



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

FIRST SECTION

CASE OF BAKHITOV v. RUSSIA

(Application no. 4026/03)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Bakhitov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 4026/03) 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 Nikolay Khayrulloevich Bakhitov (“the applicant”), on 1 December 2002.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev and Ms V. Milinchuk, their former Representatives before the European Court of Human Rights, and subsequently by Mr G. Matyushkin, their Representative.

3. On 31 August 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of proceedings to the Government. It 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 1948 and lives in Naro-Fominsk in the Moscow region. He is currently serving a sentence of imprisonment in the Ryazan region.

5. On 22 July 1995 the applicant was arrested on suspicion of murder.

6. On 18 August 1995 he was charged with robbery, murder, illegal possession of firearms and false reporting of a crime. On the same date the prosecutor ordered that the applicant be placed in detention.

7. On 27 June 1996 the prosecution authorities submitted the case file to the Moscow City Court (“the City Court”) for trial. On 3 June 1997 and 4 March 1998, at the request of the applicant’s counsel, the City Court referred the case back to the prosecution authorities for additional investigation on account of serious breaches of procedure. The prosecutor did not challenge those decisions.

8. On 4 August 1998 the additional investigative measures were completed and the case was submitted to the City Court for trial. However, on 10 August 1999 the City Court granted a request by the applicant’s counsel to remit, once more, the case for additional investigation. It held that the prosecution authorities had failed to implement the instructions given in its decision of 4 March 1998 and that the applicant’s defence rights had been violated during the investigation. On 24 September 1998 the Supreme Court dismissed the prosecutor’s appeal against that decision.

9. On 20 May 1999 the case was submitted to the City Court for trial, after additional investigation. However, on 3 June 1999 the City Court, at the defence’s request, again referred the case for additional investigation on account of serious procedural breaches. On 22 July 1999 the Supreme Court upheld that decision.

10. On 24 August 1999 the case was submitted to the City Court for trial and the first hearing was scheduled for 24 September 1999. However, on that date the case was adjourned until 1 November 1999 because the applicant’s counsel and the victims had failed to appear. Several hearings were scheduled for November 1999. Two of them were adjourned at the request of the applicant’s counsel.

11. On 22 November 1999 the City Court found the applicant guilty of illegal possession of firearms and acquitted him of the other charges. It sentenced the applicant to three years’ imprisonment and ordered that he be released from serving his sentence and consequently from detention, as by that time he had spent more than four years in detention. The applicant was released in the courtroom.

12. On 13 January 2000 the Supreme Court of the Russian Federation (“the Supreme Court”) heard the case on appeal. It found, among other things, that the first-instance court had failed to properly assess the evidence in the case. It upheld the applicant’s acquittal on the charge of false reporting of a crime, quashed the remaining part of the judgment of 22 November 1999 and remitted that part of the case for fresh examination to the City Court.

13. On 28 January 2000 the case was sent to the City Court. The first hearing was scheduled for 5 June 2000. However, on that date the case was adjourned until 1 November 2000 because the judge was involved in unrelated proceedings. The hearings of 1 November 2000 and 28 March 2001 were postponed for the same reason.

14. The hearing of 26 July 2001 was adjourned because the applicant's defence counsel was on annual leave until 18 August 2001. The next hearing was scheduled for 8 October 2001.

15. The City Court heard the case between 8 October and 20 November 2001. During that period, the case was adjourned on three occasions: from 12 to 16 October at the request of the applicant's counsel, from 26 to 29 October because the witnesses did not appear and from 16 to 19 November at the applicant's request. The City Court heard evidence from about twenty witnesses and examined several experts' reports.

16. On 30 November 2001 the City Court found the applicant guilty of illegal possession of firearms, murder and robbery and sentenced him to thirteen years' imprisonment with forfeiture of property.

17. In December 2001 the applicant and his lawyer lodged their grounds of appeal against that judgment. Between January and April 2002 the applicant was reading the record of the court hearings. On 18 April 2002 he lodged additional grounds of appeal.

18. On 5 June 2002 the Supreme Court upheld the judgment of 30 November 2001.

THE LAW

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

19. The applicant complained that the length of the criminal proceedings against him 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 ..."

