



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

FIRST SECTION

CASE OF KRIVONOSOV v. RUSSIA

(Application no. 3023/03)

JUDGMENT

STRASBOURG

27 November 2008

FINAL

27/02/2009

This judgment may be subject to editorial revision.

In the case of Krivonosov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 3023/03) 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 Yaroslav Yakovlevich Krivonosov (“the applicant”), on 24 December 2002.

2. The applicant was represented by Mr A. Puchnin, 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. On 11 June 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 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Barnaul.

5. The applicant is a former President of a private commercial bank and the owner of several businesses in Barnaul.

6. On 27 November 1997 criminal proceedings were opened against him on suspicion of fraud.

7. On 27 November 1997 the applicant was arrested and detained pending trial.

8. On 5 December 1997 charges were brought against the applicant.

9. In 1998-1999 the applicant's detention was extended on several occasions.

10. On 21 April 1999 the pre-trial investigation ended and the applicant was allowed to examine the case file which was made up of 145 volumes – 9 of which contained the summons of the victims, 6 volumes contained accounting documents and 118 volumes contained the statements of the victims (seven thousand and thirty-six clients of the bank). A deadline of 8 November 1999 was given for the reading of the file. As the applicant had not managed to read all the volumes by the given deadline, the time was extended to 12 November 1999. No further extensions were granted.

11. On 5 January 2000 the trial commenced.

12. The applicant asked the court to send the case file back to the investigator due to the numerous alleged procedural violations and the lack of sufficient time given for the examination of the file. On 22 February 2000 his request was granted. However, on 30 March 2000 this decision was quashed and the case was remitted for fresh consideration. No further documents concerning the outcome of these proceedings are enclosed in the file.

13. On 15 June 2001 the applicant was released on bail due to the expiration of the time-limits for his pre-trial detention pending court examination. By that time he spent over three and a half years in detention.

14. On 18 November 2002 the applicant was again detained within the same proceedings as a result of his alleged attempts to influence witnesses. He appealed against the detention order, and on 9 January 2003 the Altay Regional Court ordered the applicant's release on bail.

15. According to the Government, during the period from January 2000 to January 2003 the hearings were adjourned on 38 occasions due to reasons outside the authorities' control, such as illnesses of the applicant and his lawyers, their requests for additional examinations, the lawyers of the applicant and his three co-accused being occupied in unrelated proceedings, untimely arrivals of victims and witnesses and the need to examine petitions lodged by the applicant for review of the alleged violations committed during the expert examinations. The Government submitted that the proceedings were adjourned due to the court's actions on one occasion only, i.e. from 13 to 20 January 2003, the presiding judge being on a regular holiday leave.

16. As it appears from the Government's submissions, no actions were taken by the domestic courts during the periods from 30 March to 31 July 2000, from 10 September 2001 to 11 March 2002 and from 30 September 2002 to 13 January 2003.

17. On 30 May 2003 the Oktyabrskiy District Court of Barnaul convicted the applicant, along with three other accused, of unlawful banking transactions, unlawful business undertakings, fraud and breach of professional discretion and sentenced him to thirteen years' imprisonment with forfeiture of property. The applicant was taken into custody direct from the courtroom.

18. On 13 November 2003 the appeal hearing commenced. However, the applicant felt unwell and the hearing was postponed until 14 November 2003.

19. By final judgment of 14 November 2003 the Altay Regional Court reduced the sentence to twelve years with a fine and forfeiture of property. During the appeal hearing the applicant injured himself and was taken out of the court room to receive medical help. The hearing was suspended. After the wound had been treated and it was established that the applicant was fit for trial, he refused to return to the court room. The hearing proceeded in the presence of the applicant's lawyer.

20. On 6 February 2004 the Rubtsovskiy Town Court brought the applicant's sentence into compliance with changes that had been introduced into Russian legislation in December 2003. The sentence was reduced to ten years' imprisonment and a fine.

