CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF KARIMOV v. UKRAINE

(Application no. 69435/01)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

30/04/2008

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 Karimov v. Ukraine,

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 69435/01) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Andrey Gabdrakhmanovich Karimov ("the applicant"), on 9 February 2001.

2. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeriya Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. On 9 July 2003 the Court decided to communicate the application the complaint concerning the length of the proceedings under Article 6 § 1 of the Convention and lack of effective remedies in that respect under Article 13 of the Convention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mr Andrey Gabdrakhmanovich Karimov, is a Ukrainian national, who was born in 1968 and lives in the Yastrebki village, the Autonomous Republic of the Crimea (the "ARC").

A. The criminal proceedings against the applicant

1. Initial criminal investigation

5. On 11 December 1996 the Prosecutor of the Chervonogvardiysky District of the ARC (the "Prosecutor of the ARC") initiated a criminal investigation after the discovery of a corpse of an unidentified person near the Chervonogvardiysky village of the ARC. Subsequently, that person was thought to be someone called Sasha.

6. On 14 December 1996 the Chervonogvardiysky District Prosecutor's Office (the "CDPO") detained the applicant on suspicion of having murdered Sasha.

7. On 17 December 1996 the Chervonogvardiysky District Prosecutor charged the applicant with murder. He also decided to detain the applicant on remand as there was a risk of him absconding and impeding the investigation in the case.

8. On 25 December 1996 the jurisdiction over the investigation into the murder was transferred to the Nyzhnyogirsky District Prosecutor's Office (the "NDPO").

9. On 7 March 1997 the Nyzhnyogirsky District Prosecutor issued a bill of indictment against the applicant charging him with murder under the influence of alcohol.

10. On 7 April 1997 the case was remitted to the court for examination on the merits of the charges brought against the applicant.

11. On 2 June 1997 the Nyzhnyogirsky District Court of the ARC (the "Nyzhnyogirsky Court"), composed of the President of that court judge K., sentenced the applicant to eight years' imprisonment following his conviction for murder. The applicant lodged a cassation appeal against this decision with the Supreme Court of the ARC.

12. On 17 July 1997 the Supreme Court of the ARC quashed the judgment of 2 June 1997 and remitted the case for additional investigation due to a lack of corroborating evidence of the applicant's guilt. It also ruled that the applicant, who suffered from mental retardation (*oligophrenia*) was not legally represented in the course of criminal investigation brought against him.

13. On 10 November 1997 the person called Sasha re-appeared and was questioned by the NDPO.

14. On 20 November 1997 the NDPO released the applicant on condition that he did not leave his place of residence.

15. On 28 November 1997 the prosecution was terminated due to the absence of *corpus juris delicti* in respect of the applicant's acts. The investigation also revealed that the applicant stole two ducks from Ms M. (a private person) for a total value of UAH 30. The investigation into theft

of private property was also terminated due to the “change of circumstances”.

16. On 10 March 1998 the NDPO stayed the criminal investigation in the case due to their inability to identify the person who had committed the murder.

2. Re-opening of the investigation into the circumstances of murder

17. On 21 February 2000 the Deputy Prosecutor of the ARC quashed the decisions of 28 November 1997 and 10 March 1998 and remitted the case to the CDPO for a preliminary investigation in accordance with the territorial jurisdiction. It also resolved that the applicant should be involved in the proceedings as being suspected of murder.

18. On 22 February 2001 the Prosecutor's Office of the ARC terminated the criminal investigation due to the absence of any *corpus juris delicti* in respect of the applicant's acts.

B. Civil compensation proceedings

19. On 21 January 1998 the applicant instituted proceedings in the Nyzhnyogirsky Court seeking compensation for damage caused by his unlawful prosecution, detention and conviction.

20. The Government alleged that on 23 June 1998 the President of the Nyzhnyogirsky Court (judge K.), who also heard the applicant's criminal case and convicted the applicant on 2 June 1997 (see paragraph 12 above) requested the applicant to provide a certified copy of the resolution terminating criminal investigation in his case and information with regard to his salary from the last place of employment.

21. On 26 June 1998 the court informed him of the initiation of the proceedings in the case.

22. On 5 July 1999 a judge P. of the Nyzhnyogirsky Court assumed jurisdiction over the applicant's claims. It also ordered the Prosecutor's Office that dealt with the applicant's criminal case to provide a number of documents to it.

23. On 28 October and 4 December 1999 the applicant increased the amount of compensation claimed and requested the court to order the State Treasury, local Departments of Finance of the Nyzhniogirsky and Chervonogvardeysky State Administrations to appear as respondents in the case proceedings.

24. On 5 July and 19 November 1999, 17 April and 18 May 2000 the court ordered the prosecution to transfer the applicant's criminal case file to it. The prosecution partly complied, providing copies of certain documents from the case file. Some of the materials were provided on 3 August 2000 only.

