



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

FIRST SECTION

CASE OF KONASHEVSKAYA AND OTHERS v. RUSSIA

(Application no. 3009/07)

JUDGMENT

STRASBOURG

3 June 2010

FINAL

04/10/2010

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

In the case of Konashevskaya and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 3009/07) 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”) on 5 December 2006 by four Russian nationals, Nina Vatslavna Konashevskaya, Margarita Vasilyevna Belikova, Oktyabrina Sergeyevna Zharkova and Lyubov Spiridonovna Gorokhova (“the applicants”).

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained that the authorities had failed to examine a criminal case against them within a reasonable time and to ensure their right to defend themselves in person or through legal assistance of their own choosing.

4. On 9 January 2009 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 applications at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1919, 1930, 1939 and 1941 respectively and live in Moscow.

6. Mrs Zharkova filed the application also on behalf of her husband, Mr Evsey Matveyevich Pisman, who had died on 17 January 2005.

A. Criminal proceedings against Ms Konashevskaya, Ms Belikova, Mrs Zharkova and Ms Gorokhova

7. On 12 April 2002 the applicants were charged with aggravated fraud, a serious offence punishable with up to ten years' imprisonment at the material time. On 25 June 2002 the pre-trial investigation was concluded and on 12 July 2002 the case was allocated to the Babushkinskiy District Court of Moscow for judicial examination. The first hearing was scheduled for 11 August 2003.

8. By a decision of 5 May 2004, the trial court suspended the criminal proceedings in respect of Ms Konashevskaya and Ms Gorokhova owing to their serious illnesses.

9. On 21 February 2006 the court ordered an expert psychiatric examination of Mr G., the applicants' co-defendant, and suspended the examination of the case. The date when the proceedings were resumed is unknown.

10. By a decision of 29 May 2007, the court suspended the proceedings in respect of Ms Belikova and Mrs Zharkova owing to their illnesses.

11. On 25 February 2008, at the requests of Ms Belikova, Mrs Zharkova and Ms Gorokhova, the court resumed its examination of the case.

12. On 31 March 2008 the Babushkinskiy District Court of Moscow delivered a judgment by which applicants Belikova, Zharkova and Gorokhova were acquitted of the charges. On 25 June 2008 the Moscow City Court upheld the acquittal on appeal.

13. The criminal proceedings in respect of Ms Konashevskaya are still pending. On 25 December 2008 the presiding judge telephoned a competent hospital in order to establish the actual state of her health and was informed that the latter suffered from multiple illnesses, including stenocardia, post-infarct cardiosclerosis and chronic cerebral ischemia.

B. Criminal proceedings against Mr Pisman

14. Mr Pisman was charged with aggravated fraud and forgery of documents on 12 April 2002. He stood trial alongside the applicants. On 17 January 2005 he died.

15. On two occasions the trial court suspended the criminal proceedings against him, that is from 5 May 2004 to 17 May 2005 owing to his illness and his subsequent death and from 29 May 2007 to 25 February 2008 owing to the illness of his widow, Mrs Zharkova.

16. The decision of 17 May 2005 to resume the proceedings against Mr Pisman was rendered by the trial court at the request of his widow for the purpose of restoring his reputation.

17. By judgments of 31 March 2008 and 25 June 2008, he too was acquitted of the charges.

C. The applicants' right to defend themselves in person or through legal assistance of their own choosing

18. By a procedural decision of 25 July 2003, the trial court appointed legal-aid lawyers to represent the applicants.

19. On 12 August 2003 the applicants filed applications where they refused to accept the assistance of the lawyers. By a decision of 12 August 2003, the trial court declined to discharge the appointed legal representatives.

20. During the hearing of 24 September 2003, Ms Belikova and Mrs Zharkova did not object to the assistance of the lawyers.

21. During the hearing of 27 September 2003, Mrs Zharkova did not object to the assistance of the lawyer. The trial court, however, dismissed her request to appoint a representative of her own choosing.

22. By a decision of 26 May 2005, the trial court admitted Mr M., a lawyer called upon by Ms Belikova, to the proceedings.