A. Admissibility

20. 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

1. Period to be considered

21. The Court recalls that the applicant was arrested on 22 July 1995. However, the period to be taken into consideration for the purposes of the present case began only on 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 the proceedings at the time. The period in question ended on 5 June 2002, when the Supreme Court upheld the applicant's conviction. It thus lasted a total of almost seven years, of which four years and one month fall within the Court's jurisdiction. During that period the case was examined twice at two levels of jurisdiction.

2. Reasonableness of the length of proceedings

22. The Government submitted that the length of proceedings in the applicant's case had been reasonable. The lengthy examination of the case had been due to the heavy workload of the judge in charge of the case. It had been impossible to reassign the case to a different judge because of the large number of criminal cases coming before the City Court. There was no evidence that the authorities had failed to conduct the proceedings with due diligence. The applicant had been responsible for significant delays in the proceedings. Some delays had occurred when the case was referred for additional investigation at his request; several hearings had been postponed at the request of his counsel.

23. The applicant maintained his complaint. He argued that his case was not a complex one. The most significant delays had occurred as a result of poor investigation and improper conduct of the judicial proceedings.

24. 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, and 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). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

25. The Court considers that the proceedings at issue were of a certain complexity. The applicant was charged with several offences, a substantial number of victims were questioned and several expert examinations were carried out. However, the Court finds that the complexity of the case, on its own, could not justify the overall length of the proceedings.

26. As regards the applicant's conduct, the Court notes the Government's argument that certain delays were caused by the applicant's counsel. However, it finds that those delays were insignificant. As regards the Government's argument concerning the referral of the case for additional investigation at the applicant's request, the Court recalls its consistent approach to the effect that an applicant should not be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A). The Court considers that the applicant was not responsible for any substantial delays in the proceedings.

27. By contrast, the fact that during the post-ratification period the case was referred for additional investigation on two occasions on account of serious procedural breaches testifies to a very poor quality of investigation. The resulting delay of approximately one year and three months (from 5 May 1998 until 24 August 1999) is imputable to the domestic authorities, who failed to conduct the investigation promptly and to implement the instructions given by the domestic courts.

28. The Court further notes that the domestic courts examined the case twice at two levels of jurisdiction. However, the fact that the courts heard the case several times did not absolve them from the obligation to comply with the reasonable-time requirement of Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

29. The Court further observes that the most significant delays took place during the second round of proceedings. The case was sent to the City Court on 28 January 2000. However, the first hearing was scheduled only for 5 June 2000. According to the Government, the first hearing was scheduled for such a late date either at the applicant's request or because of the judge's workload. However, they did not submit any documents in support of their allegations regarding the applicant's request. Between 5 June 2000 and 26 July 2001 (one year, one month and twenty days) no hearings took place because the judge was involved in unrelated proceedings. While the Government acknowledged that those delays had taken place, they argued that they had been due to the heavy workload of the judge in charge of the case. In that respect the Court recalls that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision within a reasonable time (see, for instance, *Löffler v. Austria*, no. 30546/96, § 21, 3 October 2000). Therefore, the delays that occurred as a result of the judge's being involved in unrelated proceedings are imputable to the State.

30. Finally, the Court observes that for one year and six months in the post-ratification period the applicant was held in detention, and that fact required particular diligence on the part of the domestic courts to administer justice expeditiously (see *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI). However, they failed to comply with that obligation. The Court also notes that by the date of entry into force of the Convention in respect of the Russian Federation, the proceedings against the applicant had already been pending for two years and nine months.

31. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant submitted that he had been awaiting final judgment in his case for a very long time, causing him severe distress. He claimed 657,000 euros (EUR) in compensation for non-pecuniary damage.

34. The Government submitted that the applicant’s claim related more to the fact of his conviction rather than to the length of the proceedings against him. In any event, the amount claimed was excessive and a finding of a violation would constitute sufficient just satisfaction.

35. The Court considers that the applicant must have suffered non-pecuniary damage as a result of the excessive length of the criminal proceedings against him, and that this would not be adequately compensated by the finding of a violation alone. However, the amount claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, it awards him EUR 2,700 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The applicant did not claim reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court considers that there is no call to award him any sum on this account.

C. Default interest

37. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unreasonable length of the criminal proceedings against the applicant;
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 2,700 (two thousand seven hundred 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President