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

FIRST SECTION

DECISION

Application no. 26704/02
Pavel Ivanovich LYAKHEVICH
against Russia

The European Court of Human Rights (First Section), sitting on 12 November 2013 as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 August 2001,

Having regard to the parties' observations,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Pavel Ivanovich Lyakhevich, is a Russian national who was born in 1946 and lives in Nadym, the Yamalo-Nenetskiy Autonomous Region. The Russian Government ("the Government") were represented by Mr P. Laptev and subsequently by Ms V. Milinchuk, both former Representatives of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Initial proceedings

Whilst crossing the Russian-Ukrainian border on 17 October 1999 the applicant failed to declare 71,000 Russian roubles (RUB). The Bryansk Customs Office apprehended the applicant on spot and seized the

undeclared money. According to the applicant, at the time of the events he had been poisoned by unspecified persons and was not feeling well. It appears that immediately after those events he had been taken to hospital and received unspecified treatment there until 19 October 1999.

At some point the authorities returned to the applicant RUB 2,000 of the seized amount.

On 17 December 1999 the applicant was charged with smuggling. He failed to appear before the court and was put on the wanted list.

On 18 July 2000 the applicant appeared before the court. On the same date the Volodarskiy District Court of Bryansk, the Bryansk Region ("the district court") found, with reference to medical documents, that on 17 October 1999 the applicant had been suffering from poisoning by unspecified psychotropic substances and had been unable to adequately assess reality. However, thereafter his state of health "had stabilised" and he could no longer be regarded as "socially dangerous". The court discontinued the criminal proceedings against the applicant "due to the change of circumstances", and also ordered to discontinue the search for him. The court further ordered to return RUB 69,000 to the applicant. The judgment was not appealed against and entered into force ten days later.

On 19 January 2001 the amount of RUB 69,000 was transferred to the applicant's banking account. According to the bank certificate submitted by the Government, on 5 February 2001 he received that sum.

2. First round of the supervisory-review proceedings

On 17 January 2001 the Presidium of the Bryansk Regional Court ("the Regional Court"), acting upon the prosecutor's special appeal, examined the case by way of the supervisory-review procedure. The court quashed the judgment of 18 July 2000 in part relating to the order to return the money to the applicant and remitted the case for re-trial in that part. The Presidium considered that the money should be forfeited as instrument of the crime. The applicant was neither present nor represented at the hearing.

On an unknown date he received a copy of the ruling by the Presidium.

3. Proceedings of 8 February 2001

On 8 February 2001 the district court examined the case in line with the instructions of the Regional Court and ordered that the money be forfeited as instrument of the crime. The decision was not appealed against. The parties did not submit a copy of the decision. It is unclear whether the applicant was present at the hearing.

The decision remained unexecuted and the applicant did not repay the money.

4. Second round of the supervisory-review proceedings

On 12 June 2001 the applicant requested the Supreme Court of Russia to review the decisions of 18 July 2000 and 17 January 2001 by way of the supervisory-review procedure. In his extensive submissions he complained, in particular, that the domestic court on 18 July 2000 had incorrectly resolved the case and had failed to establish all relevant circumstances and pointed out that the supervisory-review ruling of 17 January 2001 had been self-contradictory and had had no basis in the domestic law.

At some point the Deputy President of the Supreme Court introduced a request for supervisory review pursuant to his request.

On 31 January 2002 the Presidium of the Supreme Court of the Russian Federation quashed the judgment of 18 July 2000, the ruling by the Presidium of the Bryansk Regional Court of 17 January 2001 and the judgment of 8 February 2001 by way of the supervisory-review procedure and remitted the case for a fresh consideration to the first instance court. The Presidium considered that on 18 July 2000 the lower court had omitted to establish all relevant circumstances of the case and to give them due assessment, as well as failed to inform the applicant of his rights in the event of the discontinuation of the proceedings on account of the change of circumstances, and that the subsequent decisions were to be annulled accordingly.

The applicant again challenged the decision of the Supreme Court requesting full acquittal. On 5 June 2003 his complaint was rejected.