25. On 21 February 2000 the prosecution resumed the investigation of the case (see paragraph 17 above).

26. On 24 February 2000 the President of the Supreme Court of the ARC instructed the President of the Nyzhnyogirsky District Court to ensure that the case proceedings were expedited.

27. On 2 June 2000 the compensation claims were transferred to a different judge (judge Ku.) within the same first instance court.

28. On 6 June 2000 the Deputy President of the Supreme Court requested the President of the Nyzhnyogirsky District Court to expedite examination of the applicant's case.

29. On 9 June 2000 the court invited the parties to a meeting about the case. However, the Chervonogvardiysky District Prosecutor failed to appear.

30. On 23 June 2000 the Acting President of the Supreme Court of the ARC requested the President of the Nyzhniogirsky Court to ensure that the proceedings in the applicant's case were conducted without any delays.

31. On 5 and 24 July 2000 the court requested the prosecution to provide it with the information concerning the criminal investigation into the circumstances of the case.

32. On 28 July 2000 the prosecution informed the court that the criminal investigation was still pending.

33. On 31 July 2000 the President of the Supreme Court of the ARC ordered the President of the Nyzhniogirsky Court to transfer the case-file to the Dzhankoy Court.

34. As a result, on 7 August 2000 the Nyzhnyogirsky Court suspended the compensation proceedings, pending the outcome of the criminal investigation against the applicant. On 27 September 2000 the Supreme Court of the ARC upheld this decision.

35. The applicant requested the Supreme Court to remit the case to a different court, alleging that the Nyzhnyogirsky Court judges, who were subordinate to judge K., who in 1997 heard the criminal case brought against the applicant and convicted him (see paragraph 11 above), manifested bias in examining his claims.

36. On 15 August 2000 the Deputy President of the Supreme Court instructed the President of the Supreme Court of the ARC, in view of the applicant's allegations of bias, to transfer the case to a different court for examination on its merits. On 23 August 2000 the Supreme Court of the ARC instructed the Nyzhnyogirsky Court to remit the case to Dzhankoy Court for examination as to the merits.

37. On 28 November 2000 the case-file had been returned from the Supreme Court of the ARC to the Nyzhnyogirsky Court.

38. On 12 December 2000 the Dzhankoy Court received the case to rule on the jurisdiction over it. The case-file was again returned to the Nyzhnyogirsky Court for further examination.

39. The case-file was again remitted to the Dzhankoy Court where it was received on 28 April 2001. Hearings were scheduled for 24 May, 18 and 19 June, 10 and 27 July, 9 and 30 August 2001. However, none took place, since the Prosecutor's Office (still one of the respondents in the case) failed to appear before the court or to send its representative.

40. On 28 September and 9 October 2001 the Dzhankoy Court postponed the hearings in the case due to the failure of the respondents to appear before it. On 28 September 2001 the court held that the Crimean authorities of the State Treasury, the Prosecutor's Office and the Department of Justice should be respondents in the case.

41. On 12 and 28 December 2001 the applicant failed to appear before the court. On 28 December 2001 the court terminated examination of the case due to the applicant's failure to appear before it. That decision was quashed by the Court of Appeal of the ARC and the case had been remitted for a new examination to the same court on its merits.

42. On 1 October 2002 the applicant changed the respondents in his case to the State Treasury in the ARC, the ARC's Prosecutor's Office and the Department of Justice in the ARC.

43. On 14 October 2002 the case was remitted to the Central District Court of Simferopil, due to a change of jurisdiction because of the modification in the respondents, who were all situated in this district.

44. Hearings were scheduled for 2 and 20 December, 15 January, 17 and 25 February 2003. However, the representative of the Department of Justice of the Crimea failed to appear before the court and therefore the hearings were postponed.

45. The hearings on 17 and 25 February 2003 were ignored by the Prosecutor's Office, as was the hearing on 15 January 2003 by the Department of Justice. As a result, the consideration of the merits of the case was postponed again.

46. On 25 February 2003 the representative of the Department of Justice informed the applicant that it considered the State Treasury to be a respondent in the case.

47. On 5 March 2003 the applicant informed the Court that the next hearing was scheduled for 20 March 2003.

48. On 25 March 2003 the court allowed the requests for rectification of the respondent to the State Treasury of Ukraine from the Main Department of the State Treasury in the ARC.

49. On 24 April 2003 the court again changed the respondent in the case from the Main Department of Justice in the ARC to the State Judicial Administration of the ARC.

50. The proceedings in the case were adjourned on 19 May and 9 June 2003 due to the change of the respondents.

51. On 9 June 2003 the Central District Court of Simferopil allowed the applicant's claims for compensation. In particular, the court found that the law enforcement authorities acted unlawfully in the course of criminal proceedings instituted against the applicant. Furthermore, the court ruled that the applicant had been unlawfully detained and sentenced for a serious offence. It awarded the applicant UAH 12,000 in compensation.

