



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

18 September 2008

FIRST SECTION

Application no. 18130/04  
by Ivan Eduardovich TRUFANOV and Others  
against Russia  
lodged on 13 April 2004

**STATEMENT OF FACTS**

THE FACTS

The applicants, Mr Ivan Eduardovich Trufanov, Mr Georgiy Yuriyevich Sedov and Mr Sergey Vitaliyevich Posokhov, are Russian nationals who were born in 1961, 1963 and 1966 respectively and live in the town of Taganrog. They are represented before the Court by Mr A.V. Kiryanov and Mrs E.V. Kiriyanova, lawyers practising in Taganrog.

**A. The circumstances of the case**

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

*1. Initial set of criminal proceedings*

**(a) First round of proceedings**

By judgment of 22 May 2000 the Neklinovskiy District Court of the Rostov Region found the applicants guilty of various crimes and sentenced them to various punishments.

On 29 August 2000, acting on appeal, the Rostov Regional Court upheld the judgment of 22 May 2000.

Thereafter the applicants tried unsuccessfully to initiate supervisory review of these court decisions.

On 3 May 2001 the Presidium of the Rostov Regional Court re-opened the proceedings by way of supervisory review, partly quashed the judgment

of 22 May 2000 and the appeal decision of 29 August 2000 and ordered a fresh examination of the case.

**(b) Second round of proceedings**

On 2 July 2001 the Neklinovskiy District Court found the applicants guilty of the same offences but dispensed him from serving the sentence because the case was time-barred.

An appeal by the applicant was dismissed by the Rostov Regional Court on 2 October 2001 and the judgment became final.

Following another application for supervisory review lodged by the President of the Rostov Regional Court on an unspecified date, the Presidium of the Rostov Regional Court on 31 January 2002 quashed the decisions given on 2 July and 2 October 2001 and discontinued criminal proceedings against the applicants. It found that the courts were not in a position to decide on the applicant's guilt because the whole case was time-barred. The court noted, in particular, the following:

“... However, under Section 78 of the Criminal Code if a time-limit has elapsed from the moment of commission of a crime, the person concerned is relieved from criminal liability. The [lower courts], acting in breach of that law, and having completed the judicial investigation, relieved [the applicants] not from criminal liability but from punishment, having declared them guilty. At the same time, the act of relieving from criminal liability entails the discontinuation of criminal persecution, that is the discontinuation of the criminal case. The provision of Article 5 (4) of the Criminal Procedure Code of the RSFSR in the present case is inapplicable in view of the priority accorded to the substantive law over the procedural law. ...”

*2. Court proceedings for compensation*

Thereafter the applicants sued the Ministry of Finance for, among other things, compensation of non-pecuniary damage in connection with their prosecution.

By judgment of 1 March 2005 the Taganrog Town Court of the Rostov Region rejected their claims. It reasoned as follows:

“... In the opinion of the court, the applicants are relieved from liability but not on the basis of rehabilitating grounds, which is why they may not claim compensation under Section 1100 of the Civil Code and the Decree “On the compensation of damage inflicted on a citizen by unlawful actions of the investigation bodies, prosecution and courts” as approved by Decree of the Supreme Council of the USSR dated 18 May 1981.

The court finds that since the guilt in the commission of crimes by the applicants stated above, was established then the use of the measure of restraint was well-grounded. Which is why, the court has no grounds to satisfy the claims of the applicants concerning the non-pecuniary damage resulting from unlawful detention and the undertaking not to leave a usual place of residence. ...”

On 11 May 2005 the Rostov Regional Court upheld the judgment of 1 March 2005 on appeal. It stated that:

“... The first instance court, basing its decision in respect of the refusal to satisfy the claims of the applicants concerning non-pecuniary damage, correctly assumed that by decision of the Presidium of the Rostov Regional Court dated 31 January 2002 they were relieved from liability on non-rehabilitating grounds. In the court's view, since their guilt in the commission of the above-mentioned crimes was established, then the application of the measure of restraint during the investigation was justified.

Such a conclusion of the court is a correct one, made following the examination and proper assessment of the legally relevant circumstances of the case. ...”

On 21 December 2006 the second applicant’s appeal to the Constitutional Court, in which he sought to declare Article 133 (3) of the Criminal Procedure Code unconstitutional, was declared inadmissible. The court responded that:

“... discontinuation of the criminal case in view of the lapse of the time-limit does not entail the complete rehabilitation of the person concerned, and at the same time, contrary to the opinion of the applicant, may not be viewed as declaration of his guilt in the commission of a crime in the sense of Article 49 (1) of the Constitution ...”