5. Subsequent proceedings

Once the case was remitted, the district court scheduled hearings in the case for 13 May 2002, 23 December 2002 and 29 March 2003. However, none of the hearings took place, and each time the examination of the case was adjourned, for the applicant's failure to appear before the court. According to the Government, in 2003-2004 the District Court eight more times scheduled the examination of the case and each time adjourned the hearings, because the applicant did not appear in the court room.

On 17 December 2004 the District Court discontinued the criminal proceedings against the applicant, for the lack of *corpus delicti* in his actions, on account of the amendments of 8 December 2003 in the Russian criminal law that had decriminalised, in particular, transportation across the customs border of the Russian Federation in evasion of customs control if the impugned amount was less than RUB 250,000. The court decided that the evidence, including the disputed amount of money, should remain with the applicant.

B. Relevant domestic law

For a summary of the relevant domestic law provisions concerning exhibits and forfeiture in force at the time of the events, see, in so far as relevant, *Baklanov v. Russia*, no. 68443/01, § 20, 9 June 2005.

For a summary of the domestic provisions governing the supervisory review at the time of the events, see *Fadin v. Russia*, no. 58079/00, § 26, 27 July 2006.

COMPLAINTS

The applicant complained under Article 6 of the Convention about unfairness of the supervisory-review proceedings of 17 January 2001. He further complained under Article 1 of Protocol No. 1 about unlawful seizure of his money.

Referring to Articles 6 §§ 1, 2 and 3 and Article 17 of the Convention he complained about various deficiencies of the criminal proceedings against him, in particular, a failure to call unspecified witnesses for the defence and to grant him a lawyer in 2000 and about alleged insufficiency of time for preparation of his case in 1999, about the unfair outcome and the excessive length of the proceedings, and the Supreme Court's failure on 31 January 2002 to discontinue the unfair criminal proceedings against the applicant and to order his immediate acquittal.

THE LAW

A. Complaint under Article 6 concerning the supervisory-review proceedings and under Article 1 of Protocol No. 1 about the forfeiture of the applicant's money

The applicant complained under Article 6 of the Convention that the supervisory review proceedings of 17 January 2001 in his criminal case had been unfair. This provision, insofar as relevant, reads as follows:

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

The applicant further complained under Article 1 of Protocol No. 1 about the seizure of his money by the authorities. This Article, insofar as relevant, provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. The parties' submissions

The Government submitted that the judgment of 17 January 2001 had been quashed in a new round of the supervisory-review proceedings, initiated upon the applicant's own request, and pointed out that in 2004 the criminal proceedings against him had been discontinued. In any event, in so far as Article 6 was concerned, the quashing was in accordance with the domestic law of criminal procedure. As regards Article 1 of Protocol No. 1, they emphasized that on 5 February 2001 the amount seized from the applicant had been reimbursed to him in full. The order of 8 February 2001 ordering the applicant to return the money had never been enforced, and the applicant had not repaid the disputed amount. Furthermore, the decision of 8 February 2001 had also been set aside on 31 January 2002, and by the final decision of 17 December 2004 the district court upheld that the disputed amount should remain with the applicant. They concluded that there had been no interference with the applicant's property rights.

The applicant maintained his complaints, claiming in broad terms that the proceedings against him had been unfair and that their unfairness had been confirmed by the Supreme Court of Russia on 31 January 2002. The applicant refused to specify the exact date of his receipt of a copy of the ruling of 17 January 2001, having assessed the Court's explicit question in that respect as irrelevant and excessively formalistic.

2. The Court's assessment

The Court notes at the outset that the supervisory review complained of took place on 17 January 2001, and the new examination of the case pursuant to the quashing took place on 8 February 2001. However, the respective complaints were first raised before the Court on 26 August 2001, that is more than six months after both decisions had been taken. On the other hand, the parties have not submitted information on the exact date of the receipt of the copy of the ruling of 17 January 2001 by the applicant. Furthermore, in the absence of a copy of the decision of 8 February 2001 it is unclear whether the applicant was present or represented at the hearing and when he had been notified of the hearing or of the decision. In those circumstances, the Court does not consider it necessary to rule separately on the applicant's compliance with the six-month time-limit, since his complaints are inadmissible on the following grounds.

