



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

1959 · 50 · 2009

FIRST SECTION

CASE OF RODIN v. RUSSIA

(Application no. 5511/05)

JUDGMENT

STRASBOURG

22 October 2009

FINAL

22/01/2010

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 Rodin 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 1 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 5511/05) 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 Oleg Viktorovich Rodin (“the applicant”), on 19 January 2005.

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

3. The applicant alleged, in particular, that the length of the criminal proceedings in his case exceeded the “reasonable time” requirement.

4. On 28 June 2007 the President of the First Section decided to give notice of the application to the Government. It was decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Yuzhno-Sakhalinsk.

6. On 5 February 1997 the Uglegorsk Town Prosecutor's Office opened criminal proceedings against the applicant on charge of manslaughter. On

the same day the applicant was detained and placed in custody. His detention pending investigation and trial was authorised on 8 February 1997.

7. On 6 July 1997 the investigation was completed and the case was transferred to the Ulegorsk Town Court. The applicant was charged with manslaughter, infliction of bodily harm and dangerous and disorderly conduct. The judges' dockets were full and the trial was scheduled for 9 February 1998. The hearing was subsequently adjourned until 16 April 1998 due to the judge's conflict of schedule.

8. On 20 April 1998 the Town Court found that the investigation conducted by the prosecutor's office was incomplete and sent the file back. On 10 June 1998 the Sakhalin Regional Court dismissed the prosecutor's appeal against the Town Court's decision. The applicant was to remain in custody pending investigation.

9. On 8 July 1998 the case file was forwarded to the Ulegorsk Town Prosecutor's office for additional investigation.

10. On 10 August 1998 the prosecutor's office closed the investigation and forwarded the case file to the court. Upon receipt and review of the file, the Town Court found that the investigation had not been duly completed and transferred the file back to the prosecutor's office. The prosecutor unsuccessfully appealed. The final decision on the matter was taken by the Regional Court on 18 November 1998.

11. The Town Court resumed the trial on 1 February 1999. On 13 April 1999 the Ulegorsk Town Court of the Sakhalin Region found the applicant guilty of manslaughter and infliction of bodily harm and acquitted him of the charge of dangerous and disorderly conduct. He was sentenced to eight years' imprisonment.

12. On 28 July 1999 the Sakhalin Regional Court affirmed the applicant's acquittal of dangerous and disorderly conduct, quashed the remainder of the judgment of 13 April 1999 and remanded the matter for fresh consideration. The applicant remained in custody.

13. On 17 August 1999 the applicant was taken to hospital where he underwent treatment for tuberculosis. The trial was suspended until the applicant's release from hospital in December 1999.

14. On 28 December 1999 the applicant was released on bail.

15. The applicant's case was assigned to judge Sh. On 5 December 2001 she was transferred to another court and the case was allocated to judge Ya. who could not proceed with the trial since his judge status was terminated. On 31 March 2003 the applicant's case was taken over by judge R.

16. The new trial began on 14 April 2004. According to the Government, the applicant refused to have the proceedings discontinued due to the expiration of the prescribed period for prosecuting him. By a judgment of 7 May 2004, the Town Court reclassified the charges brought against the applicant and found him guilty of two counts of infliction of

bodily harm and sentenced him to three years' imprisonment. The court found however that the applicant was no longer liable to serve the sentence and exempted him from doing so.

17. On 21 July 2004 the Sakhalin Regional Court quashed the conviction, acquitted the applicant of one charge of infliction of bodily harm and discontinued the criminal proceedings against him in respect of the second charge because the prescribed period for prosecuting him had expired.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained that the criminal proceedings against him had been excessively long, in contravention of Article 6 of the Convention, which reads, is so far as relevant, 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

19. 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. The period under consideration

20. The Court notes that the applicant was arrested on 5 February 1997. However, the period to be taken into consideration for the purposes of the present case began only on 5 May 1998, when the Convention entered into force in respect of Russia. In assessing the reasonableness of the time that elapsed after that date, account must, nevertheless, be taken of the state of the proceedings at that time. The period in question ended on 21 July 2004, when the Regional Court discontinued the criminal proceedings against the applicant. It had lasted, accordingly, a total of seven years and five and a half months, of which six years and two and a half months 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

21. The Government submitted that the overall length of the proceedings had been reasonable. They conceded that the domestic judicial authorities had been responsible for a delay in the proceedings between 5 December 2001 and 31 March 2003 owing to the insufficient number of judges in the Sakhalin Region at the time. However, they considered that this fact alone did not infringe upon the applicant's rights given that the latter was at liberty while awaiting trial. Lastly, they noted that once the prescribed period had expired and the proceedings could have been discontinued, it was the applicant who insisted on their continuation.

22. The applicant maintained his complaint.

23. The Court reiterates that the reasonableness of the length of the 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 and what was at stake for the applicant in the dispute (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).

24. The Court considers that the proceedings at issue were of a certain complexity owing to the gravity and the number of the offences the applicant was charged with. However, the Court finds that the complexity of the case, on its own, cannot justify the overall length of the proceedings.

25. The Court further notes that, apart from the adjournment of the proceedings for four months in 1999 due to the applicant's illness, the applicant himself did not contribute to the length of the proceedings, and that in any event that delay cannot be considered significant.

26. As regards the conduct of the authorities, the Court observes that in 1998 the trial court remitted the matter twice to the prosecutor's office for further investigation, and the proceedings were resumed only on 1 February 1999. The Court considers that the resulting delay of approximately nine months is imputable to the domestic authorities, and that they failed to complete the investigation promptly.

27. 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).

28. The Court further observes that a delay of approximately four years and four months occurred from the date of the quashing of the first instance

judgment on 28 July 1999 and the commencement of the retrial on 14 April 2004. The Government partially accounted for the delay, submitting that between 5 December 2001 and 31 March 2003 the number of judges assigned to the Town Court had been insufficient. In this regard the Court reiterates 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 resulting from the understaffing of the Town Court are imputable to the State. Furthermore, the Government's explanation accounted only in part for the four-year interruption in the proceedings. They did not furnish any explanation as to the two-year and one-year periods of the trial court's inactivity which occurred between December 1999 and December 2001 and between 31 March 2003 and 14 April 2004 respectively.

29. Lastly, the Court observes that almost one year and eight months of the applicant's detention extended into the post-ratification period, and that that fact required particular diligence on the part of the domestic courts to ensure that justice was administered 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 one year and three months.

30. 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 criminal proceedings against the applicant 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

31. The applicant complained that the conditions of his detention in 1997-1999 had been appalling, his detention had been unlawful and the criminal proceedings against him had been unfair. He referred to Articles 3, 5 and 6 of the Convention.

32. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione temporis*, 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

33. 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

34. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

35. The Government submitted that the applicant's allegations should not give rise to an award of any compensation for non-pecuniary damage. In any event, they considered the applicant's claim excessive and that the finding of a violation constituted sufficient just satisfaction.

36. 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 4,200 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

37. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

38. 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 length of the criminal proceedings against the applicant admissible and the remainder of the application inadmissible;

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 4,200 (four thousand and two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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 22 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President