



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

FIRST SECTION

CASE OF ANDREY ISAYEV v. RUSSIA

(Application no. 24490/03)

JUDGMENT

STRASBOURG

23 September 2010

FINAL

21/02/2011

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

In the case of Andrey Isayev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 24490/03) 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 Aleksandrovich Isayev (“the applicant”), on 28 May 2003.

2. The applicant was represented by Mr V. Kuvshinov. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, representative of the Russian Federation at the European Court of Human Rights.

3. On 5 December 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1978 and lives in Vladimir.

A. Criminal proceedings against the applicant

5. On 28 September 1998 he was convicted of theft by a competent court and given a suspended sentence of two years' imprisonment with a three-year delay in the execution of the sentence.

6. On an unspecified date the authorities brought a different set of criminal charges against the applicant. The Court is in possession of a letter written by the prosecutor's office of the Vladimir Region and dated by 30 April 1999 which contains the following statement: "...your son A.A. Isayev was arrested on 15 January 1999 in accordance with Section 122 of the Code of the Criminal Procedure of the Russian Soviet Federal Socialist Republic, after which, taking into account the circumstances of the case including his engagement in criminal activities during the service of a previous sentence, he was placed in detention and charged". According to the Government, the authorities did not arrest the applicant on 15 January 1999 as at the material time he was already in detention on account of a different criminal investigation against him, which ended in his conviction by the Oktyabrskiy District Court of Vladimir on 12 April 2000.

7. Between 7 and 9 June 2000 the applicant and his legal counsel studied the case file.

8. On 7 June 2000 and on 1 August 2001 the applicant requested that his case be examined by a jury.

9. On 2 July 2001 the criminal case against the applicant and his two co-defendants was forwarded to the Vladimir Regional Court ("the trial court") for trial.

10. On 16 July 2001 the trial court set the examination of the case for 30 July 2001.

11. On 30 July 2001 the trial court, composed of judge Sh. and two lay judges (*народные заседатели*) K. and S. started the examination of the case. The applicant was represented by legal counsel. However, at the hearing he sought leave to be represented also by his mother and by Mr Kuvshinov. The trial court dismissed his request.

12. The applicant and his legal counsel appealed against the above decision to the Supreme Court of the Russian Federation ("the appeal court"). On 15 October 2001 the appeal court held that it was not possible to examine the applicant's appeal against an interlocutory decision.

13. On 15 November 2001 the trial court, which was now composed of judge Sh. and lay judges G. and Ka., allowed Mr Kuvshinov to defend the applicant along with his legal counsel.

14. On the same date the trial court rejected the applicant's request to have his case heard by a jury on the ground that the jury trial had not been set up in the Vladimir Region.

15. On 4 December 2001 the trial court dismissed the applicant's objection to the composition of the trial court. Regarding the lay judges, the

trial court held that they had been elected by the Vladimir Regional Council of People's Deputies (*Владимирский областной совет народных депутатов*) during its session of 4-11 April 1990 in accordance with law. According to the presidential decree of 25 January 2000 their terms of office had been extended until the court received a new list of lay judges confirmed by the regional legislature.

16. On 24 December 2001 the applicant received a similar answer from the President of the Vladimir Regional Court.

17. On 29 April 2002 the trial court found the applicant guilty of two premeditated murders, damage to private property and several other crimes and sentenced him to twenty years' imprisonment with confiscation of his possessions. The sentence started to run from 15 January 1999.

18. The applicant appealed against the conviction. In the additional grounds of appeal he complained, among other things, that the judgment had been adopted by a court which had not been established in accordance with law.

19. On 19 December 2002 the appeal court upheld the applicant's conviction for murders, modified the judgment in respect of the other charges and reduced his sentence to nineteen years' imprisonment with confiscation of the possessions. In particular, it found that the trial court had been established in accordance with law.

B. Libel proceedings against a newspaper

20. On 12 February 2002 the local newspaper *Molva* published an article in which it allegedly accused the applicant's representative, Mr Kuvshinov, of causing delays in the examination of the applicant's case. Defamation proceedings brought by Mr Kuvshinov against the newspaper ended in a friendly settlement on 16 April 2003. The parties did not appeal against the settlement, and it entered into force on 28 April 2003.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of the Criminal Procedure of RSFSR of 1960 ("the CCrP") in force until 1 July 2002

21. Section 15 of the CCrP provided that hearings of criminal cases in first-instance courts had to be conducted, subject to certain exceptions, by a single professional judge or by a panel of one professional judge and two lay judges. In administration of justice lay judges enjoyed the same rights as professional judges.

