



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

FIRST SECTION

CASE OF KAZYULIN v. RUSSIA
(Application no. 31849/05)

JUDGMENT

STRASBOURG

25 February 2010

FINAL

25/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kazyulin v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 31849/05) 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 Vladimir Viktorovich Kazyulin (“the applicant”), on 5 August 2005.

2. The applicant was represented by Mr A. Zabusov, a lawyer practising in the Tambov region. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 26 March 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).

4. The Government objected to the joint examination of the admissibility and merits of the application. The Court examined and dismissed their objection.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1962 and lives in Moscow.

6. On 14 August 1995 police arrested the applicant on suspicion of hooliganism and unlawful possession of firearms. On 17 August 1995 he was placed in custody.

7. In December 1995 the prosecution authorities referred the case to the Pervomayskiy District Court of the Tambov Region ("the District Court") for trial. The case was assigned to Judge V. However, in January 1996 the District Court returned the case to the prosecutor for additional investigation.

8. In February 1996 the applicant was released under a written undertaking not to leave the town.

9. According to the Government, between 1996 and 1999 the proceedings were suspended on several occasions, either because the applicant was sick or because he had breached the undertaking not to leave the town. The Government did not provide any details in respect of those adjournments.

10. On 10 February 1999 the applicant was again placed in custody and on 23 February 1999 he was released under an undertaking not to leave the town.

11. On 2 March 1999 the prosecution authorities referred the case to the District Court for trial. The District Court set the case down for trial on 25 March 1999 and held that the applicant should remain under an undertaking not to abscond.

12. In 1999 the hearings of 25 March, 15 April were adjourned because the applicant and the victim did not appear. The hearing of 26 May did not take place because the witnesses did not appear. On 1 November the case was postponed until 2 December because the applicant had not received a copy of the indictment bill. However, on that date the case was adjourned until 18 January 2000 because the victim and witnesses did not appear.

13. On 18 January 2000 the District Court again referred the case to the prosecution authorities for additional investigation. On 17 February 2000 the Tambov Regional Court ("the Regional Court") quashed that decision on appeal and remitted the matter for fresh examination to the District Court.

14. On 4 October 2000 the case was adjourned until 8 November 2000 because Judge V. was busy in unrelated proceedings. On the latter date it was postponed until 14 December 2000 because the applicant was sick. On that date the case was adjourned until 28 February 2001 because the applicant, his counsel, but also the victim and witnesses did not appear.

15. In 2001 the case was adjourned on 28 February until 7 July because the applicant's counsel and witnesses did not appear, and on that date until 15 November because the applicant did not appear. The hearing of 15 November did not take place because the witnesses did not attend the hearing.

16. In 2002 the case was adjourned on 28 March and 16 May because the victim and the witnesses did not appear. On 15 August the case was adjourned because the applicant and the victim did not appear, but also because the judge was busy in unrelated proceedings. The hearing of 25 November did not take place because the applicant was sick and the victim and the witnesses did not appear, and that of 5 December because the applicant's counsel, the victim and the witnesses did not appear.

17. In 2003 the hearing of 28 March was adjourned because the victim and the witnesses were absent and that of 24 April did not take place because the applicant was sick.

18. In 2004 the hearings of 28 January and 11 March did not take place because the victim and the witnesses did not appear, that of 25 May was adjourned because the applicant and the witnesses were absent and that of 8 November was adjourned because the victim and the witnesses did not appear.

19. In 2005 the hearing of 23 March did not take place because the applicant, the victim and the witnesses did not attend, that of 30 May was adjourned because the victim and the witnesses did not appear, that of 16 June was postponed because the applicant, the victim and the witnesses did not appear, those of 25 July and 13 September did not take place because the victim and the witnesses were absent and that of 15 December was adjourned because the applicant, victim and witnesses did not appear.

20. In 2006 the hearing of 28 February was adjourned because the victim and the witnesses did not appear and that of 23 March was postponed because the applicant was sick.

21. On an unspecified date in 2006 the President of the District Court requested the Judiciary Qualification Board of the Tambov Region to take disciplinary measures in respect of Judge V. for her failure to comply with procedural time-limits in the examination of cases assigned to her, including the applicant's case. In particular, the President submitted that the proceedings against the applicant had been adjourned several times due to the applicant's, victim's and witnesses' failure to attend the hearings. The verification which had been carried out in that respect established that Judge V. had not taken due measures to ensure the presence of the above persons at court hearings.

22. On 31 March 2006 the Judiciary Qualification Board held that Judge V. had not respected procedural time limits in the examination of cases assigned to her, including the case against the applicant, and imposed on her a disciplinary sanction. Following that decision the applicant's case was reassigned to Judge L.

23. On 11 April 2006 the District Court granted the applicant's request to have his case examined by a panel of three judges. Since the District Court was staffed with only two judges the case was forwarded to the Regional Court to determine the territorial jurisdiction.

24. On 28 April 2006 the Regional Court decided that the applicant's case had to be heard by the Michurinskiy District Court of the Tambov Region. The applicant and his counsel appealed against that decision. They claimed that the fact that the District Court had only two judges was not sufficient grounds to change the territorial jurisdiction. On 21 July 2006 the Supreme Court of the Russian Federation ("the Supreme Court") quashed the decision of 28 April 2006 and remitted the case to the District Court for examination on the merits. The Supreme Court held that the applicant had requested that his case be examined by a panel of three judges and not asked for it to be referred to a different court. Therefore, by referring his case to another court the Regional Court had violated the applicant's rights. The Supreme Court further held that only cases concerning serious or particularly serious offences fell to be examined by a panel of three judges, whereas the charges against the applicant did not fall into those categories.

