



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

FIRST SECTION

CASE OF KOMAROVA v. RUSSIA

(Application no. 19126/02)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

02/02/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Komarova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 19126/02) 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, Ms Nadezhda Nikolayevna Komarova (“the applicant”), on 10 April 2002.

2. The applicant was represented by Ms E. O. Belyayeva-Burmistrova, a lawyer practising in the town of Yaroslavl. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 March 2005 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1955 and lives in Yaroslavl.

5. Between 1991 and 1998 the applicant worked as a senior accountant in the private company Gatchina.

1. Preliminary investigation

(a) Opening of the proceedings

6. On 2 July 1998 a local police investigator (*Заволжский районный отдел внутренних дел г. Ярославля*) initiated criminal proceedings on suspicion of misappropriation of the company's assets by some of its employees.

7. On 22 July 1998 an initial interview was held with the applicant in the presence of her counsel.

8. The applicant was formally charged on 24 July 1998.

(b) The applicant's pre-trial detention and the criminal investigation

9. On 22 July 1998 the applicant was remanded in custody pending the investigation.

10. On 24 and 31 July 1998 an investigator again questioned the applicant.

i. The applicant's complaints concerning her detention

11. The applicant's repeated complaints concerning her detention were rejected by decision of the Frunzenskiy District Court of the city of Yaroslavl (*Фрунзенский районный суд г. Ярославля*) on 10 November 1998 and 13 January 1999. The decision of 10 November 1998 was upheld on appeal by the Yaroslavl Regional Court ("the Regional Court" – *Ярославский областной суд*) on 8 December 1998.

12. On 22 June 1999 the applicant was released on the ground that all the investigative measures had been concluded and on health grounds. The investigator imposed a measure of restraint on her in the form of an undertaking not to leave her place of residence.

ii. The applicant's medical examinations

13. It appears that while in detention the applicant also repeatedly complained that she was unfit for custody on medical grounds. By decisions dated 14 October 1998 and 1 June 1999 the investigator twice ordered a medical examination of the applicant.

14. The examinations took place between 23 October and 11 November 1998 and from 7 June to 1 July 1999 respectively, and found the applicant to be in good health.

iii. The second criminal case against the applicant

15. On 13 January 1999 the investigator opened a new criminal case against the applicant, this time for alleged fraud. The two cases against the applicant were joined.

iv. The applicant's access to the case file

16. According to the Government, between 1 July 1999 and 29 March 2000 the applicant had access to the case file and availed herself of that opportunity on eight occasions.

17. By decision of 29 March 2000 the proceedings were suspended owing to the applicant's state of health. She underwent in-patient treatment in a hospital.

18. On 17 July 2000 the proceedings resumed. Over the next month the investigator brought similar charges against two other people and ordered a further medical examination of the applicant.

19. From 15 August 2000 the applicant and the other defendants in the case had access to the case file again. It appears that the other defendants and the applicant's counsel completed their study of the case by 20 and 27 November 2000 respectively.

20. As regards the applicant, she again underwent in-patient treatment between 16 August and 1 September 2000 and only started to familiarise herself with the case file on 9 October 2000.

21. On 27 November 2000 the investigator, fearing that the applicant might cause delays in the proceedings, set a deadline of 27 December 2000 for the applicant to familiarise herself with the case file.

22. In January 2001 the deadline was extended until 24 February 2001.

(c) Conclusion of the investigation

23. On 28 February 2001 the preliminary investigation of the applicant's case was concluded and the bill of indictment was prepared and signed by a local prosecutor. The applicant and two co-defendants were charged with fraud.

24. On 1 March 2001 the case was transferred to the Zavolzhskiy District Court of Yaroslavl ("the District Court" – *Заволжский районный суд г. Ярославля*) for trial.