(a) As regards the complaint under Article 6 of the Convention

In so far as the applicant may be understood to complain about a violation of the legal certainty principle on 17 January 2001, and assuming that the complaint was raised before the Court in due time, the Court will examine it in the light of further developments in the present case. The Court notes that the ruling by the Bryansk Regional Court of 17 January 2001, as well as the initial decision of 18 July 2000 and the decision of 8 February 2001 were set aside by the Presidium of the Supreme Court by way of the supervisory-review procedure on 31 January 2002. The applicant maintained, in respect of that later set of proceedings, that the ruling of the Presidium of the Supreme Court had also been unfair, since the supervisory instance had not discontinued the criminal proceedings against him.

The Court will first examine the compliance of supervisory-review proceedings of 31 January 2002 before the Presidium of the Supreme Court with the requirements of Article 6 of the Convention. The Court observes that it was the applicant himself who had solicited the supervisory review of the initial judicial decision of 18 July 2000 and the ruling of the Presidium of the regional court of 17 January 2001. In particular, he asked for his criminal case to be fully re-examined by a court. In fact, is not disputed that the application for supervisory review was lodged by the Deputy President of the Supreme Court, and the judicial decisions in issue were quashed by the Supreme Court of Russia on 31 January 2002 in accordance with the applicant's request. Furthermore, the scope of the subsequent re-examination entirely corresponded to the one requested, that is the case was fully re-examined. The Court considers, as regards the proceedings of 31 January 2002, that, being the initiator of the supervisory review, the applicant cannot claim to be a victim of the alleged breach of the principle of legal certainty (see *Fadin*, cited above, § 34).

The Court further refers to the applicant's complaint that the Presidium of the Supreme Court, after having found defects in the original judgment, did not terminate the proceedings but instead remitted the case for reconsideration. In the present case the Presidium found that the lower court had failed, in particular, to secure the applicant's right to be informed of the consequences of the decision of 18 July 2000. The Presidium's decision to quash the judgment, flawed as it was with that defect, does not appear unreasonable or arbitrary. It does not appear that the Presidium of the Supreme Court might reasonably have been expected to discontinue the proceedings without entering into the merits of the case, or to substitute itself for the lower instances and determine the criminal charges against the applicant. Moreover, it appears that the Presidium and the court considering the remitted case did not pursue any avenues which could be regarded as detrimental to the applicant. Therefore the Court does not consider that the decision of the Presidium of the Supreme Court to remit the case undermined the overall fairness of the proceedings within the meaning of

Article 6 of the Convention (see, for similar reasoning, *Bratyakin* v. Russia (dec.), no. 72776/01, 14 April 2001).

It follows that the complaint about the supervisory-review proceedings of 31 January 2002 before the Presidium of the Supreme Court of Russia must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

Against this background, the Court will now return to the complaint about the first round of the supervisory-review proceedings of 17 January 2001 before the Bryansk Regional Court. As shown above, the impugned ruling by the Presidium of the regional court was quashed by the Supreme Court on the applicant's own request. The Court reiterates that an applicant may lose his or her victim status if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it (see, most recently, *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 67, 2 November 2010). As regards acknowledgment, the Court notes that on 31 January 2002 the Presidium of the Supreme Court did not address separately the issue of the forfeiture of the money as instrument of the crime. However, the Court considers that this aspect of the case was clearly subsumed by the Supreme Court's determination of the crucial issue of fairness of the initial round of the criminal proceedings – the issue that was also the crux of the applicant's respective complaint to the Presidium of the Supreme Court. In fact, the initial decision of 18 July 2000 ordering to discontinue the proceedings "due to the change of circumstances", which gave rise to the forfeiture issue, was quashed, for the lower court's failure to examine the case in its entirety and to properly notify the applicant of his rights. Having thus acknowledged the violations of the applicant's rights, the supervisory instance decided that the subsequent judicial decisions, dealing with the instrument of the crime issue and thus entirely based on the judgment of 18 July 2000, should also be set aside, as requested by the applicant. Following the Supreme Court's ruling of 31 January 2002, the applicant was afforded redress in the form of a re-trial (see, for similar approach, *Fedosov v. Russia* (dec.), no. 42237/02, 5 January 2007; *Nikishina v. Russia* (dec.), no. 45665/99, 12 September 2000; and *Babunidze v. Russia* (dec.), no. 3040/03, 15 May 2007). As regards that latest round of the proceedings, the Court notes in addition that the applicant did not appeal against the latest decision in his criminal case dated 17 December 2004, and it may be discerned that he was satisfied with the outcome of those proceedings. Accordingly, the applicant can no longer claim to be a victim of the alleged violation.

