



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

FIRST SECTION

CASE OF KRYUK v. RUSSIA

(Application no. 11769/04)

JUDGMENT

STRASBOURG

13 December 2011

FINAL

13/03/2012

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

In the case of Kryuk v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 11769/04) 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 Vasiliy Olegovich Kryuk (“the applicant”), on 6 March 2004.

2. The applicant was represented by Mr S. Nikolayev, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in appalling conditions pending investigation and trial and that the criminal proceedings against him had been unreasonably long.

4. On 22 October 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1975 and lives in Moscow.

A. Criminal proceedings against the applicant

1. First set of the proceedings

7. On 1 August 1997 the applicant was arrested and charged with assault. He remained in custody pending investigation and trial.

8. On 31 December 1997 the criminal investigation in respect of the applicant was completed and his case-file was forwarded to the Perovski District Court of Moscow.

9. In January-April 1998 the District Court adjourned the trial twice because of a conflict in the judge's schedule and once because the applicant's lawyer's failed to appear.

10. On 27 May, 13 July and 20 October 1998 the District Court adjourned the hearing in the matter because of the failure of the witnesses to appear.

11. On 27 November and 6 April 1998 the trial was adjourned because the applicant was ill, and owing to the absence of the witnesses and the applicant's lawyer respectively.

12. The District Court heard the case on 7 and 13 May 1999. On 17 May 1999 it found the applicant guilty of assault and extortion and sentenced him to eight years' imprisonment. The verdict was quashed on appeal by the Moscow City Court on 5 April 2000. The appeal court noted that the applicant's indictment had contravened the rules of criminal procedure, and remitted the matter for further investigation.

2. Second set of criminal proceedings

13. On 16 June 2000 the City Court forwarded the case-file to the District Court. On 28 July 2000 the District court fixed the hearing for 22 September 2000.

14. The hearing of the matter was adjourned on 22 September, 1 and 8 November and 8 December 2000, for the following reasons: (a) to give the trial court time to study the file, (b) owing to the absence of the defendants, who were not transported to the courthouse on two occasions, and (c) upon request by the prosecution and defence counsel.

15. On 21 December 2000 the District Court remitted the matter for additional investigation. The trial was re-opened on 16 March 2001, when the District Court fixed the hearing for 10 April 2001.

16. The hearing scheduled for 10 April 2001 was adjourned owing to the witnesses' failure to appear. On 28 April 2001 the hearing was adjourned owing to the applicant's illness.

17. On 30 May 2001 the witnesses and the applicant's lawyer failed to appear and the hearing was adjourned. On 6 June 2001 the District Court adjourned the hearing because the defendants were ill.

18. During the period between 25 June and 25 September 2001 the District Court adjourned the trial eight times owing to the witnesses' or lawyers' failure to appear.

19. On 25 September 2001 the District Court heard the case. It found the applicant and two other defendants guilty of assault and extortion. The applicant was sentenced to eight years' imprisonment. The defendants appealed.

20. The District Court forwarded the case-file to the City Court on 14 January 2002. On 19 February 2002 the City Court found that the trial had been held in the absence of the applicant's representative and it quashed the judgment and remitted the case for fresh consideration.

3. Third set of criminal proceedings

21. The District Court fixed the trial for 29 April 2002. During the period between 29 April and 25 June 2002 the District Court adjourned five hearings owing to the witnesses' and lawyers' failure to appear.

22. On 9 July 2002 the hearing was adjourned owing to a conflict in the judge's schedule.

23. On 29 July 2002 the witnesses failed to appear and the hearing was adjourned. The next three hearings were adjourned owing to the lawyers' failure to appear. On 15 October 2002 the applicant's lawyer asked for another adjournment in order to study the case-file.

24. The District Court heard the case from 30 October to 4 November 2002. On 4 November 2002 the District Court convicted the applicant of extortion and sentenced him to seven years' imprisonment. On 19 March 2003 the City Court upheld the applicant's conviction on appeal.

4. Fourth set of criminal proceedings

25. On 17 July 2003 the Presidium of the City Court quashed the appeal judgment of 19 March 2003, by way of supervisory review, on account of certain procedural irregularities, and remitted the case for fresh consideration.