2. First instance proceedings

25. On 26 April 2001 the applicant submitted to the court a number of documents allegedly confirming her innocence. In response and at the prosecutor's initiative, the court ordered the Centre for Forensic Examinations of the Russian Ministry of Justice to examine the documents with a view to verifying their authenticity. The court also stayed the proceedings in the case pending the outcome of the expert examinations.

26. On 27 June 2001 the Centre responded that it was impossible to carry out the expert examinations requested by the court.

27. On 23 August 2001 the court decided to examine the documents with the assistance of a different expert body, the North-Western Regional Centre for Forensic Examinations ("the Centre"). However, on

21 December 2001 the Centre informed the court that, owing to malfunctioning of technical equipment, no examination could take place.

28. Having consulted counsel for the defence, the court fixed 20 May 2002 as the date of the next hearing. It appears that the hearing of 20 May 2002 did not take place and that the proceedings were adjourned until 14 August 2002 and then until 27 November 2002.

29. On 27 November 2002 the proceedings resumed.

30. By decision of 6 December 2002, taken at the prosecutor's initiative, the court decided again to order an expert examination. However, on 6 May 2003 the Centre again refused and informed the court that no such examination was possible. According to the applicant, the Centre could not carry out that examination because the court had failed to furnish it with the necessary documents in time.

31. On 31 July 2003 the court for the third time requested the Centre to carry out the examination. By letter of 27 November 2003 the Centre acceded to the request but asked for further information. It appears that the necessary information was furnished.

32. The court received a completed expert report on 30 July 2004 and scheduled the next hearing for 30 November 2004. On that date the proceedings did not take place because of the judge's involvement in a different set of proceedings. The case was adjourned until 6 December 2004. The hearings of 6, 7 and 8 December did not take place owing to the failure of counsel for one of the defendants to attend.

33. The proceedings resumed on 9 December 2004 and lasted until 15 December 2004, when they were interrupted by the illness of a lay assessor.

34. The proceedings continued on 12 January 2005 and lasted, with interruptions, until 25 February 2005. On the latter date the court adjourned the hearing first until 14 March 2005 owing to the illness of counsel for one of the defendants and then until 14 April 2005, citing the involvement of counsel for the same defendant in different sets of proceedings.

35. The hearing of 19 April 2005 was adjourned with reference to the need to secure the attendance of some of the witnesses by force.

36. On 22 April 2005 the hearings did not take place as the applicant requested that an additional witness be summoned; on 25, 27 and 28 April 2005 the applicant's counsel and one of the defendants failed to appear.

37. On 3 and 11 May 2005 the prosecutor requested that the proceedings be adjourned, referring to a lack of time to prepare for the judicial pleadings stage. The requests were granted.

38. On 20 May 2005 the proceedings were adjourned at the applicant's request, as apparently her counsel was ill.

39. It appears that by judgment of 28 July 2005 the District Court convicted the applicant as charged.

3. *Appeal proceedings*

40. The judgment was quashed on appeal by the Regional Court on 28 October 2005. The case was remitted for a fresh examination at first instance.

41. It appears that the case is currently pending before the trial court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

42. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads:

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

43. The Government contested that argument and submitted that the proceedings had not breached the reasonable-time requirement of Article 6.

44. The applicant maintained her complaints.

45. The period to be taken into consideration began on 24 July 1998 when the investigator brought charges against the applicant (see, among many other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 124, ECHR 2002-VI) and it has not yet ended as the proceedings are still pending before the domestic courts.

46. It follows that the period to be taken into consideration has lasted for over eight years and two months to date.

A. Admissibility

47. 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

48. 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 conduct of the applicant and the conduct of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC],

no. 25444/94, § 67, ECHR 1999-II, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

49. The Court notes that the case was of some complexity as it concerned charges of embezzlement and fraud allegedly committed by a group of people, including the applicant and two other people. However, in the Court's view, the complexity of the case does not suffice, in itself, to account for the length of the proceedings.