23. During the hearing of 12 March 2008, Ms Belikova, Mrs Zharkova and Ms Gorokhova agreed to accept the assistance of the appointed lawyers.

II. RELEVANT DOMESTIC LAW

Russian Code of Criminal procedure

24. The aim of criminal court proceedings is the protection of the rights and lawful interests of victims of criminal offences and the protection of a person from unlawful and ungrounded accusation, conviction and restriction of his, or her, rights and freedoms (Article 6).

25. Where the defendant absconds or his “psychiatric disorder”, or other serious illness, precludes his appearance in court, the court shall suspend the proceedings until he has been found or has recovered and shall continue the proceedings in respect of other defendants. If the separation of the proceedings impedes the examination of the criminal case, the entire trial shall be suspended (Article 253 § 3).

26. In the cases stipulated in paragraph 5 of Article 247 of the Code, at the request of the parties, the examination of the case shall be conducted in the absence of the defendant (Article 253 § 4). In exceptional cases the examination of the case concerning “serious” or “particularly serious” criminal offences may be conducted in the absence of a defendant who is not in the territory of the Russian Federation and/or declines to appear in court, provided that this person has not been held accountable for the criminal offence in question in the territory of a foreign state (Article 247 § 5). The participation in a hearing of a defence lawyer called upon by the defendant or appointed by the court is mandatory (Article 247 § 6).

THE LAW

I. LOCUS STANDI OF THE PERSONS CONCERNED

27. The application was lodged on 5 December 2006 by four Russian nationals. One of the applicants, Mrs Zharkova, in addition to alleging a violation of her own rights, stated that she wished to complain also on behalf of her husband, Mr Evsey Matveyevich Pisman, who had died on 17 January 2005.

28. The Court reiterates that the existence of a victim of a violation, that is to say, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Karner v. Austria*, 40016/98, § 25, ECHR 2003-IX).

29. In the present case Mr Pisman had died before the application was introduced, and the case is therefore to be distinguished from cases in which an applicant's heirs were permitted to pursue an application which had already been introduced (see *Fairfield and Others v. the United Kingdom*, (dec.), no. 24790/04, 8 March 2005, with reference back to *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI).

30. Individuals, who are the next-of-kin of persons who have died in circumstances giving rise to issues under Article 2 of the Convention, may apply as applicants in their own right under that provision; this is

a particular situation governed by the nature of the violation alleged and considerations of the effective implementation of one of the most fundamental provisions in the Convention system. However complaints brought under, *inter alia*, Article 6 § 1 do not in principle fall within this category (see *Grădinar v. Moldova*, no. 7170/02, § 91, 8 April 2008; *Biç and Others v. Turkey*, no. 55955/00, § 22, 2 February 2006 and *Georgia Makri and others v. Greece* (dec.), no. 5977/03, 24 March 2005).

31. Accordingly, since Mr Pisman died prior to the introduction of the application, the Court cannot accept his standing as an applicant for the purposes of Article 34 of the Convention. It follows that the application in his respect is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

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

32. The applicants 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:

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

A. Admissibility

33. 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. Submissions by the parties

34. The Government submitted that the period under consideration had begun on 10 October 2002, when the applicants had refused to receive the bill of indictment, and had ended on 25 June 2008, when the appeal court had delivered its judgment. They argued that the examination of the case had been slowed down by the illnesses of the elderly applicants and the numerous consequent suspensions of the proceedings. The criminal case in question had been particularly complex owing to the large number of documents in the case file (sixty-four volumes) and the large number of witnesses and victims. Mr G. had been the main defendant and for this reason the necessity to examine his psychological state entailed the

suspension of the case in respect of the applicants. In the Government's opinion, the length of the proceedings in the present case was mostly attributable to their conduct and did not breach the "reasonable time" requirement set out in Article 6 § 1 of the Convention.

35. In the Government's submissions, the national authorities had emphasised their willingness to proceed with the examination of the charges against Ms Konashevskaya. However, apart from her age, she had suffered from multiple illnesses which had prevented her from travelling to the courthouse in order to be present at the trial. The trial court "had examined the possibility of a visiting hearing in her home" but the applicant's relatives had refused to cooperate with the officials in this respect. A commissioned bailiff had tried and failed to contact Ms Konashevskaya, and for that reason her opinion regarding the "visiting hearing" had remained unknown.

