CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## SECOND SECTION

## PARTIAL DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 35312/02
by Aleksandr Yanovich RYSHKEVICH
against Ukraine

The European Court of Human Rights (Second Section), sitting on 13 December 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 2 August 2002,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Aleksandr Yanovich Ryshkevich, is a Ukrainian national who was born in 1956 and lives in Listvennoye, the Autonomous Republic of Crimea.

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

*1. Criminal proceedings concerning the traffic accident*

On 13 August 1995 at about 4 a.m. the applicant had a traffic accident, involving a collision with another car. The driver of the other vehicle received injuries and one of the passengers died. The police inspected the scene immediately and tested the applicant's blood alcohol level.

Shortly afterwards criminal proceedings were instituted in which the applicant was accused of having negligently caused a traffic accident. On 4 October and 3 November 1995, motor-vehicle experts presented their opinion in the case.

On an unknown date in March-April 1996, the pre-trial investigation was completed and the case was sent to the Sovetsky District Court (hereafter "the Sovetsky Court") for examination on the merits. The prosecution's case was that the applicant, being drunk, exceeded the speed limit, crossed the centre line and collided with the victims' car, which was going in the opposite direction.

On 14 May 1996 the Sovetsky Court found that, during the pre-trial proceedings, the rights of the defence had not been respected and ordered a further investigation.

On an unidentified date the applicant's case was resubmitted to the Sovetsky Court which, on 22 August 1997, committed the applicant to trial. On 2 October 1997 the trial judge ordered the applicant's detention on remand.

The applicant requested that the trial judge be removed from the case, alleging that she intentionally delayed the proceedings and unreasonably detained him. On 25 November 1997 the request was granted by the President of the Belgorodsky Inter-District Court, who decided to transmit the case to the Nizhnegorodsky District Court (hereafter "the Nizhnegorodsky Court").

On 20 January 1998 the Nizhnegorodsky Court found that the court's instructions of 14 May 1996 had not been fully carried out by the investigative authorities, and ordered further investigations. The court also released the applicant on the undertaking not to abscond.

On 11 February 1998 the Supreme Court of the Autonomous Republic of Crimea (hereafter "the SCARC"), allowing the appeal of the prosecution, quashed the decision to remit the case for reinvestigation. The court held that any flaws or shortcomings in the evidence could be assessed and, if need be, rectified during the trial.

On 18 May 1999 the Nizhnegorodsky Court acquitted the applicant of the charges due to the lack of any *corpus delicti*. The court found that the expert opinions produced by the prosecution were insufficient to prove that the applicant had indeed crossed the central line and collided with the victims' car on the wrong side of the road. On the same day the court issued a separate ruling to the effect that the police accident report of 13 August 1995, produced to the court, was forged.

On 22 June 1999 the SCARC quashed the decision of 18 May 1999 and remitted the case for trial.

On 3 November 2000 the Nizhnegorodsky Court ordered a reinvestigation, stating that in May 1999 the applicant had been acquitted primarily due to the flaws and irregularities of the original inquiries, which should be rectified before the new trial.

Upon the prosecutor's appeal on 15 February 2001, the SCARC quashed this decision and remitted the case to the Kirovsky District Court for the examination on the merits.

On 26 March 2001 the Kirovsky District Court found the applicant guilty as charged. The court accepted in evidence the disputed accident report of 13 August 1995. The decision was also based on the evidence of a surviving victim and two other passengers of the damaged vehicle; the expert reports attesting that the collision was caused by the applicant violating the right of way; the results of the medical test to the effect that the applicant was drunk at the time of the accident and the applicant's own admission made during pre-trial investigation in the presence of his lawyer with whom he had had previously consulted. The applicant was sentenced to 6 years' imprisonment. However, in accordance with the Amnesty Act of 24 July 1998 he was released from punishment. The court also lifted the applicant's undertaking not to abscond.

On 12 July 2001 the SCARC dismissed the applicant's appeal and upheld the decision of 26 March 2001. On 21 February 2002 the Supreme Court of Ukraine rejected the applicant's request for leave to appeal under the cassation procedure.

*2. Proceedings concerning the prosecutors' alleged inactivity*

Since 2002 the applicant unsuccessfully applied to the Prosecutor's Office of the Autonomous Republic of Crimea (hereafter "the Prosecutor's Office"), seeking to institute criminal proceedings against the police officers involved in the investigation of his traffic accident case.

In November 2002 the applicant challenged in court the alleged inactivity of the Prosecutor's Office. On 9 September 2003 the Tsentralny District Court of Simferopol (hereafter "the Tsentralny Court") partly allowed the applicant's complaint and found the inactivity of the Prosecutor's Office unlawful. The court, however, rejected the applicant's request to institute criminal proceedings against the police officers. The Court of Appeal of the Autonomous Republic of Crimea (hereafter "the Court of Appeal") upheld this decision in substance, but withdrew from the operative part the rejection of the request to prosecute the officers. On 16 June 2004 the Supreme Court rejected the cassation appeal of the Prosecutor's Office against these decisions.

In early 2004 the applicant lodged with the Tsentralny Court another administrative complaint concerning the alleged failure to act of the

Prosecutor's Office. He stated that the Prosecutor's Office unlawfully disregarded his criminal complaint against the Deputy Prosecutor of the Crimea, who ignored his previous requests for the criminal prosecution of the police officers. On 27 August 2004 the court found partly in favour of the applicant and ordered the Prosecutor's Office to take an appropriate decision on the applicant's complaints. The applicant's request to open criminal proceeding against the Deputy Prosecutor was rejected. On 21 February 2005 the Court of Appeal upheld this decision.

