

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

THIRD SECTION

CASE OF TUPIKIN v. RUSSIA

(Application no. 54390/18)

JUDGMENT

STRASBOURG

27 October 2022

This judgment is final but it may be subject to editorial revision.



In the case of Tupikin v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 6 October 2022,

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

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 8 November 2018.

2. The Russian Government ("the Government") were given notice of the application.

THE FACTS

3. The applicant's details and relevant information are set out in the appended table.

4. The applicant complained of the excessive length of criminal proceedings against him.

THE LAW

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

5. The applicant complained that the length of the criminal proceedings in question had been incompatible with the "reasonable time" requirement. He relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

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

6. The Government raised two preliminary objections. They argued that the applicant had lost victim status because, having been acquitted, he obtained compensation for unlawful prosecution (RUB 250,000, equivalent to about EUR 2,980) and because the regional court had issued a separate ruling (*частное определение*) acknowledging unreasonable duration of the criminal proceedings imputable to the authorities. They also argued that that compensation was granted to the applicant only after the lodging of the

present application and thus, at the moment of the lodging, the applicant had not exhausted domestic remedies.

7. The Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V).

8. In the present case, in the Court's view, even assuming that the regional court's separate ruling could be seen as an acknowledgment of a violation of the applicant's right to a reasonable time of proceedings, however the applicant was not afforded any redress for that alleged breach. Indeed, compensation for the unlawful prosecution of an acquitted person could be granted under other conditions and pursue another aim than that pertaining to the unreasonable length of the criminal proceedings.

9. The Court notes that, before lodging of the present application, the applicant had introduced a compensation claim provided for by the Compensation Act which constitutes a special remedy for complaints of unreasonable length of proceedings (see *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, §§ 15-19, 23 September 2010) and that his claim was dismissed (see appended table). In view of the above, the Court considers that the applicant has duly exhausted domestic remedies and that he can still claim to be a victim of a breach of the "reasonable time" requirement. Thus, it dismisses the Government's objections and declares the application admissible.

10. On the merits, 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 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, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

11. In the leading case of *Nakhmanovich v. Russia* (no. 55669/00, 2 March 2006) the Court already found a violation in respect of issues similar to those in the present case.

12. Having examined all the material submitted to it, the Court has not found any fact or argument capable of justifying the overall length of the criminal proceedings at the national level. 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.

13. Therefore, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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."

15. Regard being had to the documents in its possession and to its case-law (see, in particular, *Skrylev and Others v. Russia,* no. 15754/06, 15 April 2014, *Kulida v. Russia,* no. 44049/09, 17 June 2014, and *Dimov v. Russia,* no. 7427/06, 23 September 2014), the Court finds it reasonable to award the sum indicated in the appended table.

16. The Court further considers it appropriate that the default interest rate 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 this application discloses a breach of Article 6 § 1 of the Convention concerning the excessive length of criminal proceedings;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, to be converted into the 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.

Done in English, and notified in writing on 27 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (excessive length of criminal proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Start and path of proceedings	End of proceedings	Total length Levels of jurisdiction	Compensation proceedings Last final decision Court and date	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses (in euros)[1]
54390/18 08/11/2018	**Viktor Vasilyevich TUPIKIN** 1953	Nikolenko Yekaterina Vladimirovna, lawyer practicing in Volgograd	18/05/2009 (criminal case opened, proceedings terminated several times, but then re-opened) 22/05/2013 (trial started) 02/09/2013 (conviction judgment) 27/02/2014 (appeal quashing conviction judgment) 15/08/2016 (first instance judgment after new trial)	09/01/2017 (appeal judgment, acquittal)	6 years and 2 months and 25 days according to the domestic courts 2 levels of jurisdiction	Last final decision: Supreme Court of the Russian Federation, 29/06/2018, claim for compensation dismissed	1,500

[1] Plus any tax that may be chargeable to the applicant.