

JUDGMENT

City of Chita

5 March 2008

Judge of the Ingodinsky District Court of the City of Chita I.N. Falileyev,
with participation of prosecutor T.S. Kiriyenko,
appellant Platon Leonidovich Lebedev,
defence attorneys I.Yu. Sapozhkov, S.V. Kupreichenko and K.Ye. Rivkin,
with secretary E.I. Latkina,
having considered in an open court session in the procedure prescribed by Art. 125 CCP RF an appeal of P.L. Lebedev against unlawful actions (failures to act) of officials of the RF Procuracy General,

ESTABLISHED:

P.L. Lebedev filed the aforementioned appeal in which he indicated the following. On 13 February 2007 in the premises of FGU IZ-75/1 of the city of Chita, investigator T.B. Rusanova from the RF Procuracy General confirmed that she had not seized any American Express cards during the search on 3 October 2003. A “testimony” of investigator T.B. Rusanova confirms that former deputy Prosecutor-General Yu.S. Biryukov and investigator S.K. Karimov included knowingly false information in the bill of indictment of 26 March 2004, namely: “American Express corporate cards seized during a search of P.L. Lebedev’s summer house, from which it follows that these documents were been sent to him as the executive of Status Service Limited on 6 June 2000, have been added to the case file.” This knowingly false allegation included into the bill of indictment was later “legalized” in the verdict of the Meshchansky District Court of the City of Moscow of 16 May 2005 with regard to the appellant and M.B. Khodorkovsky. A copy of the verdict of 16.05.2005 containing an identical allegation has been added to [the file of] criminal case No. 18/432766-07.

In their supplementary submission to the appeal, the appellant and his defence attorneys I.Yu. Sapozhkov and S.V. Kupreichenko said the following. According to a record of a search of 01 July 2003 carried out by investigator T.B. Rusanova, two travelling passports of P.L. Lebedev were seized. However, the passports seized were not added to the criminal case file. These passports, which could confirm P.L. Lebedev’s alibi, were not examined by the Meshchansky Court and subsequently by the [courts of] cassation and supervisory instances.

On 29 December 2006 and 11 January 2007, P.L. Lebedev, who was in the Chita remand prison, filed motions for sending requests to competent authorities for provision of information concerning the dates when he crossed the RF state border that could confirm his alibi. Both motions were denied by the investigator. P.L. Lebedev appealed the investigator’s orders to deny the motions to the Ingodinsky District Court of the City of Chita, which found the orders of investigator S.K. Karimov to deny these motions of P.L. Lebedev unlawful and groundless.

As a result of these court judgments, the investigators were forced to make a copy of a record of inspection of P.L. Lebedev’s travelling passports available to him. On 29 March 2007, these documents concerning P.L. Lebedev’s alibi were inspected and their copies were attached to the file of case No. 18/432766-07. Therefore, since 1 July 2003 the investigative authorities have been concealing documents demonstrating P.L. Lebedev’s irrefutable alibi from him and his defence attorneys.

The fact that the Border Service of the FSB RF does not have information about his crossings of the border seems suspicious. There are reasons to assume that the prosecution is concealing information important for the case.

Investigators T.B. Rusanova and S.K. Karimov exerted unlawful pressure on Vasily Alexanyan in order to coerce him into giving knowingly false evidence concerning alleged guilt of P.L. Lebedev.

According to the text of a record of questioning of a witness questioned by investigator T.B. Rusanova on 22.07.2003, the lawyer participating in the questioning was deprived of an opportunity to fulfil his obligations provided for by Art. 53 para 2 CCP RF and faced ignorance, boorishness and threats by the investigator.

The fact of breach of the CCP RF was also recorded by lawyer Drel in the text of a search report of 03.10.03.

On 06.07.2007, investigator T.B. Rusanova said that according to the norms of the CCP RF participation of a defence attorney in court hearings was not a valid reason for his non-participation in the reading of a case file under Art. 217 CCP RF. By such statements, investigator T.B. Rusanova restricts P.L. Lebedev's right to judicial protection, *i.e.* prevents the appellant and his defence attorneys from participation in court hearings of [his] appeals against the investigator's actions.

