



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

FIRST SECTION

CASE OF TUGARINOV v. RUSSIA

(Application no. 20455/04)

JUDGMENT

STRASBOURG

29 April 2010

FINAL

29/07/2010

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

In the case of Tugarinov 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 20455/04) 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 Vitaliy Dmitriyevich Tugarinov (“the applicant”), on 14 April 2004.

2. 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 12 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 1977 and lives in the village of Ivolginsk in the Republic of Buryatiya.

5. On 29 January 1995 the Ivolginskiy District police department instituted criminal proceedings against the applicant and several other individuals. They were accused of severely injuring Mr I. during a public disturbance. An investigator questioned the applicant in the presence of

legal-aid counsel, Mrs N. On the same day the applicant was remanded in custody.

6. In September 1995 the applicant was served with a bill of indictment and the case was committed for trial to the Ivolginskiy District Court. On 1 December 1995 the District Court found the applicant guilty of disorderly conduct and causing serious injury. It sentenced him to four years' probation. The applicant was released on the same day. The judgment of 1 December 1995 was upheld on appeal and became final on 14 March 1996.

7. On 16 October 1998 the Presidium of the Supreme Court of the Republic of Buryatiya, by way of supervisory-review proceedings, quashed the judgments of 1 December 1995 and 14 March 1996, having established that the District Court had been composed in violation of the domestic requirements, and remitted the case for a fresh examination.

8. Ten days later the Ivolginskiy District Court received the case file. Of the nine hearings fixed between 27 October 1998 and 7 April 1999, three were adjourned because a co-defendant, having been drafted into the army, could not attend, two hearings were rescheduled because the applicant or his counsel were ill, one was postponed because the applicant's counsel was participating in other proceedings and one was annulled owing to the absence of a co-defendant's counsel.

9. On 7 April 1999 the District Court accepted a request by the applicant and his counsel for the trial court and the prosecutor to step down. That decision was amended on appeal by the Supreme Court of the Republic of Buryatiya. In particular, on 22 June 1999 the Supreme Court held that the District Court was correct in accepting the challenge to the composition of the bench. However, it should have rejected the request for the prosecutor's dismissal.

10. The District Court, sitting in the new composition, fixed a hearing for 25 August 1999. That hearing, as well as the subsequent one scheduled for 1 October 1999, was adjourned due to failure to attend on the part of a co-defendant and of victims and witnesses.

11. On 15 November 1999 a new presiding judge was assigned to the case following the applicant's request for a change in the composition of the bench. Hearings were held between 15 and 23 November 1999.

12. On 23 November 1999 the District Court changed the composition of the bench, having dismissed the presiding judge at counsel's request. That decision was quashed on appeal a month later and the examination of the case on the merits was ordered.

13. On 11 January 2000 the President of the Supreme Court of the Republic of Buryatiya transferred the case to the Sovetskiy District Court of Ulan-Ude for an examination on the merits.

14. The first trial hearing scheduled by the Sovetskiy District Court for 1 February 2000 was adjourned because of the absence of counsel for a co-defendant.

15. On 21 February 2000 the applicant's counsel successfully asked the District Court to return the case for an additional inquiry, alleging gross defects in the initial pre-trial investigation.

16. On 30 March 2000 the head of the investigating department of the Ministry of Interior Affairs of the Republic of Buryatiya reopened the investigation.

17. A month later, on 30 April 2000, the criminal proceedings against the applicant were discontinued for the following reasons:

- on the charge of participation in disorderly acts due to the application of an amnesty act;
- on the charge of having caused injuries because the applicant's guilt had not been proven.

18. On 16 May 2000 the Prosecutor of the Republic of Buryatiya quashed the decision of 30 April 2000 and authorised the resumption of the pre-trial investigation. On 9 June 2000 the investigation recommenced.

19. On 9 July 2000 an investigator discontinued the criminal proceedings against the applicant because his conduct did not constitute a criminal offence. That decision was quashed by a prosecutor on 28 September 2000 and the criminal proceedings were resumed on 6 October 2000.

20. Twice, on 13 November 2000 and 20 February 2001, the investigation was stayed because the applicant was ill. Decisions to resume the proceedings were issued on 25 December 2000 and 31 August 2001 respectively.

21. On 5 October 2001 the applicant was placed on a wanted persons' list and the investigation was stayed. That decision was quashed and the proceedings were resumed.

22. On 8 November 2001 an investigator closed the criminal proceedings. The relevant part of the decision read as follows:

“[The applicant's] guilt in respect of the above-mentioned criminal offences is confirmed by reliable and consistent statements by the victim, Mr I., and by witnesses Mr T., Mr B., Mr Tyu., whom the victim had told that he had identified the person who had hit him – [the applicant]. A witness Mr G. had seen [the applicant] hit Mr I. in the face with a stick.

However, taking into account that the pre-trial investigation and the examination of the case in the courts... have lasted six years and ten months, and having regard to the fact that during those years [the applicant] did not commit any unlawful acts and that by 2001 he was no longer socially dangerous... [the criminal proceedings are to be closed]”

23. On 28 December 2001 the Sovetskiy District Court, upon the applicant's complaint, quashed the decision of 8 November 2001 as

unlawful. The District Court held that the criminal proceedings had been unlawfully closed without the applicant having consented to it.

