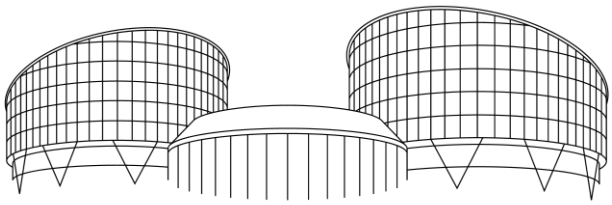

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ROMENSKIY v. RUSSIA

(Application no. 22875/02)

JUDGMENT

STRASBOURG

13 June 2013

FINAL

13/09/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Romenskiy v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 21 May 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22875/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Viktorovich Romenskiy ("the applicant"), on 29 April 2002.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya and Mr N. Tsoy, lawyers practising in Moscow and Strasbourg. The Russian Government ("the Government") were represented by Mr P. Laptev and subsequently by V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not been tried by an impartial tribunal and that there had been a violation of the presumption of innocence in his case.

4. On 2 May 2006 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1984 and lives in the Krasnodar Region.

6. During the evening of 24 March 2001 the applicant, a minor at the time, was having a drink with his friends, K., V., and B.D. They then met up with a group of youths, including Z., B.C., B.B. and G., who were also under the influence of alcohol. The two groups started a quarrel which ended with a short fight. According to the applicant, when he and his friends left the scene of the fight nobody was seriously hurt. He just had some bruises on his face. However, it appears that during the fight or immediately afterwards G. was stabbed with a knife. He was taken to hospital, where he died.

7. On the next day the applicant was questioned, charged with the murder of G. and detained in custody pending the investigation. The police searched the scene of the incident, the applicant's house, and seized his clothes. The clothes were then sent to a forensic expert, who concluded that red stains on the applicant's jacket were from G.'s blood. Blood stains were also found on the shoes and clothes of K. and B.B., who were also arrested in connection with the incident but were later released and the charges against them dropped. The prosecution concluded that it was the applicant who had stabbed G.

8. According to the applicant, on 29 November 2001, shortly before the commencement of the trial in his case, he was beaten in the detention centre by one of the guards.

9. At the first hearing before the trial court, on 30 November 2001, the defence requested the court to release the applicant pending trial. The court refused, concluding as follows:

> "[The application for release should be dismissed] on the ground that the applicant has committed a serious crime, he has not produced any document that would prove [that there exists] a danger to his life or health".

10. At the trial the applicant pleaded not guilty. He did not deny that he had had a fight with G., but denied stabbing him with a knife. The defence requested the court to summon over a dozen witnesses. The court heard some of them but several witnesses were not summoned or failed to appear. The court questioned several witnesses to the incident. None of them had seen G. being stabbed. K. testified that before the incident of 24 March 2001 the applicant had shown him a home-made knife. He said that on leaving the scene of the incident, the applicant told him that he had stabbed G. with the knife. The court also heard the investigators in charge of the case and examined the record of the search of the scene of the incident, the results of the post-mortem examination of G.'s body, and the results of the forensic examination of the stains on the applicant's jacket.

11. On 10 December 2001 the Dinskiy District Court found the applicant guilty of the murder of G. and sentenced him to six years' imprisonment. The applicant submitted that it took the court no more than one hour and forty minutes to hear the applicant's two legal representatives and his own

final submissions, then to discuss, draft and deliver the judgment, which was three pages long.

12. The applicant appealed. The arguments by the defence were centred on the taking and interpretation of evidence in the proceedings. However, chapter 1 of the appeal brief stated: "The investigation and trial were incomplete, one-sided and tendentious, with an accusatory bias". Point 1.3 of that chapter read as follows:

> "1.3. Yet, the most striking example of the partiality of the court and the accusatory bias of the proceedings was a ruling made by the court 10 days prior to the delivery of the judgment and before the end of the trial court's examination of the evidence. In the ruling of 30.11.2001 the court predetermined the [applicant's] guilt, finding that: '... [Mr] Romenskiy ha[d] committed a serious crime ...' (trial hearing record, page 7)".

13. On 27 March 2002 the Krasnodar Regional Court, sitting as a court of appeal (*кассационная инстанция*), upheld the judgment. The court heard the parties and concluded that the applicant's guilt had been sufficiently established at the trial. The Regional Court found that there had been no significant violations of the procedural or substantive law which would require a review of the judgment. The issue of the alleged impartiality was not analysed in explicit terms.

14. According to the applicant, he brought supervisory review appeal against his conviction, referring, inter alia, to partiality on the part of the judge. However, his arguments to that end were rejected without detailed reasoning, and the supervisory review of the judgment was refused.

II. RELEVANT DOMESTIC LAW

15. Under the "old" Code of Criminal Procedure (CCrP), in force at the material time (the Code of Criminal Procedure of 27 October 1960, effective until 30 June 2002), a decision to order detention pending trial could only be taken by a prosecutor or a court (Articles 11, 89 and 96). In making the decision the relevant authority had to take into account, in particular, the gravity of the charge (Article 91). Amendments on 14 March 2001 repealed the provision that permitted the defendant's placement in custody on the sole ground of the dangerousness of the criminal offence imputed to him.