B. Law of RSFSR on the Judicial System of 8 July 1981 (“the Law”)

22. Section 29 of the Law provided that the regional and other equal courts, including the president of the court, the president's deputies, the court members and the lay judges, should be elected by the relevant council of people's deputies for the duration of five years.

C. Federal Law on the Lay Judges of the Federal Courts of General Jurisdiction in the Russian Federation of 2 January 2000 (“the Act”), in force between 10 January 2000 and 1 January 2004

23. Section 1 of the Act provided that the Russian citizens were entitled to participate in the administration of justice as lay judges. The lay judges were persons entitled by law to hear civil and criminal cases as part of the court panel and carry out their judicial duties on a non-professional basis.

24. Section 9 of the Act provided that the lay judges could be called to sit in cases heard by a regional court for the whole period of examination of the case and only once a year.

D. Supreme Court's Ruling on selection of lay judges of 14 January 2000, in force until 5 August 2002

25. The Ruling provided that the sitting lay judges had to remain in office until new lists of lay judges arrived to the court.

E. Presidential Decrees**Decree of 25 December 1993**

26. The Decree provided that lay judges serving in the regional courts of general jurisdiction were authorised to remain in office until adoption of the federal law on lay judges.

Decree of 23 January 1997

27. The Decree provided that lay judges serving in the regional courts of general jurisdiction were authorised to remain in office until adoption of a federal law regulating the order of their appointment or election.

Decree of 25 January 2000

28. The Decree provided that lay judges serving in the courts of general jurisdiction were authorised to remain in office until the courts received new lists of lay judges confirmed by a regional legislative assembly.

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF LACK OF A TRIBUNAL ESTABLISHED BY LAW**

29. The applicant complained under Article 6 of the Convention that the court that had convicted him on 29 April 2002 had not been a “tribunal established by law” because it had been composed in breach of the relevant national rules. In particular, he alleged that the terms of office of the lay judges G. and Ka. had expired before the trial in his case had started and that the trial court had not been in possession of the list of lay judges at the material time. The relevant part of the provision reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

Admissibility

30. The Government contested the argument. In particular, they submitted that the lay judges G. and Ka. had been elected by the Vladimir Regional Council of People's Deputies during its session in April 1990 to serve for five years. Due to the extension of their terms of office by the three presidential decrees of 1993, 1997 and 2000 they were still in office at the time of consideration of the applicant's case. The new lists of lay judges from the district courts did not arrive at the Vladimir Regional Court until September 2002, that is after the applicant was convicted.

31. To support their statements the Government submitted the decision of the Vladimir Regional Council of People's Deputies of 11 April 1990 that contains the names of the lay judges G. and Ka., as well as their other personal data, a certificate from the Vladimir Regional Court stating that the lay judges G. and Ka. had not taken part in other trials during the period of consideration of the applicant's case, and the decisions of the Vladimir Region legislative assembly validating the lists of lay judges for the district courts of the Vladimir Region with a stamped date of their arrival to the Vladimir Regional Court.

32. The applicant failed to submit his observations but maintained his complaint in further correspondence with the Court.

33. The Court reiterates that the phrase “established by law” covers not only the legal basis for the very existence of a “tribunal” but also the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000; and *Posokhov v. Russia*, no. 63486/00, § 39, ECHR 2003-IV).

34. Having regard to the materials submitted by the Government, the Court is satisfied that the lay judges G. and Ka. were elected to their office at the Vladimir Regional Court in accordance with the relevant law at the material time and were entitled to continue their service following several extensions of their terms of office. The Court also accepts that the Vladimir Regional Court was not in possession of the lists of new lay judges until September 2002 and was thus operating based on the old list.

35. In view of the foregoing considerations, the Court concludes that there is no evidence that the tribunal that convicted the applicant on 29 April 2002 had not been established by law.

36. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF PROCEEDINGS

37. The applicant further complained under Article 6 § 1 that the criminal proceedings against him had been excessively long. The relevant part of the provision reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

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

B. Merits

39. The Government disagreed with the complaint. Referring to their argument that on 15 January 1999 the applicant was already in detention on account of a different criminal investigation against him, they suggested that the length of the examination of the case be calculated from 2 July 2001 when the case was forwarded by the investigation authorities to the trial

court. They further submitted, without supplying specific examples, that the trial had been delayed by the applicant's representative's requests to study the case, his disruption of the court order, the legal counsels' illnesses, execution of court orders for delivery of witnesses, and complexity of the case. In addition, there had been no periods of court inactivity.

40. The applicant failed to submit his observations but maintained his complaint in further correspondence with the Court.

41. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings starts from the moment that a person is substantially affected by actions taken by the prosecuting authorities as a result of the suspicion against him. It has been the Court's long-standing practice to consider an arrest as such a moment (see *Pierre de Varga-Hirsch v. France* (dec.), no. 9559/81, 9 May 1983, Decisions and Reports (DR) 33, p. 158).

42. The Court recalls that in their letter of 30 April 1999 (see paragraph 6 above) the Vladimir Regional prosecutor's office confirmed that the applicant had been arrested on 15 January 1999. It further recalls that the applicant's sentence under the conviction of 29 April 2002 (see paragraph 17 above) started to run from 15 January 1999. The Government failed to submit any evidence that would refute the argument that the applicant had been substantially affected by the arrest on the specified date. Accordingly, the Court accepts that the criminal proceedings against the applicant concerning the charges on which he was convicted on 29 April 2002 commenced on 15 January 1999.

43. The Court observes that the criminal proceedings against the applicant lasted from 15 January 1999 to 19 December 2002, which spanned the investigation stage and the judicial proceedings where the courts reviewed the case at two instances. Accordingly, the period to be taken into consideration amounted approximately to three years and eleven months.

44. 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 applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

45. The Court accepts that the present case was complex, involving three co-defendants and multiple serious charges. It is further satisfied that there were no significant or unexplained periods of inactivity once the trial court received the case.

46. However, the Court is mindful of the fact that the authorities failed to provide any account for the time that elapsed between 15 January 1999, the date on which the applicant was arrested, and 2 July 2001, the date on which his case was forwarded to the trial court.

47. Having regard to the serious length of the delay and the lack of any account for it from the authorities, the Court finds that the period of the criminal proceedings against the applicant breached the “reasonable time” requirement (see, among other authorities, *Barfuss v. the Czech Republic*, no. 35848/97, §§ 82-83, 31 July 2000).

48. Accordingly, there has been a violation of Article 6 § 1 on account of excessively long proceedings.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The applicant further complained under Article 6 § 1 that his case had not been heard by a jury; that the trial and appeal courts had not been impartial in view of continued examination of the case despite his complaints about the lay judges' expired terms of office and because it had tried to put pressure on the applicant's representative by means of an article published in the *Molva* newspaper; that on 30 July 2001 the trial court had refused to allow his representative Mr Kuvshinov to defend him; and that he had not had sufficient time to prepare his defence.

50. The Court considers that the complaint about the dismissal of the applicant's request to have his case heard by a jury is manifestly ill-founded. The jury trial is not an essential aspect of a fair hearing in the determination of a criminal charge (see *Callaghan and Others v. the United Kingdom*, no. 14739/89, Commission decision of 9 May 1989, DR 60, p. 296; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004) and, furthermore, jury trials were introduced in the Vladimir Region only after the applicant's conviction. A similar complaint was examined and dismissed by the Court in the case of *Klimentyev v. Russia* (dec.), no. 46503/99, 17 September 2002. It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

51. The complaints of the trial court's lack of impartiality in view of the continued examination of the case despite the applicant's complaints of the lay judges' expired terms of office and in view of alleged pressure on the applicant's representative through publishing of a newspaper article were not raised in the grounds of appeal and are completely unsubstantiated. It follows that these complaints must be rejected in accordance with Article 35 §§ 1 and 3 of the Convention.

52. The complaint about the trial court's initial decision to disallow Mr Kuvshinov from defending the applicant along with his legal counsel was not raised in the grounds of appeal. In any event, the representative was so allowed before the start of the examination of the case on the merits, and the applicant had the aid of professional legal counsel for the duration of the proceedings. It follows that this complaint must be rejected in accordance with Article 35 §§ 1 and 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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.”

54. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning unreasonable length of criminal proceedings 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 unreasonably long criminal proceedings against the applicant;
3. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 23 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President