The appellant and his defence attorneys are asking [the court] to find unlawful the aforementioned actions (failures to act) of investigators of the RF Procuracy General T.B. Rusanova and S.K. Karimov on concealing of the facts of falsification of case file materials – use of evidence non-existent in the case file (the American Express corporate cards) – and to find unlawful and groundless the decisions and actions (failures to act) of theirs referred to in the supplementary submissions to the appeal.

Having listened to appellant P.L. Lebedev, his defence attorneys I.Yu. Sapozhkov, S.V. Kupreichenko and K.Ye. Rivkin, who supported the arguments set out in the appeal, and prosecutor T.S. Kiriyyenko, who asked that P.L. Lebedev's appeal be dismissed, and reviewed the materials submitted, the court finds as follows.

According to Art. 125 of the CCP RF, orders of investigators refusing to open a criminal case, terminating a criminal case and other decisions or actions (failures to act) of investigators that can prejudice constitutional rights and freedoms of participants of criminal proceedings or hinder access of citizens to justice, can be appealed to court.

As follows from P.L. Lebedev's appeal, on 16 May 2005 the Meshchansky District Court of the City of Moscow issued a verdict in the criminal case in which the prosecution submitted the American Express corporate cards as evidence. The travelling passports, which were not added to the criminal case file, had also been seized in the framework of this criminal case. Also in the framework of the same criminal case, a witness was questioned on 22.07.2003, and a search was carried out on 03.10.03 with participation of lawyer Drel.

Decisions and actions (failures to act) of an investigator related to proceedings in a criminal case that has been tried by a court on the merits with issuance of a court judgment cannot be a subject of a review in the procedure established by this article of the CCP RF. For appealing of this kind of decisions and actions (failures to act) of an investigator another judicial procedure has been established by Chapter 48 CCP RF. The appellant's reference to the fact that a copy of the verdict of the Meshchansky District Court of the City of Moscow has been added to the criminal case he is reading cannot be found substantiated. A court verdict is a document containing information about the personality of an accused. Information about the

personality of an accused is one of the circumstances to be established in a criminal case. In addition, under Art. 125 CCP RF the court is not entitled to assess findings of a court judgment.

The actions (failures to act) of investigators T.B. Rusanova and S.K. Karimov referred to in the appeal and the supplement thereto – concealment of the travelling passports during proceedings in criminal case No. 18/432766-07, coercion of V. Alexanyan into giving false evidence, concealment of information about appellant’s crossings of the border and investigator Rusanova’s statement of 06.07.2007 – cannot be considered in the procedure prescribed by Art. 125 CCP RF either.

As follows from the meaning of Art. 125 CCP RF, appealed under this article can be procedural decisions made by an investigator or procedural actions (failures to act) performed by him/her. Concealment of evidence in a criminal case by an investigator, exertion of pressure on a participant of proceedings and coercion into giving false evidence are not procedural actions as such and cannot be a subject of a review in the procedure under Art. 125 CCP RF.

The words of investigator T.B. Rusanova cannot be a subject of consideration in the procedure under Art. 125 CCP RF either. In this case, the investigator expressed her own opinion as to interpretation of the norms of CCP RF, which does not constitute a procedural action.

On the basis of the above and pursuant to Art. 125 para 5 (2) CCP RF, [the judge]

ADJUDGED:

To dismiss the appeal of Platon Leonidovich Lebedev against unlawful actions (failures to act) of officials of the RF Procuracy General.

The judgment may be appealed to the Chita Oblast Court within ten days from the day of its issuance, and appellant P.L. Lebedev may appeal the judgment within the same period from the day when a copy of the judgment is served on him.

Judge

[signature]

I.N. Falileyev

[handwritten note:
True copy]

[signature]

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District Court of the City of Chita]