26. On 15 September 2003 the City Court again upheld the judgment of 4 November 2002 on appeal.

B. Conditions of the applicant's detention

27. Pending investigation and trial, the applicant was detained in remand prisons nos. IZ-77/1 and IZ-77/3 in Moscow.

1. The description provided by the Government

28. According to the Government, the applicant was detained in remand prison no. IZ-77/1 from 6 August 1997 to 17 June 1999, from 3 May 2000 to 22 October 2001, and from 27 March to 21 October 2002. They provided the following information as regards the cells where the applicant was detained, their surface area and the number of sleeping places per cell:

Cell no.	Surface area (in square metres)	Number of beds
102	51.85	16
106	57.8	16
109	52.7	16
118	32.1	10
131	52.7	16
134	52.7	16
308	16.2	8

29. The Government further indicated that the applicant was detained in remand prison no. IZ-77/3 from 17 June 1999 to 3 May 2000, from 22 October 2001 to 27 March 2002, and from 21 October 2002 to 14 January 2003. They provided the following information as regards the cells where the applicant was detained and their surface area:

Cell no.	Surface area (in square metres)
413	18.3
423	18.3
605	32.7
606	32.7
612	8.7
610	32.7

30. The applicant was detained in cell no. 610 from 21 October 2002 to 14 January 2003. There were between twenty-eight and thirty inmates detained there together with the applicant.

31. The Government did not provide information as regards the remand prisons' population during the period of the applicant's detention there, noting that the relevant documents had been destroyed on the expiry of the statutory time-limit for storing them.

32. At all times the applicant was provided with an individual sleeping place. The cells were equipped with ventilation in good working order. There was natural and artificial lighting. The cells were regularly disinfected. The water supply and heating systems functioned properly. The average temperature in the cells was +18°C during the summer and +20 to +22°C during the winter. The inmates were entitled to outdoor exercise and use of shower facilities.

2. The description provided by the applicant

33. According to the applicant, he was detained in severely overcrowded cells. There were between ninety and one hundred and twenty inmates held in one cell with only ten to sixteen beds. The inmates had to take turns to sleep.

3. Medical assistance

(a) The Government's submissions

34. The applicant received regular medical assistance. On 26 September 1998 the applicant consulted an ophthalmologist who diagnosed him with slight myopia and prescribed him glasses. On 20 November 2002 the applicant had another eye examination and was prescribed new glasses as his myopia had got worse.

35. On 25 August 2003, while the applicant was serving a sentence in correctional colony no. IK-17 in Nizhniy Novgorod, he was diagnosed with varicose veins and underwent the necessary treatment.

(b) The applicant's submissions

36. According to the applicant, his health has seriously deteriorated owing to his detention in appalling conditions in the remand prisons.

37. On 30 July 2004 the applicant was released. In November 2004 he was diagnosed with hepatitis.

II. RELEVANT DOMESTIC LAW

38. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygiene requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Conditions of the applicant's detention in remand prisons nos. IZ877/1 and IZ-77/3 in Moscow

39. The applicant complained that the conditions of his detention in remand prisons nos. IZ-77/1 and IZ-77/3 in Moscow from 6 August 1997 to 14 January 2003 had fallen short of the standards set forth in Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

1. Admissibility

(a) The parties' submissions

40. The Government submitted that the complaint in its part concerning the applicant's detention between 6 August 1997 and 5 May 1998 was incompatible *ratione temporis* with the provisions of the Convention, within the meaning of Article 35 § 3. They further considered that the applicant had failed to exhaust the effective domestic remedies available to him in respect of his complaint. In particular, they noted that it had been open to the applicant to bring his grievances to the attention of the prosecutor. The Government cited examples of allegedly successful complaints by inmates to prosecutors' offices in the Kaluga, Novosibirsk, Vladimir and Khabarovsk Regions of the Russian Federation. For instance, the Government stressed that as a result of the efficient work of the Kaluga Regional prosecutor's office the number of complaints lodged with it by inmates had decreased from one hundred in the first half of 2006 to sixty-one in the first half of 2007. At the same time, only 13.1% of the complaints lodged with the Kaluga Regional prosecutor's office in 2007 had been considered well-founded in comparison to 18% of complaints found to be well-founded in 2006.

