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

FIRST SECTION

Application no. 15058/08
Dmitriy Yevgenyevich KOZLOV
against Russia
lodged on 15 February 2008

STATEMENT OF FACTS

The applicant, Mr Dmitriy Yevgenyevich Kozlov, is a Russian national, who was born in 1978 and lives in Kaluga.

A. The circumstances of the case

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

On 1 May 2007 the police arrested the applicant on suspicion of driving a car in the state of alcohol intoxication. He refused to submit to a medical examination, which was considered necessary in order to confirm intoxication. Such refusal constituted an administrative offence under Article 12.26 of the Code of Administrative Offences (CAO). The administrative offence record was compiled and then submitted to a justice of the peace.

The case against the applicant was not presented by a public prosecutor. Nor did any prosecutor participate in the first-instance hearing on 29 June 2007. On this date, the justice of the peace discontinued the case for lack of a *corpus delicti* and because of the inconclusive evidence that of all people present in the car the applicant was the driver rather than a passenger. No appeal was lodged. The judgment became final on 10 July 2007.

However, on 18 December 2007 the regional prosecutor applied, under Article 30.11 of the CAO, to the deputy President of the Kaluga Regional Court seeking the quashing of the judgment of 29 June 2007.

On 21 January 2008 the deputy President of the Regional Court examined the prosecutor's application and quashed the first-instance judgment for insufficient reasoning. By the same judgment, noting the expiry of the statutory time-limit for prosecution, the deputy President of the Regional Court discontinued the case.

The applicant sought further review before the Supreme Court of Russia. The outcome of this application is unclear.

B. Relevant domestic law and practice

1. "Supervisory review"-type proceedings under the CAO (before December 2008)

Article 30.11 of the CAO provided that a regional prosecutor, the Prosecutor General or their deputies were empowered to challenge, by way of review, a final judgment in an administrative offence case.

In decision no. 113-O of 12 April 2005 the Constitutional Court held that the supervisory review procedures were aimed at correcting judicial errors in final court decisions. These procedures should provide adequate procedural guarantees to the person concerned, including observance of the principles of adversarial proceedings and equality of arms. However, the extent and scope of such guarantees may be narrower at the stage of supervisory review, regard being had to the aims and specificities of this procedure. At the same time, the level of guarantees should be the same for the person concerned and the prosecutor. The Constitutional Court considered that a supervisory review court had an obligation to notify the person concerned of the supervisory request from a prosecutor and to provide this person with an opportunity to submit comments on such request.

In its decision no. 113-O of 4 April 2006 the Russian Constitutional Court stated that, until a legislative amendment, the courts were to refer to the provisions of Chapter 36 of the Code of Commercial Procedure (CCoP), as to the time-limits, grounds and procedural rules in "review proceedings" in respect of final court decisions.

Article 292 of the CCoP provided, in 2007 and 2008, that a request for supervisory review of the final judgment could be lodged within three months of the date when the "the most recent legal act under review had become final".

In decision no. 89-АД06-1 of 5 February 2007 the deputy President of the Supreme Court of Russia stated that supervisory review of a final judgment under the CAO was not allowable when such review adversely affected the legal situation of the person concerned.

2. "Supervisory review"-type proceedings under the CAO (after December 2008)

After the legislative amendments in force since 20 December 2008, Article 30.12 provided that the first-instance and appeal judgments, which became final, could be challenged by way of supervisory review by the defendant or his counsel, the victim, legal representative of a minor or another vulnerable person and legal representatives of a legal entity. Supervisory review could be sought by a regional prosecutor or his deputy, the Prosecutor General or his deputy.

Requests for supervisory review should be lodged before regional courts or the Supreme Court of Russia. Such requests were to be examined by the

Presidents of such courts or their deputies. The Supreme Court was empowered to deal with appeals against decisions taken on supervisory review at the regional level. In other cases, the Supreme Commercial Court should have similar competence (Article 30.13).

Requests for supervisory review should indicate grounds for review (Article 30.14). The scope of review should be limited to the grounds indicated in the request and observations in reply. If the interests of legality require, the supervisory review judge could review the case in its entirety. Renewed requests for supervisory review on the same grounds before the same court were not allowed (Article 30.16).

In decision no. 598-O of 3 April 2012 the Constitutional Court considered that the issues relating to judicial errors should, normally, be raised and assessed in ordinary appeal proceedings. Recourse of supervisory review should remain limited to exceptional cases, disclosing that in the earlier proceedings there had been an error which had determined the outcome of the case or significantly adversely affected the rights or interests. Moreover, recourse to the supervisory review procedure should be allowable only after exhaustion of ordinary appeal procedures. Dealing specifically with the issue of personal participation by the person concerned in supervisory review proceedings, the Constitutional Court held that the related provisions of the CAO were in compliance with the Constitution.

3. Other relevant provisions of the CAO

Article 1.5 of the CAO provides that for a principle of the presumption of innocence in administrative offence cases, absolving the defendant from the obligation to prove his innocence.

Under Article 12.26 of the CAO a refusal to submit to a medical examination for alcohol intoxication is punishable by the withdrawal of the driving licence for up to two years.