16. A prosecutor's order, or a court decision, ordering detention pending trial was to be reasoned and justified (Article 92). The judge had the power to rule on the defendant's application for release, if submitted (Article 223). Such decision was to be delivered in the form of a procedural ruling (Article 261). Pursuant to a ruling of the Constitutional Court of 2 July 1998, all rulings having the effect of extending an applicant's detention pending trial became appealable to a higher court, separately from the judgment on the merits. The time-limits for examination of appeals against

procedural rulings rejecting an application for release were the same as those established for appeals against a judgment (Article 331 of the CCrP in fine).

17. Article 342 of the old Code specified the grounds for quashing or changing judgments on appeal, which are as follows: (i) a prejudicial or incomplete inquest, investigation or court examination; (ii) inconsistency between the facts of the case and the conclusions reached by the court; (iii) a grave violation of procedural law; (iv) misapplication of the [substantive] law; (v) inadequacy of the sentence with regard to the gravity of offence and the convict's personality. Article 332 of the old Code stipulated that the appellate court was empowered to examine "the materials of the case and additional materials submitted [by the parties]".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained that he had not been tried by an impartial tribunal and that the tribunal had breached his right to the presumption of innocence by declaring him guilty before the end of the trial. He referred to Article 6 of the Convention, which reads, in so far as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to ... hearing ... by an ... impartial tribunal ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. ..."

19. The Government pleaded non-exhaustion. First, they may be understood as asserting that the applicant could have applied for supervisory review of the judgment in his case. Second, they argued that the applicant had not challenged the ruling of 30 November 2001 in separate proceedings but only mentioned it as one of the arguments in his brief of appeal on the merits of the judgment of 10 December 2001.

20. The applicant indicated that he had tried to bring a supervisory review appeal but to no avail. He further argued that he had exhausted domestic remedies by lodging an appeal against his conviction. In his opinion, an appeal against the ruling of 30 November 2001 as such would not have remedied the situation since even if that ruling had been quashed, it would not have changed the attitude of the judge sitting in the case.

A. Admissibility

21. The Government pleaded non-exhaustion on two grounds. As to the first legal avenue mentioned by the Government, it appears to be in dispute whether or not supervisory review proceedings were initiated in respect of the Krasnodar Regional Court judgment of 27 March 2002. However, the Court refers to its well-established case-law, in accordance with which a supervisory review appeal, as available at the relevant time, was not regarded as an effective remedy to be exhausted in criminal proceedings (see *Berdzenishvili v. Russia*, (dec.), 29 January 2004, no. 31697/03, with further references). Consequently, it is irrelevant whether or not the applicant raised his arguments in a supervisory review appeal.

22. The Government also claimed that the applicant should have lodged a separate appeal against the ruling of 30 November 2001. The Court reiterates in this respect that domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI). The impugned ruling concerned only the applicant's detention pending trial. Therefore, an appeal directed against that ruling would have been limited to matters of detention. By contrast, the thrust of the applicant's complaint before the court of appeal in Russia and before the Court was quite different: he attacked the judgment as a whole, claiming that the outcome of the trial had been predetermined. The ruling of 30 November 2001, therefore, was not a separate object of appeal but a proof of the bias of the trial court. The Court concludes that the avenue indicated by the Government was not capable of "providing adequate redress" for the applicant's grievance under Article 6 § 1 of the Convention. The Government did not claim that the issue of the alleged partiality should have been raised by the applicant earlier, at the trial stage. Thus, the Court concludes that by lodging a general appeal the applicant exhausted effective domestic remedies, as required by Article 35 of the Convention.

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

24. On the merits the Government claimed that the applicant's Article 6 rights had been respected. They added that according to information received from the Supreme Court, "the lawfulness of the statement in the

ruling of 30 November 2001 ... that the applicant 'had committed a crime', which prejudged the finding of his guilt, [was] doubtful".

25. The applicant claimed that by finding, before the end of the trial, that he had committed a crime, the court had shown its bias towards him and, in addition, breached his right to the presumption of innocence.