50. Nor does it appear that the applicant's conduct contributed substantially to the length of the proceedings or that throughout the proceedings she went beyond the limits of legitimate defence or lodged any frivolous petitions or unsubstantiated requests with the investigator or the courts. In any event, the Court reiterates that Article 6 does not require a person charged with a criminal offence to cooperate actively with the judicial authorities. In particular, applicants cannot be blamed for taking full advantage of the resources afforded by national law in their defence (see *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

51. The Court finds, on the other hand, that many of the delays in the proceedings were occasioned by the acts of the domestic authorities or rather by their failure to act. In this connection it recalls that for eleven months the applicant was kept in custody – a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Kalashnikov v. Russia*, cited above, § 132). Furthermore, the Government failed to account for the events in the case from 31 July to 14 October 1998 and from 13 January to 7 June 1999, a period totalling seven months and seven days.

52. Further delays in the proceedings were due to the trial court's repeated decisions to order expert examinations from the North-Western Regional Centre for Forensic Examinations. The Court finds, and it is not disputed by the Government, that the reason for the Centre's refusal to accede to the trial court's request of 6 December 2002 was the court's own failure to provide the Centre with all the necessary materials. The resulting delay of approximately two years and eleven months between 23 August 2001, when the Centre was first requested to carry out the examination, and 30 July 2004, when the trial court eventually received the completed expert examination, was thus attributable to the domestic authorities. In addition, the Court does not find any convincing explanation in the Government's submissions for the delays of four months and seven days in the proceedings, between 30 July and 6 December 2004. Finally, it notes that after more than eight years of proceedings before the investigative authorities and the domestic courts at two instances, the case is currently still pending before the trial court.

53. Having regard to the foregoing, the Court considers that the length of the proceedings does not satisfy the “reasonable time” requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicant also complained that the criminal proceedings against her had been unfair. In addition, she alleged that the conditions of her pre-trial detention had been in breach of Article 3, that the detention itself had been incompatible with Article 5 and that the measure of restraint in the form of an undertaking not to leave her place of residence had been arbitrary and unjustified.

55. Insofar as the applicant is dissatisfied with the criminal proceedings against her, the complaints are premature as the case is still pending before the domestic courts. As regards the conditions of her detention and the complaint concerning the lawfulness of that detention, the Court recalls that the applicant's detention ended on 22 June 1999, whilst the present application was lodged on 10 April 2002, that is, more than six months later. It follows that these complaints were introduced out of time. Finally, as to the measure of restraint in the form of an undertaking not to leave her place of residence during the proceedings, the Court recalls that it is not in itself questionable that the State may apply various preventive measures restricting the liberty of an accused, including deprivation of liberty, in order to ensure the efficient conduct of a criminal prosecution. In the Court's view, an obligation not to leave the area of one's residence is a minimally intrusive restriction of liberty (see, *mutatis mutandis*, *Nagy v. Hungary* (dec.), no. 6437/02, 6 July 2004). Since it does not appear that the applicant actually sought to leave the area of her residence and was refused (see, *Fedorov and Fedorova v. Russia*, no. 31008/02, §§ 44-46, 13 October 2005) or that the overall duration of that measure – seven years and two months to date – was unjustifiably long (see, by contrast, *Luordo v. Italy*, no. 32190/96, § 96, ECHR 2003-IX; *Goffi v. Italy*, no. 55984/00, § 20, 24 March 2005; and *Bassani v. Italy*, no. 47778/99, § 24, 11 December 2003), the Court is unable to conclude that the measure in question was arbitrary or otherwise disproportionate.

56. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Accordingly, this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 5,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

59. The Government considered these claims excessive.

60. The Court does not discern any causal link between the violation found and the amount of pecuniary damage alleged; it therefore rejects this aspect of the claim. However, on an equitable basis, it awards the applicant EUR 4,200 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

61. The applicant did not claim reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

62. 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 complaints concerning the excessive length of the proceedings 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,200 (four thousand two hundred euros) in respect of non-pecuniary damage to be converted into

Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President