## **B. Relevant domestic law**

Article 49 of the Constitution provides as follows:

“Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the procedures stipulated by the federal law and established by the verdict of a court of law.

The defendant shall not be obliged to prove his or her innocence.

The benefit of doubt shall be interpreted in favour of the defendant.”

Article 78 of the Criminal Code (Release from criminal liability due to the lapse of the time-limit) reads:

“1. A person shall be released from criminal responsibility if the following time-limits have expired since the day of commission of a crime: a) two years after the commission of a crime of small gravity; b) six years after the commission of a crime of average gravity; c) ten years after the commission of a grave crime; d) fifteen years after the commission of an especially grave crime.

2. The limitation period shall be counted from the day of commission of a crime to the time of the entry of a court’s judgement into legal force. If a person commits a new crime, then the limitation period for each crime shall be counted independently.

3. The running of a limitation period shall be stopped if the person who has committed the crime evades the investigation or court trial. In this case, the running of the limitation period shall be resumed upon the time of detaining said person or his acknowledgement of guilt.

...”

Article 133 of the Criminal Procedure Code of Russia (Grounds which give rise to the rehabilitation claims) reads:

“1. The right to the rehabilitation shall incorporate the right to compensation of the property damage, to the elimination of consequences of the inflicted moral harm and to the reinstatement in the labour, pension, housing and other rights. The damage caused to the citizen as a result of the criminal prosecution, shall be recompensed by the state in full volume, regardless of the guilt of the body of inquiry, of the inquirer, the investigator, the public prosecutor and the court.

2. The right to the rehabilitation, including the right to compensation of the damage inflicted in connection with the criminal prosecution, shall have:

- 1) the defendant, in respect of whom the verdict of not guilty is passed;

2) the defendant, the criminal prosecution in respect of whom ended in connection with the withdrawal of the charge by the public prosecutor,

3) the suspect or the accused, the criminal prosecution with respect to whom is terminated on the grounds stipulated by Items 1, 2, 5 and 6 of the first part of Article 24 and by Items 1 and 4 - 6 of the first part of Article 27 of the present Code;

4) the convict – in the cases of the full or partial cancellation of the verdict of guilty, passed by the court, which has come into the legal force, and of the termination of the criminal case on the grounds envisaged by Items 1 and 2 of the first part of Article 27 of the present Code,

5) the person, towards whom were applied measures of the medical character – in case of the cancellation of the courts illegal or unsubstantiated resolution on the application of the applied measure.

3 The right to the compensation of the damage in accordance with the procedure laid down by this Chapter, shall also be enjoyed by any person, who has been illegally subjected to measures of the procedural coercion in the course of the proceedings on the criminal case

4. The rules of this Article shall not be apply to those cases when measures of procedural coercion, applied towards the person have changed, or the adjudged verdict of guilty has been cancelled or modified in view of the issue of an act of amnesty, of an expiry of the term of legal limitation, or of not having reached the age from which criminal liability sets in, or in respect of a minor who, even though has attained the age of criminal liability, could not fully realise the actual nature and social menace of his/her actions (omission) and control these actions at the time of committal of the offence defined by criminal law due to retardation in mental development not relating to a psychological disorder, or of an adoption of the law, eliminating the criminality or the punishability of the act in question

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## COMPLAINTS

The applicants complain under Article 6 § 2 of the Convention and Article 3 of Protocol No. 7 about the decision of the Presidium of the Rostov Regional Court dated 31 January 2002 and the judgment of 1 March 2005, as upheld by the decision dated 11 May 2005. In their view, these decisions openly breached their presumption of innocence and denied them compensation for the wrongful prosecution.

## QUESTIONS TO THE PARTIES

1. Did the Taganrog Town Court in its judgment of 1 March 2005 and the Rostov Regional Court in its decision of 21 May 2005, respect the applicants' presumption of innocence? The reference is being made to the wording of the respective court decision in which the courts mentioned the applicants' "guilt" in certain crimes.

2. Is the existence of the so-called “non-rehabilitating” grounds for discontinuation of criminal proceedings and the denial of compensation in connection with criminal proceedings in such cases compatible with Article 6 § 2 of the Convention and Article 3 of Protocol No. 7?