24. In February 2002 the criminal proceedings were reopened. However, two weeks later they were stayed. That decision was quashed by a higher-ranking prosecutor on 28 June 2002.

25. On 25 September 2002 the criminal proceedings were again stayed because the applicant had not responded to the investigator's summons. That decision was quashed by the Sovetskiy District Court because there was no evidence that the applicant had been properly summoned.

26. On 24 December 2002 the criminal proceedings were resumed.

27. On 20 January 2003 an investigator sent the bill of indictment to the Ivolginskiy District Prosecutor. The prosecutor refused to sign it and returned the case for an additional investigation, noting that the applicant's defence rights had been violated. The same thing happened in February 2003.

28. On 28 March 2003 the prosecutor signed the bill of indictment and served it on the applicant. The applicant was committed to stand trial before the Ivolginskiy District Court.

29. The first hearing fixed by the District Court for 15 April 2003 was adjourned because the victims failed to appear and the applicant successfully asked for his counsel to be replaced. The following hearing was scheduled for 7 May 2003. However, it was then rescheduled for 14 May 2003 as the applicant's representative was ill.

30. Of the twenty hearings fixed between 14 May and 15 September 2003, one hearing was adjourned because the applicant's representative was ill, one was postponed because the applicant was to attend a funeral and two hearings were rescheduled because the victims or their counsel did not attend.

31. On 15 September 2003 the District Court found the applicant guilty of disorderly conduct and causing severe injury and sentenced him to four years' probation. On 18 November 2003 the Supreme Court of the Republic of Buryatiya upheld the judgment on appeal.

THE LAW

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

32. 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...”

A. Submissions by the parties

33. The Government put forward two lines of argument. Firstly, they submitted that the applicant's complaint had been lodged too late, as although the applicant had signed his application form, he had dated it 14 April without indicating the year. The stamp on the application form showed that the Court had received it on 26 May 2004. Therefore, there was no evidence that the applicant had complied with the six-month requirement, as the criminal proceedings against him had ended with the final judgment of 18 November 2003. As an alternative, the Government argued that the applicant's complaint was manifestly ill-founded. They stressed that the Court only has competence *ratione temporis* to examine the five-year period after 16 October 1998, when the Presidium quashed the initial conviction. In the Government's opinion, the duration of the proceedings was justified by objective reasons, such as the applicant's and his counsel's illness, the applicant's difficult family situation, the victims' and witnesses' failure to attend, and so on. The domestic authorities were not responsible for any stays in the proceedings, while the applicant twice successfully petitioned the trial court for a change in its composition. Furthermore, the case was sent back to the investigating authorities at the applicant's request.

34. The applicant, relying on a copy of postal receipt no. 670000-49 showing the date and content of his first letter to the Court and an international postal certificate, submitted that he had sent his application form on 14 April 2004, thus complying with the six-month requirement. He further argued that his absences from court hearings had been rare and caused by his illness. In addition, he had been forced to ask for removal of the bench or presiding judge or for a reopening of the pre-trial investigation, as he had no other means to prevent violations of his procedural rights. In any event, the domestic authorities had accepted that his requests were well-founded.

B. The Court's assessment

1. Admissibility

(a) Six-month rule objection

35. The Court reiterates the Government's argument pertaining to the applicant's alleged failure to comply with the six-month requirement. In this

respect, the Court observes that despite the facts that the applicant omitted to indicate the year on his application form and that the application was only received by the Court on 26 May 2004, the evidence presented by the applicant, in particular copies of the postal receipt and international shipment certificate, shows that he posted his letter with the application form at a post office on 14 April 2004. Having regard to the fact that the final judgment in his case was issued on 18 November 2003, the Court considers that he raised his complaint of excessive length of the criminal proceedings within the six-month time-limit established by Article 35 § 1 of the Convention (see *Arslan v. Turkey* (dec.), no. 36747/02, ECHR 2002-X (extracts), and *Gaspari v. Slovenia*, no. 21055/03, § 35, 21 July 2009). The Government's objection is therefore dismissed.

(b) Period to be considered

36. The Court further observes that the entire duration of the proceedings is divided into two separate periods. The first of these commenced on 29 January 1995 when the criminal proceedings were instituted against the applicant and ended on 1 December 1995 when the applicant's conviction was upheld on appeal. The second began on 16 October 1998 when the conviction was quashed on a supervisory review and a retrial was authorised. The period in question ended on 18 November 2003 with the final judgment of the Supreme Court of the Republic of Buryatiya. In this respect, the Court observes that it only has competence *ratione temporis* to consider the second period, which commenced after the Convention had entered into force in respect of Russia on 5 May 1998 and which lasted a little over five years and one month before the investigating authorities and courts at two levels of jurisdiction. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

(c) The Court's decision on the admissibility of the complaint

37. The Court therefore concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. 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)

39. The Court observes that the parties did not argue that the case had been complex. It sees no reason to conclude otherwise.

