions by the domestic courts. It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant complains under Articles 3 and 6 § 1 of the Convention about the inadequate conditions of his detention in facility no. 18/3 of Novorossiysk and his inability to obtain compensation for the damage to his health sustained as a consequence of the detention. The Court considers that this complaint falls to be examined under Article 3 of the Convention, which provides in the relevant part as follows:

> "No one shall be subjected to... inhuman or degrading treatment...."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

4. The applicant complains under Articles 3, 5 §§ 1 and 4, 6 § 1 of the Convention that he was deprived of his liberty for ten days on the basis of a court order that was later quashed as unlawful by a Regional Court and that the amount of compensation awarded to him for unlawful detention was negligible.

(a) Insofar as the applicant complains about unlawful deprivation of liberty as a result of a court decision of 7 August 2000, the Court will first examine whether the applicant can still claim to be a victim of the alleged violation of his rights under Article 5 § 1 of the Convention. The Court recalls that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among other authorities, *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, p. 846, § 36). In the present case, the Regional Court found that the applicant's detention between 7 and 17 August 2000 was unlawful. The Court considers that this finding is, in substance, a finding of a violation of Article 5 § 1 of the Convention. The Court further notes that the domestic courts have subsequently awarded the applicant a certain amount as compensation for non-pecuniary damage sustained as a result of unlawful detention. In the Court's opinion, this award may be regarded as redress for the violation of Article 5 § 1 of the Convention established by the domestic

court. The applicant, therefore, can no longer claim to be a victim of the alleged violation of the Convention.

It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

(b) However, the applicant remains dissatisfied with the amount of the award, the excessively long non-enforcement of the award and the refusal of the domestic courts to increase it in line with inflation. The Court observes that all these complaints concern, in substance, the amount of compensation for unlawful detention and, therefore, they fall to be examined under Article 5 § 5 of the Convention, which provides as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Court notes at the outset that Article 5 § 5 of the Convention requires an "enforceable right to compensation". It is undisputed that the applicant sought and obtained damages for the wrongful detention. However, the Convention is "intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective" (see, e.g., *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, p. 16, § 33). The Commission has accepted in the past that a right to compensation which sets levels of compensation for damage suffered so low as no longer to be "enforceable" in practical terms would not comply with the requirements of Article 5 § 5 of the Convention (see *Cumber v. the United Kingdom*, no. 28779/95, Commission decision of 27 November 1996).

The question in the present case is, therefore, whether the amount of the compensation obtained was so low that the right was completely eroded. Admittedly, by pan-European standards, an award of approximately EUR 120 for ten days of detention may be low (see, *a contrario*, *Cumber v. the United Kingdom*, cited above). However, in domestic terms the said amount equals a monthly salary of a qualified worker. Therefore, the Court considers that the award in question cannot be said to be so low as to be negligible, particularly when it is borne in mind that the wording of Article 5 § 5 does not require compensation to be of a specific amount.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. Lastly, the Court has examined the remainder of the applicant's complaints as submitted by him.

However, having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the remainder of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the conditions of his detention in facility no. 18/3 and his absence from the appeal hearings;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Deputy Registrar

Peer LORENZEN
President