



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

1959 · 50 · 2009

SECOND SECTION

CASE OF KOBELIAN v. GEORGIA

(Application no. 40022/05)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Kobelian v. Georgia,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 40022/05) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Georgian national, Mr Leva Kobelian (“the applicant”), on 29 September 2005.

2. The Georgian Government (“the Government”) were successively represented by their Agents, Mr David Tomadze and Mr Levan Meskhoradze of the Ministry of Justice.

3. On 10 January 2008 the President of the Second Section decided to give notice of the complaint concerning the length of the proceedings 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 1960 and lives in Ninotsminda, Georgia.

5. On 20 July 2000 criminal proceedings were instituted against the applicant for a number of economic crimes. He was placed under police supervision pending trial.

6. On 30 June 2001 the prosecution authority terminated the investigation and sent the case to the Ninotsminda District Court for trial. The Registry of that court acknowledged receipt of the file on 12 July 2001.

7. On 18 January 2005 the Aspindza District Court, which instance had taken over the applicant's case, reproaching the prosecutor for deficiencies in the bill of indictment and the failure to conduct a financial audit of the applicant's activities, remitted the case for an additional investigation. However, on 17 March 2005 the Tbilisi Appellate Court, overturning the decision of 18 January 2005, ordered the trial court to proceed with an examination on the merits. The appellate decision was upheld by the Supreme Court on 14 July 2005.

8. In a verdict of 11 August 2006, the applicant was partly convicted and partly acquitted of the charges. No sentence was imposed with respect to the conviction, as it had become time-barred.

9. The verdict of 11 August 2006 was upheld by the Tbilisi Appellate Court and the Supreme Court on 23 October 2006 and 15 May 2007 respectively.

10. As disclosed by the case materials, the applicant, an ethnic Armenian allegedly without knowledge of the Georgian language, was assisted by a Georgian-speaking legal counsel and an interpreter throughout the judicial proceedings.

THE LAW

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

11. The applicant complained under Article 6 § 1 of the Convention about the outcome and length of the criminal proceedings. The provision relied on reads, in its relevant part, as follows:

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

12. The Government, acknowledging that the period of the authorities' inactivity between 12 July 2001 and 18 January 2005 might have given rise to a breach of the above-mentioned provision, stated that the complaint, being lodged more than six months after that delay, was belated within the meaning of Article 35 § 1 of the Convention.

13. In reply, the applicant maintained his complaints.

A. Admissibility

1. *As regards the outcome of the proceedings*

14. By calling into question the outcome of the proceedings, the applicant requests the Court to act as an appeal court of “fourth instance”. However, the Court reiterates that the domestic courts are best placed for assessing the relevance of evidence to the issues in the case and for interpreting and applying rules of substantive and procedural law (see, amongst many authorities, *Rizhamadze v. Georgia*, no. 2745/03, § 21, 31 July 2007; *Gurepka v. Ukraine*, no. 61406/00, § 45, 6 September 2005). Insofar as the relevant domestic decisions do not disclose any manifestly arbitrary reasoning (cf., *a contrario*, *Donadze v. Georgia*, no. 74644/01, § 32, 7 March 2006), the Court considers that this limb of the applicant’s complaint under Article 6 § 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. *As regards the length of the proceedings*

15. The Court reiterates that the period to be taken into consideration in determining whether the proceedings satisfied the “reasonable length” is not limited to a particular period of inactivity but corresponds to the overall duration of these proceedings, from the moment of their institution until the final determination of the criminal charges (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 66 and 73, ECHR 1999-II). In the present case, this period began on 20 July 2000 and ended on 15 May 2007 (see paragraphs 5 and 9 above). The present application being lodged on 29 September 2005, the Government’s objection as regards the failure to comply with the six-month rule must be dismissed.

16. The Court notes 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

17. The criminal proceedings in the present case lasted 6 years, 9 months and 25 days for three levels of jurisdiction (see paragraph 15 above). The reasonableness of this period 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, *Pélissier and Sassi*, cited above, § 67).

18. 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).

19. 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, especially given the unexplained and therefore unjustified delay of the judicial proceedings at first instance between 12 July 2001 and 18 January 2005 (cf. *Klyakhin v. Russia*, no. 46082/99, § 94, 30 November 2004). 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 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant invoked Article 1 of the Convention and Article 2 of Protocol No. 7 without any relevant explanation. Under Article 5 § 1 (c) of the Convention, he called into question the lawfulness and length of the pre-trial restraint measure of police supervision. Article 6 § 3 (a) and (e) of the Convention was invoked to denounce the applicant’s alleged inability to read a number of official documents drafted in Georgian as well as to take part in the court hearings. Lastly, relying on Articles 13 and 14 of the Convention, the applicant complained about the ineffectiveness of the domestic judiciary in general and claimed that the protraction of the criminal proceedings was due to his Armenian ethnicity.

21. However, in the light of all the material in its possession, the Court finds that the applicant’s above submissions do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

22. 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

23. 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

24. The applicant claimed 1,131,972 euros (EUR) in respect of pecuniary and non-pecuniary damage.

25. The Government contested the claim.

26. As regards the alleged pecuniary damage, the Court observes that the applicant did not produce any document in support of his claim, which the Court, accordingly, dismisses. However, the Court considers that the applicant must have sustained some non-pecuniary damage on account of the protracted proceedings. Ruling on an equitable basis, it awards him EUR 1,000 under that head.

B. Costs and expenses

27. The applicant did not claim any costs or expenses. Consequently, the Court makes no award under this head.

C. Default interest

28. 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* unanimously 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 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President