2. The Court's assessment

(a) Alleged partiality of the trial court

(i) General principles

26. The Court reiterates that "[a] tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is presumed unless there is evidence to the contrary" (see *Padovani v. Italy*, 26 February 1993, § 26, Series A no. 257 B, and *Daktaras v. Lithuania*, no. 42095/98, § 30, ECHR 2000 X). The Court may also employ an objective approach, that is, determine whether the judge offered sufficient guarantees to exclude any legitimate doubt in respect of his impartiality (see *Piersack v. Belgium*, 1 October 1982, § 30, Series A no. 53, and *Grieves v. the United Kingdom* [GC], no. 57067/00, § 69, ECHR 2003-XII). The Court is mindful that there is no watertight division between the two notions, and that the same act or statement by a judge may be analysed through the prism of a "subjective" or "objective" test (see *Olujić v. Croatia*, no. 22330/05, §§ 57 et seq., 5 February 2009). The Court further reiterates that "in maintaining confidence in the ... impartiality of a tribunal, appearances may be important" (*Brudnicka and Others v. Poland*, no. 54723/00, § 41, ECHR 2005 II). Finally, the Court has always stressed the importance of "national procedures for ensuring impartiality" which are directed, inter alia, "at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public" (see *Mežnarić v. Croatia*, no. 71615/01, § 27, 15 July 2005, and *Huseyn and Others v. Azerbaijan*, nos. 35485/05, 45553/05, 35680/05 and 36085/05, § 162, 26 July 2011).

27. In general, one of the roles of the trial judge is to manage the proceedings with a view to ensuring the proper administration of justice. It is perfectly normal that a judge may consider and dismiss an application for release lodged by a detained defendant. In doing so the judge is required, under both the Convention and the domestic law, to establish the existence of a "reasonable suspicion" against the defendant. The mere fact that a trial judge has already taken pre-trial decisions in the case, including decisions relating to detention, cannot in itself justify fears as to his impartiality; only special circumstances may warrant a different conclusion (see *Hauschildt v. Denmark*, 24 May 1989, § 51, Series A no. 154, and *Sainte-Marie*

v. France, no. 12981/87, § 32, 16 December 1992). That being said, while deciding on an application for release lodged by a defendant, the court must not assess whether or not the defendant is guilty (see *Gultyayeva v. Russia*, no. 67413/01, § 197, 1 April 2010). The court's role is limited to establishing the state of suspicion, which may be insufficient to prove the defendant's guilt beyond reasonable doubt, but which connects the defendant, his actions, whereabouts, and so on, to the *actus reus* of the case. "Suspicion and formal finding of guilt are not to be treated as being the same" (*Jasiński v. Poland*, no. 30865/96, § 55, 20 December 2005).

(ii) Application to the present case

28. In the Court's opinion, the District Court in its ruling of 30 November 2001 went beyond this line. The wording of the impugned ruling did not only described a status of suspicion – it implied that the applicant was already considered "guilty" by the District Court, without any qualification or reservation (see *Chesne v. France*, no. 29808/06, § 38, 22 April 2010; see also, *a contrario*, *Jasiński*, cited above, § 56, where no violation was found because the domestic court's findings for the purposes of extending the applicant's detention "[did] not convey a conviction that the applicant had committed the offences in question"). The finding of the Russian court in the present case was unequivocal, and in view of that the Court finds that the applicant's fear that the judge might have had a preconceived opinion about the case was objectively justified.

29. Finally, the Court reiterates that proceedings, viewed as a whole, can be considered fair if any defects in the original trial are subsequently remedied by the appeal courts (see, *mutatis muta*ndis, *Edwards v. the United Kingdom*, 16 December 1992, § 39, Series A no. 247-B, and *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86, Series A no. 86, with further reference to *Adolf v. Austria*, 26 March 1982, §§ 38-40, Series A no. 49). The Court observes that the judgment of the trial court was reviewed by a higher court, the Krasnodar Regional Court, sitting as a court of appeal. However, the appellate court did not address the applicant's complaint about the alleged partiality of the trial court, but summarily rejected all his "procedural" complaints as unsubstantiated. Thus, the Krasnodar Regional Court did nothing to dissipate the applicant's fears as to the partiality of the District Court.

30. In sum, and having regard to the proceedings as a whole, the Court concludes that there has been a violation of Article 6 § 1 of the Convention on account of the lack of impartiality of the Dinskiy District Court.

(b) Presumption of innocence

31. The applicant also alleged that the ruling of 30 November 2001 had breached his presumption of innocence guaranteed by Article 6 § 2 of the Convention. However, in the light of its finding above under Article 6 § 1

the Court considers that this issue does not require separate examination under Article 6 § 2.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. Lastly, the Court has examined the other complaints submitted by the applicant under Articles 3, 5, 6 and 18 of the Convention. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

34. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

35. As to costs and expenses, the applicant, who had been granted legal aid, claimed that he had had no money with which to pay the lawyers and that they had worked *pro bono* in his case. He asked the Court to determine the amount of remuneration due to his lawyers for their work.

36. In the circumstances, the Court considers that the involvement of the lawyers in the case did not incur any costs for the applicant. It follows that the Court cannot award the applicant any sum in respect of legal fees, in addition to those already received by his lawyers from the legal aid scheme.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the trial court's alleged partiality and the breach of the presumption of innocence admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the partiality of the Dinskiy District Court;

3. *Holds* that there is no need to examine separately the applicant's complaint under Article 6 § 2 of the Convention;

4. *Dismisses* the applicant's claim for legal costs.

Done in English, and notified in writing on 13 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Isabelle Berro-Lefèvre
Deputy Registrar	President