## COMPLAINTS

1. As regards the applicant's criminal case he complains that:

- his detention between November 1997 and January 1998 was unlawful and unreasonable, contrary to Article 5 § 1 of the Convention;
- the proceedings in the case were unfair and excessively long, contrary to Article 6 § 1 of the Convention;
- contrary to Article 2 of the Protocol No. 4 his freedom was unreasonably restricted by the undertaking not to abscond;
- the failure of the appeal instances to put an end to violations in his case caused an infringement of Article 2 of Protocol No. 7; and
- contrary to Article 4 of Protocol No. 7, his case was examined on several occasions.

The applicant also relies on Article 13 of the Convention and Article 1 of Protocol No. 1, without any particular reasoning.

2. The applicant complains about the authorities' repetitive refusal to institute criminal proceedings against the police officers involved in the investigation of his criminal case. He relies in substance on Article 6 § 1 of the Convention.

## THE LAW

### *1. Criminal proceeding against the applicant*

**a.** The applicant complains that that the length of the criminal proceedings concerning the traffic accident was incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which reads as follows:

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

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.

**b.** The applicant complains under Article 5 § 1 of the Convention about the alleged unlawfulness of his detention on remand and, under Article 2 of Protocol No. 4, about the unreasonable restriction of his freedom of movement.

The Court recalls that, according to its established case-law, where no domestic remedy is available, the six month period runs from the act alleged to constitute a violation of the Convention (*Al Akidi v. Bulgaria* (dec.), no. 35825/97, 19 September 2000). The Court notes that the applicant ceased to be in police custody on 21 January 1998 and that his undertaking not to abscond was lifted on 26 March 2001, i.e. more than six months before the application was submitted to the Court. It follows that these complaints were lodged out of time for the purposes of Article 35 § 1 of the Convention and must be dismissed pursuant to Article 35 § 4.

**c.** The applicant further complains about the unfairness of his conviction. He invokes Article 6 § 1 of the Convention. However, it is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention.

Insofar as this submission can be understood as a complaint about the trial court's use in evidence of the police report which had previously been found to be forged, the Court reiterates that, while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law. It is not the role of the Court to determine, as a matter of principle, whether particular types of evidence may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair (*Perry v. the United Kingdom* (dec.), no. 63737/00, 26 September 2002).

The Court considers that, in the present case, the use of the disputed police report did not deprive the applicant of a fair trial In particular, the applicant had been given the opportunity, which he took, of challenging before three levels of jurisdiction its authenticity, and opposing its use. The fact that his attempts were unsuccessful is immaterial (*Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, § 47). Moreover, the disputed report was not the only evidence on which the conviction was based. The trial court in finding the applicant guilty referred to the testimony of several witnesses, a number of expert opinions and an evidentiary test of the applicant's excessive blood alcohol level at the time of the accident.

The Court finds, therefore, that the applicant enjoyed the right to adversarial proceedings with the participation of the interested parties. Within the framework of the proceedings, the applicant was able to present

all necessary arguments defending his interests, and the judicial authorities considered them properly. The Court, therefore, rejects this part of the application, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

**d.** The applicant alleges that the appellate review of his conviction was insufficient, contrary to Article 2 of Protocol No. 7. The Court observes that the criminal case against the applicant was examined by the Kirovsky District Court and the Court of Appeal and, thereafter, in leave to appeal proceedings in the Supreme Court. During the appeal proceedings the court examined both the substance of the case and the alleged procedural errors made by the lower court. Therefore, the applicant had his case reviewed by a higher tribunal, in conformity with Article 2 of Protocol No. 7 to the Convention (see, *mutatis mutandis, Lantto v. Finland* (dec.), no. 27665/95, 12 July 1999). This part of the application must, therefore, be rejected pursuant to Article 35 §§ 3 and 4 as being manifestly ill-founded.

**e.** The applicant complains that his case was examined on the merits on several occasions, which, in his opinion violates Article 4 of Protocol No. 7. The Court recalls that the aim of this provision is to prohibit the repetition of criminal proceedings that have been concluded by a final decision (cf. *Gradinger v. Austria*, judgment of 23 October 1995, Series A no. 328-C, p. 65, § 53). However, the Court finds that none of the judgments on the merits delivered in the present case, except for the last one of 26 March 2001, can be said to have been final and enforceable. This complaint, therefore, must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

**f.** The applicant next refers to Article 13 of the Convention and Article 1 of Protocol No. 1. The Court finds no evidence whatsoever in the case-file which might disclose any appearance of a violation of these provisions. The Court, therefore, rejects this part of the application, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

*2. The criminal complaints against the police officers and the prosecutor*

The applicant complains under Article 6 § 1 of the Convention about the allegedly unreasonable rejection of his criminal complaints against the police officers involved in the investigation of his traffic accident, and the Deputy Prosecutor of the Crimea. The Court recalls that Article 6 does not guarantee any right to have criminal proceedings instituted against a third person (cf. *Nardelli and others v. Italy* (dec.), no. 51631/99, 15 October 2002). Therefore, this part of the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to adjourn the examination of the applicant's complaint under Article 6 § 1 of the Convention about the length of the criminal proceedings against him;

*Declares* the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President