36. The applicants maintained their complaint. They asserted that the period to be taken into consideration had started on 12 April 2002, when they had been charged with the criminal offences in question. They further argued that the national authorities had significantly delayed the examination of the proceedings. Six judges had been appointed to hear the case. The decision to suspend the criminal proceedings in respect of all the applicants owing to the necessity to conduct the psychiatric examination of their co-defendant G. had been unjustified. After the criminal proceedings had been resumed in 2008, it had taken the trial court only three weeks to complete the examination of the case and to deliver its judgment. Therefore, the length of the proceedings was attributable to the national authorities.

2. The Court's assessment

(a) The period to be taken into consideration

37. The Court reiterates that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court (see, for example, *Deweert v. Belgium*, judgment of 27 February 1980, Series A no. 35, § 42), such as the date of arrest, the date when the person concerned was officially notified that he or she would be prosecuted, or the date when preliminary investigations were opened (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, § 19; *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, § 18; and *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, § 110). "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see *Deweert*, cited above, § 46).

38. According to the applicants, they were charged with the criminal offences on 12 April 2002. The Government have not provided any comments in this connection. Therefore, the Court takes the above date as the starting point of the criminal proceedings in the present case.

39. By the judgment of 31 March 2008 the trial court acquitted Ms Belikova, Mrs Zharkova and Ms Gorokhova of the charges. On 25 June 2008 the appeal court upheld their acquittal in the final instance. It follows that in respect of these applicants the period to be taken into consideration lasted for six years, two months and fifteen days. This period spanned the investigation stage and two levels of jurisdiction.

40. The criminal proceedings in respect of Ms Konashevskaya are still pending. Accordingly, they have been lasting for eight years.

(b) General principles

41. The Court reiterates that Article 6 § 1 imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to hear cases within a reasonable time (see *Ledonne v. Italy* (no. 2), no. 38414/97, § 23, 12 May 1999; *Agga v. Greece* (no. 1), no. 37439/97, § 26, 25 January 2000; and *Majarič v. Slovenia*, no. 28400/95, § 39, 8 February 2000).

42. It further refers to its settled case-law to the effect 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 applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). What is at stake for the applicant also has to be taken into consideration (see, *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

43. It lastly reiterates that an accused in criminal proceedings should be entitled to have his case conducted with special diligence and Article 6 is, in criminal matters, designed to avoid a situation in which an accused should remain too long in a state of uncertainty about his fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

(c) Application of the general principles to the present case

44. The Court accepts that the number of defendants, the seriousness of the charges against them and the large volume of documents must have made the trial rather complex. However, the complexity of the case does not suffice in itself to account for the length of the proceedings (see *Golovkin v. Russia*, no. 16595/02, § 39, 3 April 2008). Therefore, the Court will concentrate on the other factors.

(i) The conduct of the national authorities

45. As regards the conduct of the national authorities, the Court observes, firstly, that the Government have not submitted any satisfactory explanation for the period of one year and one month that it took the trial court to schedule the first hearing.

46. It is also noted that they submitted rather an inaccurate account of the judicial activity. It is unclear how many court hearings were scheduled and how many of them took in fact place. The applicants' assertion that six judges were appointed to hear their case has remained unanswered by the Government.

47. Furthermore, on 21 February 2006 the court suspended the trial due to the necessity to examine the applicants' co-defendant G.'s psychological state. According to the Government, it was impossible to proceed to determine the charges against the applicants while the psychological state of their co-defendant G. was being examined by experts. The Court, however, is not convinced by this argument. From the judgment of 31 March 2008 it follows that it concerned only the applicants. In other words, at one point the trial court separated the proceedings against the applicants from the proceedings against their co-defendant G. In these circumstances, it does not transpire that the suspension of the trial on 21 February 2006 was required in the interests of the fair administration of justice.

48. In the light of these facts, the Court cannot but conclude that the national authorities do not appear to have acted with due diligence.