It follows that the complaint about the supervisory-review proceedings of 17 January 2001 before the Bryansk Regional Court must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(b) As regards the complaints under Article 1 of Protocol No. 1

The Court notes that the applicant's complaint under Article 1 of Protocol No. 1 is formulated in broad terms. The Court discerns two main aspects of the complaint: first, a delay in repayment of the money ordered by the judicial decision of 18 July 2000 and, second, the quashing of that decision by way of the supervisory-review procedure on 17 January 2001.

As regards the enforcement issue, it is not disputed that pursuant to the judicial decision of 18 July 2000, on 5 February 2001 the sum of RUB 69,000 was reimbursed to the applicant. Thus, the delay in enforcement did not exceed seven months. Having regard to its well-established case-law (see, among others, *Belkin and Others v. Russia* (dec.), nos. 14330/07 et al., 5 February 2009), the Court considers that this period complied with the requirements of the Convention.

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

As regards the quashing issue, the Court observes that on 17 January 2001 the court order of 18 July 2000 was set aside by way of the supervisory-review proceedings, and the Presidium of the Bryansk Regional Court had ordered a fresh examination of the case in the part concerning the return of the seized money to the applicant. As a result, on 8 February 2001 the first-instance court ordered forfeiture of the impugned amount.

First, the Court finds it important to note that the applicant has never complied with the decision of 8 February 2001 (see, by contrast, *Kazmin v. Russia*, no. 42538/02, §§ 63, 13 January 2011). Thus, it is not disputed that at no point after 5 February 2001, the date of enforcement of the court order of 18 July 2000, the applicant actually repaid the impugned amount to the authorities.

Second, in so far as the applicant's reliance on a binding judicial decision could have been frustrated by the very fact of the quashing on 17 January 2001 of the first instance court's decision, the Court has established above that on 31 January 2002 the disputed supervisory-instance ruling was set aside, along with other judicial decisions in the case, by the Presidium of the Supreme Court of Russia pursuant to the applicant's own request. The effect of the proceedings which formed the basis for the applicant's complaint under Article 1 of Protocol No. 1 has thus been annulled (see, *mutatis mutandis*, *Nikishina*, cited above). The Supreme Court acknowledged a violation of the applicant's rights in the initial criminal proceedings and, as a result of the subsequent proceedings, on 17 December 2004 the applicant obtained a judicial decision favorable to him in so far as his property claim was concerned. Indeed, on that date the district court decided that the disputed amount should remain with the applicant. The Court considers that such a redress was sufficient and adequate, having the effect of rendering the applicant "no longer a victim" of the alleged violation (see, *mutatis*

mutandis, *Babunidze*, cited above, with further references, and *Podrugina and Yedinov v. Russia* (dec.), no. 39654/07, 17 February 2009).

It follows that this part of the complaint must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Other complaints raised by the applicant

The applicant raised a number of complaints, notably, under Article 6 §§ 1, 2 and 3 and Article 17 of the Convention alleging unfair outcome and various deficiencies of the criminal proceedings against him.

However, the Court notes that the applicant did not appeal against the decision of 17 December 2004. It follows that this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

The applicant further complained under Article 6 § 1 that the criminal proceedings against him were unreasonably long. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II, § 67). In the present case, the criminal proceedings were opened on 17 December 1999 and ended on 17 December 2004. However, no proceedings were pending between 18 July 2000 and 17 January 2001, as well as between 8 February 2001 and 31 January 2002 when the case was being examined at the supervisory instance (see, among many others, *Lelik v. Russia*, no. 20441/02, § 39, 3 June 2010). As regards the remaining period of two years and seven months, the Court notes that considerable periods of inactivity are clearly attributable to the applicant. In particular, it was not disputed that between 13 May 2002 and late 2004 the hearings were adjourned on at least ten occasions on account of the applicant's failure to appear before the court. At the same time, it was not substantiated that any specific significant periods of inactivity were imputable to the State. In sum, the Court concludes that the "reasonable time" requirement was respected in the present case.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President