On 24 March 2005 the Plenary session of the Supreme Court of Russia issued ruling no. 5 concerning the application of the CAO. The Supreme Court considered that, where the statutory time-limit for prosecution under the CAO expired, a court was required to discontinue the proceedings and could not grant the defendant's request for examination of the merits of the case (point 14 of the Ruling).

When quashing the lower court's judgment, if the statutory time-limit for prosecution had expired, the higher court was to discontinue the case instead of requiring its re-examination by the lower court.

COMPLAINTS

The applicant argues that the quashing of the final judgment by the deputy President of the Regional Court violated Article 6 of the Convention. The applicant contends that the domestic procedure for setting aside the final court decision was not in line with the requirements of the Convention. He argues, *inter alia*, that the Code of Administrative Offences did not provide, at the time, for any specific time-limits for seeking such "extraordinary" review. Even assuming that the relevant domestic law and

judicial practice (see above) clarified this issue, it remains that the relevant time-limit was, in any event, missed by the regional prosecutor. Furthermore, the CAO contained no specific grounds for seeking such review. Thus, it was both unlawful and disproportionate to set aside the final judgment.

Furthermore, the deputy President of the Regional Court held no hearing since none was prescribed under the CAO. Nor did he provide any reasons for dismissing the applicant's arguments relating to the belatedness of the prosecutor's application.

QUESTIONS TO THE PARTIES

1. Was Article 6 of the Convention applicable in the administrative offence proceedings referred to by the applicant? In particular:

- Was Article 6 of the Convention applicable under its civil limb (see, for comparison, *Lutz v. Germany*, 25 August 1987, §§ 51-57, Series A no. 123; *Malige v. France*, 23 September 1998, §§ 31-40, *Reports of Judgments and Decisions* 1998-VII; *Schmautzer v. Austria*, 23 October 1995, §§ 26-28, Series A no. 328-A; and *Nilsson v. Sweden* (dec.), no. 73661/01, 13 December 2005)?

- Alternatively, was Article 6 of the Convention applicable under its criminal limb, irrespective of the fact that detention was not among penalties under Article 12.26 of the Code of Administrative Offences (CAO) (see, for comparison, *Menesheva v. Russia*, no. 59261/00, §§ 94-98, ECHR 2006-III, and *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, §§ 54-57, ECHR 2009)? Is it appropriate to consider that the criminal head of Article 6 was, in any event, applicable in view of the general character of the CAO and the deterrent and punitive purpose of the penalties (see, by way comparison, *Ziliberberg v. Moldova*, no. 61821/00, § 33, 1 February 2005)?

If Article 6 of the Convention was applicable:

2. Was there a violation of Article 6 of the Convention, on account of the examination of the prosecutor's – arguably, belated – application for review by the deputy President of the Regional Court (see *Bezrukovy v. Russia*, no. 34616/02, §§ 33-44, 10 May 2012)?

3. Was there a violation of Article 6 of the Convention on account of the quashing of the judgment of 29 June 2007 by way of supervisory review (see, for comparison, *Ryabykh v. Russia*, no. 52854/99, §§ 51-59, ECHR 2003-IX; *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007; *Eduard Chistyakov v. Russia*, no. 15336/02, §§ 22-28, 9 April 2009; and *OOO Link Oil SPB v. Russia* (dec.), no. 42600/05, 25 June 2009)? Was this judgment final, meaning that it acquired the force of *res judicata*, i.e. it became irrevocable, so that no further ordinary remedies were available or when the

parties exhausted such remedies or permitted the time-limit to expire without availing themselves of them (see *Nikitin v. Russia*, no. 50178/99, §§ 37-39, ECHR 2004-VIII)? When assessing compliance with the requirements of Article 6 of the Convention, does it matter that the supervisory court's substitution of the legal ground for discontinuation of the proceedings deprived the applicant of a legal possibility to claim compensation for wrongful prosecution?

The parties are invited to address, *inter alia*, the following issues with reference to the provisions of the Code of Administrative Offences (CAO), which were applicable at the material time and were applied in the applicant's case:

- Did the CAO and/or the relevant judicial practice set up a time-limit for bringing an application for review, as in the present case? If yes, did the prosecutor comply with this time-limit in the present case? How was this time-limit calculated, noting, *inter alia*, that Article 292 of the Code of Commercial Procedure (which was, arguably, applicable) made reference to "the most recent legal act under review had become final"?
- In addition to the person concerned, who had the power to initiate supervisory review proceedings in respect of a final judgment? Was the prosecutor's right to do so limited to the case in which this or another prosecutor had already participated at first instance and/or in ordinary appeal proceedings?
- Could review proceedings be held before one and only level of jurisdiction? Were further similar applications before the same or higher instance available? If yes, what was the method for calculating the applicable time-limit?
- Was it necessary to exhaust all "ordinary" means of appeal before applying for such review?
- What were the grounds for review? Was there any requirement of a fundamental defect in the proceedings, which ended with a final and enforceable judgment?

4. Was there a separate violation of Article 6 of the Convention on account of any procedural shortcomings such as the absence of an oral hearing before the deputy President of the Regional Court and the latter's alleged omission to deal with the arguments relating to the time-limit for bringing the review proceedings?