40. As to the applicant's conduct, the Government argued that he had contributed to the length of the proceedings. In particular, at least six hearings were adjourned owing to his or his representative's absence. The Court observes that as it appears from the lists of hearings drawn up by the Government, the aggregated delay incurred through the applicant's or his counsel's absence at the hearings for various reasons, amounted to approximately three and a half months.

41. The Government further argued that the delays caused by the changes in the composition of the District Court should be attributed to the applicant, because he had successfully petitioned for them. Bearing in mind the prominent place which the right to a fair trial by an independent and impartial tribunal holds in a democratic society (see, *inter alia*, *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, p. 16, § 30), the Court considers that the State should bear the responsibility for a delay incurred through a successful challenge of the trial bench by a party to the proceedings. If a court accepts a party's request for a change in the composition of the bench, it inevitably means that the fears of that party as to the impartiality and independence of the tribunal are justified (see *Sidorenko v. Russia*, no. 4459/03, § 32, 8 March 2007). The Court further reiterates that Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide the cases within a reasonable time (see, among other authorities, *Löffler v. Austria (No. 2)*, no. 72159/01 § 57, 4 March 2004). Therefore, the responsibility for an aggregated delay of approximately ten months caused by changes in the composition of the Ivolginskiy District Court and the transfer of the case to Sovetskiy District Court rests ultimately with the State (see *Marchenko v. Russia*, no. 29510/04, § 39, 5 October 2006).

42. The Court further observes that there were other substantial delays for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. The Court reiterates that on 21 February 2000 the Sovetskiy District Court remitted the case for an additional inquiry to enable the prosecution to correct serious violations of the procedural law. The inquiry was closed and reopened on several occasions because the investigating authorities had consistently failed to decide how to proceed with the case and what its outcome should be. While the Court does not lose sight of the fact that the investigation was stayed on a number of occasions because the applicant was ill, it nevertheless is mindful that the additional investigation was, in the first place, the result of the authorities' failure to comply with procedural requirements and to safeguard the applicant's defence rights during the initial pre-trial investigation. The Court therefore considers that the period from

21 February 2000, when the additional investigation was authorised, to 15 April 2003, when the case was returned to the trial court for adjudication, is attributable to the State.

43. The Court furthermore notes that the conduct of the applicant's co-accused, their lawyers, the victims and witnesses was one of the reasons for the prolongation of the proceedings. The Court reiterates that the delay occasioned by their failure to attend at least nine hearings and the courts' failure to discipline them is attributable to the State (see *Kuśmerek v. Poland*, no. 10675/02, § 65, 21 September 2004). The Government did not indicate any steps that were taken by the domestic courts to ensure their presence.

44. Having examined all the material submitted to it and taking into account the overall length of the proceedings, the Court considers that in the instant case the length of the proceedings is excessive and fails to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

45. The applicant further complained that in Russia there is no authority to which application could be made to complain of excessive length of proceedings. This complaint falls to be examined under Article 13 of the Convention which reads as follows:

"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. Submissions by the parties

46. The Government, without providing further details, submitted that it was open to the applicant to complain to a prosecutor's office or the Judicial Qualification Board about the delays occasioned in his case.

47. The applicant maintained his complaints.

B. The Court's assessment

1. Admissibility

48. 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.

2. *Merits*

49. 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* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the Government did not indicate any 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, §§ 100-101, 30 November 2004). In particular, the Government did not explain how complaints to a prosecutor or the Judicial Qualification Board could have expedited the criminal proceedings or how the applicant could have obtained relief – either preventive or compensatory – by having recourse to authorities which did not have powers to grant such a relief.

50. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. Lastly, the applicant complained of various procedural defects which had allegedly been committed by the investigating authorities and domestic courts in the course of the criminal proceedings against him.

52. Having regard to all the material in its possession, the Court finds that the evidence discloses 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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**

54. The applicant, without submitting supporting documents, claimed 1,900,000 Russian roubles (RUB) in respect of pecuniary damage allegedly

sustained as a result of his having been convicted. In addition, he claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government submitted that the claims were manifestly ill-founded and, in any event, excessive.

56. The Court observes that there is no causal link between the violations found and the pecuniary damage claimed (see *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March 2006). Furthermore, the applicant did not submit documents confirming expenses he had allegedly accrued. Consequently the Court finds no reason to award the applicant any sum under this head.

57. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to examine his case within the reasonable time and lack of effective remedies for his complaints about the excessive length of the proceedings. However, the particular amount claimed appears excessive. The Court takes into account the relevant aspects, such as the length of the proceedings, and making its assessment on an equitable basis, awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

58. The applicant, relying on copies of postal receipts and invoices, also claimed RUB 4,148 for costs and expenses incurred before the domestic courts and the Court.

59. The Government submitted that those postal expenses were not necessary and some of them were not supported by any evidence.

60. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 95 covering costs under all heads, plus any tax that may be chargeable to him on that amount.

C. Default interest

61. 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 and the absence of effective remedy 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* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:
 - (i) EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 95 (ninety-five euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 29 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President