41. The Government further asserted that the avenue of lodging a civil action was also open to the applicant. In the Government's opinion, the effectiveness of that avenue was unquestionable. They indicated that a number of individuals had received compensation for “improper” conditions of detention in the Perm Region and the Tatarstan and Mariy El Republics. The Government did not provide the Court with copies of the relevant judgments.

42. The applicant did not comment.

(b) The Court's assessment

(i) The Court's competence to examine the complaint

43. The Court notes that the applicant complained about the conditions of his detention between 6 August 1997 and 14 January 2003. However, it will examine that complaint only in respect of the period which falls within its competence *ratione temporis*, that is, after the Convention entered into force in respect of Russia on 5 May 1998.

(ii) Whether it was incumbent of the applicant to exhaust the domestic remedies indicated by the Government

44. As regards the Government's objection concerning the applicant's alleged failure to exhaust domestic remedies, the Court notes that the Government have previously raised the issue of non-exhaustion, referring to the same domestic case-law, in a number of Russian cases concerning conditions of detention in Russia. The Court has examined and dismissed them, finding the said remedies ineffective (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 76-91, 12 March 2009). The Court discerns nothing in the Government's submissions which would persuade it to depart from its earlier findings. It follows that the applicant was not required to exhaust the domestic remedies indicated by the Government, and thus the Government's objection must be dismissed.

(iii) Whether the applicant complied with the six-month rule

45. The Court's next task is to ascertain whether the applicant has complied with six months' rule. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. However, in the absence of domestic remedies the six-month period runs from the date of the acts or measures complained of (see, for example, *Demir v. Turkey*, no. 22280/93, Commission decision of 9 January 1995, unreported).

46. The Court notes that the applicant's complaint concerns the period between 5 May 1998 and 14 January 2003. Regard being had to the Court's earlier finding that the applicant was absolved from the obligation to pursue the remedies indicated by the Government in respect of his complaint about conditions of detention (see paragraph 44 above), the six months start to run from the end of the period under consideration, that is from 14 January 2003. The applicant introduced his application on 6 March 2004.

47. It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Alleged lack of adequate medical care and contraction of hepatitis

Admissibility

48. The applicant complained under Article 3 of the Convention that his health had deteriorated owing to the appalling conditions of detention and lack of proper medical care, and that he had contracted hepatitis while in detention.

49. The Government pointed out that the applicant's allegations lacked any evidentiary basis. According to the applicant's medical case-file he had been provided with appropriate medical care and there was nothing in the documents to substantiate his assertion that he had contracted hepatitis while in the State's custody.

50. Having regard to the material in its possession, the Court firstly notes that it is not necessary for it to decide whether the applicant has complied with the six months' rule in respect of this part of his complaint. It finds that, in any event, the applicant's allegations appear to be conjecture having no evidentiary basis. 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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

51. The applicant complained that the criminal proceedings against him had been excessively long, in contravention of Article 6 of the Convention, which reads, *in so far as relevant*, 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

52. The Government submitted that the complaint was in part incompatible *ratione temporis* and that, in any event, it should be dismissed for the applicant's failure to respect the six-month rule. In this regard they considered that the proceedings had ended on 19 March 2003, when the Moscow City Court upheld the applicant's conviction on appeal, and that the subsequent supervisory review and appeal proceedings should not be taken into account. They also considered that the complaint should be dismissed for the applicant's failure to exhaust effective domestic remedies. It had been open to him to lodge a suitable complaint with the President of a

court or a judicial qualifications board. Alternatively he could have complained to a prosecutor or brought a civil claim for damages before a court.

53. The applicant did not comment.

54. In so far as the Government suggested that the applicant had failed to complain to the domestic authorities about the length of the criminal proceedings against him, the Court observes that it has already on a number of occasions examined the same objection by the Russian Government and dismissed it (see, among recent authorities, *Belashev v. Russia*, no. 28617/03, § 67, 4 December 2008). The Court also refers to its previous finding, made in the context of a complaint under Article 13 of the Convention, that in Russia there were no domestic remedies whereby an applicant could enforce his or her right to a “hearing within a reasonable time” (see *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007, and *Klyakhin v. Russia*, no. 46082/99, §§ 101-102, 30 November 2004). The Court sees no reason to depart from that finding in the present case and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

55. The Court notes that the applicant was arrested on 1 August 1997. The criminal proceedings against him ended on 15 September 2003, when the City Court upheld his conviction on appeal. However, the period to be taken into consideration for the purposes of the present case began only on 5 May 1998, when the Convention entered into force in respect of Russia. In assessing the reasonableness of the time that elapsed after that date, account must, nevertheless, be taken of the state of proceedings at that time.