(ii) The conduct of applicant Konashevskaya

49. The criminal proceedings against Ms Konashevskaya have been suspended since 5 May 2004. Though the national authorities express their willingness to proceed with the examination of the charges against the applicant, her advanced age and the serious multiple illnesses have prevented her from travelling to the courthouse in order to appear before the trial court.

50. The Court has taken note of the Government's arguments that a bailiff attempted to obtain contact with the applicant and that her relatives had omitted to cooperate in organising a "visiting hearing" in her home. However, having regard to the circumstances of the case, in particular Ms Konashevskaya's advanced age (90), the state of her health, what has been at stake and the failure of the State officials to contact her directly, the Court cannot accept that the national authorities took all appropriate measures available to them under domestic law in order to ensure an expeditious trial in respect of this applicant.

51. Having regard to the foregoing, the Court considers that the length of the proceedings have gone beyond what may be considered reasonable in this particular case.

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

(iii) The conduct of applicants Belikova and Zharkova

53. The criminal proceedings in respect of Ms Belikova and Mrs Zharkova were suspended from 29 May 2007 to 25 February 2008. The court decisions to suspend the proceedings were grounded on the serious illnesses of the applicants, which precluded their presence in the court room. The proceedings were resumed when the applicants informed the court that they were fit to stand trial. Nothing in the submitted materials indicates that there were other delays which could be attributed to their conduct. It follows that owing to factors pertaining to the applicants, the proceedings had been delayed for eight months and twenty-eight days which appears rather insignificant compared to their overall length. On the other hand, it has been established that the authorities did not demonstrate the requisite diligence in handling the case (see paragraphs 45-48 above).

54. The Court finds that much was at stake for the applicants as they suffered a feeling of uncertainty about their future, especially bearing in mind their age, frail health and that they risked a long-term imprisonment for the serious criminal offence.

55. Having regard to its case-law on the subject and all the material submitted, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

(iv) The conduct of applicant Gorokhova

57. The criminal case against Ms Gorokhova was opened on 12 April 2002 and was determined on 25 June 2008. During the period from 5 May 2004 to 25 February 2008, the proceedings were suspended. This delay of three years, nine months and twenty-two days is to be attributable to the applicant as the suspension was caused by her illness.

58. Taking into account that the criminal proceedings took approximately two years prior to the applicant's illness and four months after she recovered, the Court considers that the actual length of the proceedings can be regarded as reasonable.

59. There has accordingly been no violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (c) OF THE CONVENTION

60. The applicants complained that during the court proceedings they had been denied their right to defend themselves through legal assistance of their own choosing. They relied on Article 6 § 3 (c) of the Convention which provides as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

61. The Government contested that argument.

62. The Court observes that, from the materials submitted by the parties, it appears that during one of the last hearings, on 12 March 2008, Ms Belikova, Mrs Zharikova and Ms Gorokhova were represented by lawyers whose assistance they had accepted.

63. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. Each applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government contested the claim.

67. The Court observes that it has found a violation of Article 6 § 1 of the Convention in respect of the first, second and third applicants.

68. The Court considers that the applicants must have sustained non-pecuniary damage. Having regard to the circumstances of the case and ruling on an equitable basis, it finds it appropriate to award EUR 6,000 to

the first applicant and EUR 2,400 to the second and third applicant each under that head.

B. Costs and expenses

69. The applicants did not make any claims for costs and expenses incurred before the domestic courts and the Court.

70. Accordingly, the Court does not award anything under this head.

C. Default interest

71. 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 about the excessive length of the proceedings concerning the four applicants 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 length of the criminal proceedings against the first, second and third applicants;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the fourth applicant;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from 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 at the date of settlement:
 - (i) EUR 6,000 (six thousand euros) to Ms Nina Vatslavna Konashevskaya, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,400 (two thousand four hundred euros) to Ms Margarita Vasilyevna Belikova, plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (iii) EUR 2,400 (two thousand four hundred euros) to Mrs Oktyabrina Sergeyevna Zharkova, plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (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 applicants' claim for just satisfaction.

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

Søren Nielsen
Registrar

Christos Rozakis
President