52. The applicant did not agree with the amount of compensation awarded to him and on 20 June 2003 lodged an appeal with the Court of Appeal of the ARC by which he sought UAH 1,000,000 in compensation.

53. On 25 July 2003 his appeal had been rejected and the applicant was allowed to rectify the shortcomings in his appeal.

54. On 16 September 2003 the court of appeal adjourned the hearing to 6 October 2003.

55. On 3 November 2003 the Court of Appeal of the ARC allowed the applicant's appeal in part and awarded him UAH 50,000 in compensation.

56. On 24 December 2003 the Pechersky District Bailiffs' Service of Kyiv issued a check to the applicant for an amount of the award and thus the judgment given in the applicant's favour had been enforced.

THE LAW

I. THE LENGTH OF THE CIVIL COMPENSATION PROCEEDINGS AND LACK OF EFFECTIVE REMEDIES IN THAT RESPECT

57. The applicant complained under Article 6 § 1 of the Convention that the civil proceedings in respect of compensation for damage caused by his unlawful prosecution, detention and conviction were unreasonably long. The applicant further maintained that there were no effective remedies for his complaint under Article 6 § 1, in breach of Article 13 of the Convention. These provisions read, in so far as relevant:

> “In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

> “Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

58. The Government stated that the application was inadmissible as the applicant was no longer a victim in relation to alleged violation of his rights.

59. The applicant disagreed.

60. The Court agrees with the Government that the payment of compensation to the applicant for unlawful prosecution, detention and conviction, awarded by the ruling of 9 June 2003 that became final on 3 November 2003, and acknowledgment of these breaches by the domestic courts redressed the applicant's complaints. However, no acknowledgment or reparation has been made by the Ukrainian authorities with regard to the applicant's complaints about unreasonable length of these compensation proceedings. The Court considers, therefore, that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by the Article 6 § 1 in relation to the length of period during which the applicant's compensation claims were being examined. The Government's objection must therefore be dismissed.

61. In the absence of any other objections as to admissibility and taking into account that the complaints under Articles 6 § 1 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or otherwise inadmissible on any other grounds, the Court concludes that these complaints must be declared admissible.

B. Alleged violation of Article 6 § 1 of the Convention

62. The Government stated that there was no infringement of the applicant's right for a "hearing within a reasonable time" as the proceedings were conducted without undue delays that could be attributed to the domestic authorities. Furthermore, they stated that only the applicant could be blamed for delays in processing of his case.

63. According to the Government, the applicant was responsible for periods of delay in his case. In particular, they stated that he had initially failed to provide all the information necessary for examination of his claims on their merits (see paragraph 20 above), wrongly specified respondents in the proceedings (see paragraphs 42 and 48 above) and overall failed to act diligently in the course of the proceedings instituted by him. The Government also submitted that the applicant contributed to the length of proceeding by lodging numerous motions for change of respondents and challenging the court that heard his case (see paragraph 35 above).

64. The applicant disagreed. He considered that the delays were largely attributed to the domestic authorities. He finally contended that he would not challenge judges if there had not been so serious procedural defects in his case. In particular, he argued that he requested change of jurisdiction to a different court as the court where he was convicted should not have dealt with his claims.

65. The Court observes that the period to be taken into consideration in the present case began on 21 January 1998, when the applicant brought his compensation claims against the domestic authorities, and ended on 24 December 2003, when the judgment given in the applicant's favour was

enforced. Furthermore, the proceedings were suspended by the ruling of 7 August 2000 given by the Nyzhnyogirsky Court, which became final on 27 September 2000 and reinitiated in a different court on 28 April 2001. Their overall duration had thus been five years and eleven months.

66. The Court recalls that in assessing the reasonableness of the length of the proceedings in question, it is necessary to have regard to the particular circumstances of the case and the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities, and what was at stake for the applicant (see, for instance, *Kudla v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

67. The Court notes that the proceedings at issue could not be said to be of any particular complexity as the criminal proceedings against the applicant were discontinued and particular shortcomings in them were specified as early as on 17 July 1997, in the ruling given by the Supreme Court of the ARC, which quashed the applicant's conviction (see paragraph 12 above). The grounds for terminating proceedings were further repeated on two occasions – 28 November 1997 and 22 February 2001 (see paragraphs 15 and 18 above).

68. The Court is of the opinion that there is no evidence in the case-file that the applicant significantly contributed to the overall length of the case proceedings, as his absences during the hearings on 12 and 28 December 2001, motions and requests lodged in the course of case-examination were not decisive for justifying the overall excessive duration of the proceedings (see, *mutatis mutandis*, *Merit v. Ukraine*, no. 66561/01, § 74, 30 March 2004).