56. The Court further notes that the period from 19 March 2003, when the applicant’s conviction again became final and no proceedings were pending, to 17 July 2003, when the conviction was quashed by way of supervisory review and the case was remitted for fresh consideration, should not be taken into account (see, for example, *Brovchenko v. Russia*, no. 1603/02, § 97, 18 December 2008). It lasted, accordingly, a total of five years and nine and a half months, of which five years and fifteen days fall within the Court’s jurisdiction. This period spanned the investigation stage and the judicial proceedings, where the courts reviewed the applicant’s case three times at two levels of jurisdiction and once at one level of jurisdiction, following the quashing by way of supervisory review, leading to the final judgment of 15 September 2003.

57. Lastly, the Court notes that the final judgment was delivered on 15 September 2003 and that the applicant introduced his application on 6 March 2004, that is, within six months of the end of the criminal proceedings against him. It therefore dismisses the Government’s objection in this respect.

58. 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

59. The Government submitted that the overall length of the proceedings had been reasonable. In any event, the applicant himself had contributed to the length of the proceedings. On numerous occasions the trial court had had to adjourn the hearing owing to his lawyer's failure to appear. There had not been any significant delays in the proceedings attributable to the authorities. It had been necessary for the courts to examine the matter thoroughly, which had required time and effort.

60. The applicant maintained his complaint.

61. The Court reiterates that the reasonableness of the length of the 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). In addition, only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

62. The Court considers that the proceedings at issue were of a certain complexity owing to the gravity of the charges and the number of defendants. However, the Court finds that the complexity of the case, on its own, cannot justify the overall length of the proceedings.

63. The Court takes cognisance of the fact that the trial court scheduled and held hearings at regular intervals without undue delay, and cannot be said to have remained inactive.

64. Furthermore, the Court is prepared to accept that the problems of attendance of the parties, including the applicant's counsel and witnesses, even though persistent at times, did not seriously affect the length of the proceedings.

65. In the Court's opinion, it was the repeated referrals of the case to the trial court for fresh examination that seriously delayed the proceedings. The judicial proceedings against the applicant lasted over five years. During that period the applicant had to stand trial three times. His conviction was quashed twice by the appeal court owing to the trial court's failure to comply with the rules of criminal procedure.

66. Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that, since remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see,

mutatis mutandis, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006; and *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008). The fact that the domestic courts heard the case several times did not absolve them from complying with the “reasonable time” requirement of Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

67. Lastly, the Court notes that the fact that the applicant was held in custody throughout the criminal proceedings against him required particular diligence on the part of the authorities dealing with the case to administer justice expeditiously (see, among other authorities, *Korshunov v. Russia*, no. 38971/06, § 71, 25 October 2007).

68. In the light of the criteria laid down in its case-law, and having regard to all the circumstances of the case, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

69. Lastly, the applicant complained that his conviction had been based on inadmissible and contradictory evidence and that the trial court had erred in the way they had applied the criminal law in his case. He referred to Article 6 of the Convention.

70. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione temporis*, the Court finds that there is no 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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.”

A. Damage

72. The applicant claimed 1,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

73. The Government considered that the applicant had failed to substantiate his claims and that they should be dismissed in their entirety. Alternatively, they proposed that finding a violation would constitute sufficient just satisfaction.

74. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

75. The Court, however, notes that it has found that the criminal proceedings against the applicant were excessively long. In such circumstances, the Court considers that the applicant's suffering and anguish cannot be compensated by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

76. The applicant also claimed 12,000 Russian roubles (RUB) for lawyer's fees in respect of the proceedings before the Court and RUB 8,500 for the services provided by a translator. He submitted the original invoices for the amounts claimed.

77. The Government contended that nothing should be awarded to the applicant under this head.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria and the fact that a number of the applicant's complaints were declared inadmissible, the Court considers it reasonable to award the sum of EUR 300 for the proceedings before the Court.

C. Default interest

79. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the criminal proceedings against the applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 2,400 (two thousand and four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President