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

THIRD SECTION

DECISION

Application no. 44432/06
Viktor Mikhaylovich KRUK
against Russia

The European Court of Human Rights (Third Section), sitting on 20 September 2016 as a Committee composed of:

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 September 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Viktor Mikhaylovich Kruk, is a Russian national, who was born in 1946 and lives in Moscow. He was represented before the Court by Mr D. Agranovskiy, a lawyer practising in the Moscow Region.

The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 11 February 2005 the applicant was arrested on suspicion of embezzlement. His detention on remand was extended on several occasions.

On 18 November 2005 the Leninskiy District Court in Kursk granted a further extension of his detention until 11 February 2006.

On 28 February 2006 the investigator applied to the court for a further extension of the applicant's detention. His application was rejected first by

the District Court on 6 March and later by the Kursk Regional Court on 11 April on the ground that the maximum statutory twelve-month detention period had expired on 11 February 2006 and that no further extension were permissible.

The applicant was released from custody on 6 March 2006.

By judgment of 28 April 2006, as upheld on appeal on 1 June 2006, the Kursk courts refused to entertain the applicant's claim that the supervising prosecutor had negligently failed to secure his release upon the expiry of the authorised detention period on 11 February.

On 13 June 2006 the case was submitted for trial to the Sudzhanskiy District Court in the Kursk Region, from where it was forwarded to the Taganskiy District Court in Moscow and subsequently returned back to the Kursk Region.

In 2007 and 2008, the proceedings were adjourned and then resumed on several occasions because one of the co-defendants was taken ill.

On 27 November 2009 the criminal proceedings against the applicant were discontinued because the statute of limitations had expired.

COMPLAINTS

The applicant complained under Article 3 of the Convention that he had been detained in inhuman and degrading conditions.

The applicant complained under Article 5 § 1 of the Convention that he had been detained without a judicial order in the period from 11 February to 6 March 2006. He also complained under Article 5 § 3 of the Convention about an excessive length of his pre-trial detention.

Lastly, the applicant complained under Article 6 § 1 of the Convention about an excessive length of criminal proceedings.

THE LAW

The first part of the applicant's complaints under Articles 3 and 5 of the Convention related to his detention. Since he lodged the application on 20 September 2006, that is to say, more than six months after his detention had ended on 6 March 2006, the Court must verify the compliance with the six-month rule. In contrast to an objection as to the non-exhaustion of domestic remedies which must be raised by the respondent Government, the Court cannot set aside the application of the six-month rule solely because a government have not made a preliminary objection to that effect. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available

to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant. In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 71-72, 10 January 2012). The Court does not consider that a complaint about the prosecutor's failure to act was an effective remedy for the applicant's grievances relating to the irregularities of his detention. Those proceedings concerned an assessment of the prosecutor's performance of his duties and could not lead to award of compensation or other redress to the applicant. In the absence of an effective domestic remedy, the Court holds that the six-month period started to run from the last day of the applicant's detention on 6 March 2006. It follows that this part of the complaints is belated and must therefore be rejected as being out of time in accordance with Article 35 §§ 1 and 4 of the Convention.

The applicant's remaining complaint concerned an allegedly excessive length of criminal proceedings. The Government submitted that, following the discontinuation of the criminal proceedings against the applicant, he should have exercised his "right to rehabilitation" by lodging a claim for compensation for wrongful prosecution. The applicant replied that the violations he complained about could not have been redressed in the "rehabilitation" proceedings. Whereas the Court has consistently held that an award of compensation in the "rehabilitation" proceedings cannot deprive the applicant of his status as a "victim" of violations of Article 5 of the Convention (see *Pushchelenko and Others v. Russia*, no. 45392/11 et al., § 27, 12 March 2015, and *Shalya v. Russia*, no. 27335/13, § 9, 13 November 2014), it dispensed with ruling whether or not that procedure constituted an effective remedy for a grievance under Article 6 § 1 about an excessive length of criminal proceedings (see *Zementova v. Russia*, no. 942/02, § 61, 27 September 2007). However, the Court has recently found that three applicants lost their status as "victims" of the alleged violation of their right to a trial within a reasonable time after the domestic courts had awarded them sums of money in the "rehabilitation" proceedings, taking into account in particular the duration of the criminal proceedings (see *Khanov and Others v. Russia* (dec.), no. 15327/05 et al., 30 June 2016). The Court reiterates that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II). Since it has not been plausibly shown that the "rehabilitation" proceedings could not have led to an award of compensation for the alleged breach of the applicant's right to a trial within a reasonable time, the applicant must have used this remedy. The Court uphold therefore the Government's objection and rejects this complaint

under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2016.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President