69. The Court considers, therefore, that the applicant's situation, in particular his state of health and his disability (see paragraph 12 above), and the subject-matter of litigation, which concerned restoration of the applicant's rights violated by his unlawful detention and conviction, required that the authorities acted with diligence in considering his case and examined it without any undue delay.

70. The Court notes that the civil proceedings against the applicant were suspended and resumed, due to re-opening of the criminal investigation against the applicant, which in itself discloses a serious deficiency as this re-opening occurred two and a half years after proceedings against the applicant were terminated (see, *mutatis mutandis*, *Baglay v. Ukraine*, no. 22431/02, § 31, 8 November 2005 and *Stoianova and Nedelcu v. Romania*, nos. 77517/01 and 77722/01, § 20, ECHR 2005-...). Furthermore, the failure of the State authorities, and in particular representatives of the prosecutor's office, to comply with the rulings of the court hearing the case, to appear before the court in the course of the hearings of the case (see paragraphs 29, 39 and 40 above) and their failure to produce documents requested by the courts during the case examination (see paragraph 24 above) reveal little diligence on their part and showed that

these official disregarded court rulings and contributed to the delay in examination of the case (see, *mutatis mutandis*, *Nosal v. Ukraine*, no. 18378/03, § 41, 29 November 2005). Moreover, it appears in the instant case that the judicial authorities failed to ensure that the proceedings in the case were expeditious and effective as they have not applied any meaningful measures in order to sanction the State officials' failure to appear in court or to enforce their procedural rulings given in the course of the proceedings aimed at their streamlining (see, *Siliny v. Ukraine*, no. 23926/02, § 34, 13 July 2006).

71. In sum, having regard to the circumstances of the instant case and the duration of the proceedings, the Court considers that the length of the proceedings was excessive and failed to meet the reasonable time requirement. There has accordingly been a violation of Article 6 § 1.

C. Alleged violation of Article 13 of the Convention

72. The applicant complained that his complaints about the course of investigation and the delays therein have been to no avail. He relied on Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

73. The Government argued that the applicant used the remedies available to him for expediting the proceedings in the case, however, his attempts were unsuccessful. In particular, they referred to the applicant's complaints lodged against the ruling of 7 August 2000, which were rejected by the Supreme Court of the ARC on 27 September 2000.

74. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* cited above, § 156). It also notes that administrative remedies existing in the Ukrainian judicial system, such as the complaints to the higher court with regard to inactivity of the lower court, as applied in the instant case (see paragraphs 26, 30, 33 and 36 above), were not sufficiently effective to expedite and to streamline the proceedings in the applicant's case, as the instructions given by the officials of the higher courts were mere non-binding recommendations. The Court further refers to its finding in the *Merit* case about the lack of an effective and accessible remedy under domestic law for complaints in respect of the length of criminal proceedings (see, *Merit v. Ukraine*, cited above, §§ 78-79).

75. In these circumstances the Court concludes that there has been a violation of Article 13 of the Convention.

II. OTHER COMPLAINTS RAISED BY THE APPLICANT

76. The applicant further complained about the unreasonable length of the criminal proceedings in his case, referring to Article 6 § 1 of the Convention. He stated, invoking Article 6 § 3(b) of the Convention that he was not provided with necessary legal assistance at the initial stages of the criminal investigation into his case. He further alleged that his right to be presumed innocent until proven guilty envisaged in Article 6 § 2 of the Convention, was infringed as the courts have been unable to award him full compensation for the defective criminal proceedings against him.

He further referred to Article 3 of the Convention that in 1997 he pleaded guilty under duress and therefore was later convicted for a murder that he did not commit. The applicant also alleged that his rights to receive compensation for unlawful detention and unlawful conviction, as enshrined in Article 5 § 5 of the Convention and Article 3 of Protocol No. 7, respectively, were breached.

77. Having carefully considered the applicant's submissions in the light of all the material in its possession and disregarding other possible formal inadmissibility grounds, the Court finds that, insofar as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

78. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 7,576 euros (EUR) in respect of pecuniary damage. He further EUR 17,700 in compensation for non-pecuniary damage.

81. The Government submitted that the finding of a violation would constitute sufficient just satisfaction in the case.

82. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant. It makes no

award in this respect. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

83. The applicant claimed no costs and expenses for the Convention proceedings or for the proceedings before the domestic courts. The Court therefore makes no award under this head.

C. Default interest

84. 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 length of the civil compensation proceedings and lack of effective remedies in that respect, 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* that there has been a violation of Article 13 of the Convention;

4. *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 2,000 (two thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable;
   (b) that the aforementioned sum shall be converted into the national currency of Ukraine at the rate applicable at the date of settlement;
   (c) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek — Registrar

Peer Lorenzen — President