21. On 13 October 2004 the Rubtsovskiy Town Court ordered the applicant's conditional early release.

THE LAW

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

22. 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 as follows:

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

23. The Government contested that argument.

24. The proceedings commenced on 27 November 1997 when the applicant was arrested. However, the period to be taken into consideration did not begin until 5 May 1998, when the recognition by Russia of the right of individual petition took effect. In assessing the reasonableness of the time that elapsed after that date, account must nevertheless be taken of the state of proceedings at the time. The period in question ended on 14 November 2003. Thus, it lasted almost six years for two levels of jurisdiction of which five years, six months and eleven days fall within the Court's competence.

A. Admissibility

25. 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

26. 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 relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

27. The Court observes that the parties agreed that the case had been complex since it involved a considerable number of witnesses and victims. However, in the Court's view, the complexity of the case does not suffice, in itself, to account for the length of the proceedings. Moreover, the fact that the applicant was held in custody required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI).

28. As to the applicant's conduct, the Government argued that he had contributed to the length of the proceedings by taking an excessive period of time to study the file and by filing numerous requests to the court. They further argued that the hearings had been adjourned a considerable number of times due to his lawyer's illnesses, holidays, assistance in unrelated criminal proceedings and requests to adjourn the hearing due to requests for additional examinations.

29. According to the Government, the delays were also attributable to the applicant's co-accused and their lawyers, to the late arrival of victims and witnesses, the number of which amounted to seven thousand, and by the need to conduct financial and other examinations.

30. The applicant maintained his complaint. He stressed that, even if calculated from the date of the ratification of the Convention by Russia on 5 May 1998, the proceedings lasted around five and a half years of which almost four years he spent in detention. The domestic authorities failed to discharge the duty of special diligence owed to persons kept in detention pending trial. The length was thus excessive.

31. The Court observes that there were periods of inactivity throughout the proceedings for which the Government have not submitted any satisfactory explanation. On the other hand, the Court is not convinced by the Government's claim that the delays in the proceedings were primarily

caused by the applicant and his lawyers, although it accepts that certain delays were attributable to them.

32. The Court further notes that throughout the domestic court proceedings the applicant filed many requests in connection with his case, both during his trial and between hearings. It reiterates that Article 6 does not require a person charged with a criminal offence to co-operate 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 Sargin v. Turkey*, 8 June 1995, § 66, Series A no. 319-A,).

33. The Court furthermore notes that the conduct of the applicant's co-accused, the victims and witnesses was one of the reasons named by the Government for the prolongation of the proceedings. The Court reiterates that the delay occasioned by their failure to attend and the court's failure to discipline them is attributable to the State (see *Kuśmierek v. Poland*, no. 10675/02, § 65, 21 September 2004).

34. The Court observes that the criminal proceedings against the applicant lasted for almost six years for two levels of jurisdiction, of which five years, six months and eleven days fall within the Court's competence *ratione temporis*.

35. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. Lastly, the applicant complained under Article 5 §§ 1 (c) and 3 of the Convention that his detention had been unlawful and had lasted for an unreasonably long period of time. He further complained under Article 6 § 1 about the unfairness of the proceedings against him. Invoking Article 7 § 1 of the Convention, the applicant complained that some of the offences for which he was charged had not constituted criminal offences under national law at the time when they were committed. Finally, he complained under Article 1 of Protocol No. 4 about having been deprived of his liberty merely on the grounds of his inability to fulfil contractual obligations.

37. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, 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 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 3,458,297 American dollars (USD) in respect of pecuniary damage. He further claimed USD 500,000 for non-pecuniary damage.

40. The Government submitted that the applicant had claimed compensation for damage incurred as a result of his criminal prosecution and conviction. However, it was not the Court’s task to assess the reasonableness of the charges against him. The Government therefore considered that the applicant’s claim should be dismissed. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage for the violation found by the Court in respect of the excessive length of the criminal proceedings against him. Ruling on an equitable basis, it awards him EUR 2,000 under that head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

42. The applicant also claimed USD 75,291 for the costs and expenses incurred before the domestic courts and the Court.

43. The Government contested these claims.

44. 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 were reasonable as to quantum. In the present case, the applicant submitted a letter from his wife stating that she had paid the indicated sum to the applicant’s lawyers. However, no receipts or other documents were enclosed with the

submissions. Regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

45. 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 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 2,000 (two thousand euros), plus any tax that may be chargeable in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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 27 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President