25. In the remainder of 2006 several hearings were adjourned. On 31 August the District Court set the hearing of the case for 12 September. On that date the court heard the victim. The applicant submitted that he wished to give his testimony after the victim and the witnesses. Since some of the witnesses were absent from the hearing, the case was adjourned until 26 September. The District Court ordered those witnesses to be brought to the hearing. However, on 26 September the applicant and his counsel did not appear and the case was adjourned until 7 November. On that date the case was postponed until 23 November because one of the applicant's lawyers did not appear. The hearings of 23 November and 14 December did not take place because the applicant and the witnesses did not attend them.

26. In 2007 the hearing of 18 January was adjourned because the applicant and his counsel did not appear. On 13 February 2007 the District Court heard three witnesses. The applicant and his counsel did not appear after the recess in the hearing and the case was adjourned until 6 March 2007. The hearings of 6 and 22 March, 19 April, 3 and 22 May, 6 and 20 June and 17 July 2007 did not take place because either the applicant or his counsel did not appear.

27. The District Court addressed several notification letters to the applicant. However, they were not delivered to him since he was not at his address, and he did not pick them up at the post office. The bailiffs could not bring the applicant to the hearing either, because he was never to be found at his address. It appears that the criminal proceedings are still pending before the first-instance court.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

28. The applicant complained under Articles 6 and 13 of the Convention that the length of the criminal proceedings against him had been excessive and that he had not had an effective remedy in that respect. Articles 6 and 13 of the Convention, in so far as relevant, provide as follows:

“In the determination of ... any criminal charge against him, 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

29. The Court notes that those complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *Period to be considered*

30. The Court observes that criminal proceedings against the applicant commenced on 14 August 1995. However, the Court only has competence *ratione temporis* to examine the period after 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 be taken of the state of the proceedings at the time. The period in question has not ended yet. Therefore, the proceedings have so far lasted more than eleven years at one level of jurisdiction.

2. *Reasonableness of the length of proceedings*

31. The Government submitted that the length of the proceedings in the present case had been reasonable. The examination of the case had been complicated by the serious nature of the charges against the applicant and by difficulties in summoning witnesses. The applicant and his counsel had contributed to delays in the proceedings by repeatedly failing to attend the

hearings. The case had been adjourned several times on objective grounds, such as failure of different persons to attend hearings, examination of the applicant's motions and remittals of the case for additional investigation. After lodging his complaint with the Court, the applicant had intentionally failed to attend the hearings.

32. The applicant maintained his complaint. He admitted that he had not attended several hearings. However, he claimed that he had informed the District Court of the reasons for his absences.

33. 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 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).

34. 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, and *Vachev v. Bulgaria*, no. 42987/98, §§ 86-97, ECHR 2004-VIII (extracts); *Chrysoula Aggelopoulou v. Greece*, no. 30293/05, §§ 16-19, 4 December 2008; and *Sarantidis v. Greece*, no. 23163/07, §§ 25-27, 5 February 2009).

35. 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.

36. There has accordingly been a breach of Article 6 § 1 of the Convention.

3. Lack of effective remedy in respect of the length of the proceedings

37. The Government submitted that the domestic authorities had taken due measures to protect the applicant's right to have his criminal case examined within a reasonable time. In particular, the Judiciary Qualification Board had imposed a disciplinary sanction on Judge V. for her failure to ensure the attendance of participants in the criminal proceedings, including the applicant. The applicant had had a possibility to complain about the delayed examination of his case to other judicial bodies, but he had not lodged any requests to speed up the examination of his case or requested the domestic court to summon the witnesses and victim to the hearings. He had himself contributed to the length of the proceedings.

38. The applicant maintained his complaint.

39. 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*, no. 30210/96, § 156, ECHR 2000-XI). Furthermore, an effective remedy

required by Article 13 of the Convention is intended to be capable of either expediting the proceedings or providing the applicant with adequate redress for delays that have already occurred (see *Kudla*, cited above, §§ 157-159).

40. The Court finds that even if the decision of the Judiciary Qualification Board imposing a disciplinary measure on the judge could be considered as a measure intended to expedite proceedings in the applicant's case, it did not provide the applicant with adequate redress for delays that had already occurred. The Court notes that the Government did not indicate any other remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Klyakhin v. Russia*, no. 46082/99, §§ 101-102, 30 November 2004, and *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007).

41. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy under domestic law whereby he could enforce his right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 10 million Russian roubles in respect of non-pecuniary damage.

44. The Government contested that claim.

45. The Court considers that the applicant must have sustained non-pecuniary damage. However, the amount claimed appears to be excessive. Ruling on an equitable basis, it awards him 6,700 euros under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

46. The applicant did not submit any claim for costs and expenses. Accordingly, the Court makes no award under that head.

C. Default interest

47. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the unreasonable length of criminal proceedings against the applicant;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of absence of an effective remedy against the unreasonable length of criminal proceedings;
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 6,700 (six 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President