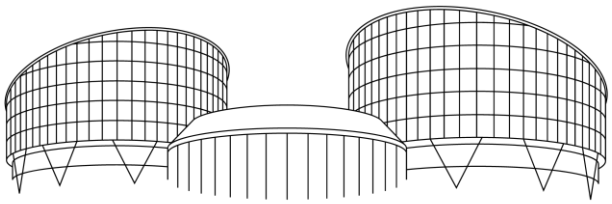

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF KOLCHINAYEV v. RUSSIA

(Application no. 28961/03)

JUDGMENT

STRASBOURG

17 December 2009

FINAL

17/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kolchinayev v. Russia,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 28961/03) 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 Nikolay Konstantinovich Kolchinayev ("the applicant"), on 14 July 2003.

2. The applicant was represented by Ms O.V. Preobrazhenskaya, a lawyer living in Strasbourg. The Russian Government ("the Government") were represented by Mr P. Laptev and Mrs V. Milinchuk, the former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 5 December 2006 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. Having examined the Government's objection and having regard to the subject matter of the application and the Court's case-law, the Court dismissed the Government's objection.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and is now serving his sentence in prison UP-288/T of Minusinsk, the Krasnoyarsk Region.

6. On 14 August 1989 seven teenagers were found dead near Kazynet railway station of the Askizskiy District of the Republic of Khakassia. On an unspecified date in 1989 the competent authorities opened an investigation into the case. On 24 July 1992 the applicant was arrested on suspicion of having committed murder. By a judgment of 24 March 1995, the Kemerovo Regional Court convicted him as charged and sentenced him to capital punishment. By a judgment of 11 October 1995, the Supreme Court of Russia upheld the conviction on appeal. On 4 September 1996 the Presidium of the Supreme Court of Russia, by way of supervisory review proceedings, quashed the judgments of 24 March 1995 and 11 October 1995 and remitted the case for an additional investigation.

7. On 17 February 1997 the case file was transferred to the General Prosecutor's Office and the criminal proceedings were reopened. On 3 April 1997 the applicant was released from custody on an undertaking not to leave his town of residence. On 18 August 2000 he was officially charged.

8. On an unspecified date the pre-trial investigation was completed and on 30 November 2000 the case file was submitted to the trial court for judicial examination.

9. On 18 September 2001 the Supreme Court of the Republic Khakasia convicted the applicant of murder and sentenced him to 15 years' imprisonment. The applicant was detained in the court room immediately after the pronouncement of his sentence. By a judgment of 12 February 2003, the Supreme Court of Russia upheld the conviction on appeal.

THE LAW

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

10. 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, in so far as relevant, 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..."

11. The Government contested that argument.

A. Admissibility

12. The Court considers 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

13. The Government submitted that the period under consideration had begun on 18 August 2000, when the applicant had been charged in the course of the additional investigation, and had ended on 18 September 2001, when the first-instance court had delivered its judgment. They argued that the criminal proceedings had been particularly complex in view of the remoteness of the events (the murder took place in 1989), the large number of victims and defendants (seven and three respectively) and the large number of documents in the case file (twenty-nine volumes). The Government also asserted that the studying of the case documents by the defendants' legal counsel, including the applicant's lawyer, and repeated applications put forward by the defence in the course of the court's proceedings had somewhat impeded the examination of the case.

14. According to the applicant, the whole period from 4 September 1996 until 12 February 2003 should be assessed by the Court. He further argued that though the events that had triggered the additional investigation had indeed taken place in 1989, they had already been examined by the domestic courts in 1992-1996. The studying of the case documents had taken only twenty-one days out of the ten-month trial. The applications of the defence had been decided by the trial court very quickly. Finally, it had taken the appeal court more than one year and four months to examine his appeal. Therefore, all the delays were attributable to the authorities.

2. The Court's assessment

(a) Period to be taken into consideration

15. 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, *Deweer 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 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 *Deweer*, cited above, § 46).

16. In the present case, the Court reiterates that the applicant was finally convicted by the Supreme Court of Russia on 11 October 1995 which is prior to 5 May 1998, the date on which the Convention was ratified by Russia. This period cannot therefore be taken into consideration. As regards the new trial which ended with the final judgment of the Supreme Court of 12 February 2003, the Court considers in this connection that the applicant was "notified" of the charge against him on the day when the Presidium of the Supreme Court of Russia quashed his conviction, that is on 4 September 1996. However, the period to be taken into account began only on 5 May 1998, the date when the Convention was ratified by Russia. It ended, as indicated, on 12 February 2003 with the final judgment of the appeal court. Yet, in assessing the reasonableness of the time that elapsed after the ratification date, due regard must be had to the state of proceedings at the material time. At the ratification date the criminal proceedings had been pending for approximately one year and eight months.

17. Thus, the period to be assessed in the present case lasted for six years, five months and ten days altogether for two levels of jurisdiction, of which four years, ten months and eight days fall within the Court's competence.

(b) Reasonableness of the length of the proceedings

18. The Court reiterates that an accused in criminal proceedings should be entitled to have his case conducted with special diligence. The Convention institutions have consistently taken the approach that Article 6, in respect of criminal matters, was designed to avoid that a person charged should remain too long in a state of uncertainty about his fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

19. The Court further 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).

20. As to the complexity of the present case, the Court accepts that, in principle, the remoteness of the events may cause certain difficulties in establishing and assessing facts related to the criminal offence. It should be noted, however, that the events in question had already been subject to judicial examination in 1992-1995, and were thus not completely unknown to the investigative and judicial authorities. Moreover, in the Court's view, the complexity of the case does not suffice, in itself, to account for the length of the proceedings and regard should be had to the other factors (see *Golovkin v. Russia*, no. 16595/02, § 39, 3 April 2008).

21. As to the conduct of the applicant, the Court is not convinced by the Government's argument that there were any delays which could be attributed to him and his counsel. Nothing in the submitted materials shows that their conduct at the hearings had been obstructive. The Court reiterates that at all events applicants cannot be blamed for taking full advantage of the resources afforded by national law in their defence (see *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A). It should thus be concluded, that studying the case documents and lodging applications, even in large numbers, during the course of the trial cannot be viewed as factors justifying the length of the proceedings at issue.

22. As regards the conduct of the authorities, the Court observes that there were substantial periods of inactivity for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. In particular, the Government failed to explain why it had taken more than three years and nine months, of which two years, nine months and twenty-seven days fall within the Court's competence *ratione temporis*, to conduct the additional investigation of the case, which had already been investigated in 1989-1995. Furthermore, no justification was provided for the period of one year and four months which elapsed while the appeal court examined the applicant's appeal.

23. 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). 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaints related to the period from 1992 to 1995

24. The applicant lodged several complaints related to the events of 1992-1995. He complained, in particular, of ill-treatment by the police and an ineffective investigation in this respect, of the unlawfulness of his arrest and of numerous procedural violations during the pre-trial and the trial proceedings.

25. The Court reiterates that it is only competent to examine complaints of violations of the Convention arising from events that have occurred after the Convention entered into force with respect to the High Contracting Party concerned. The Convention entered into force in respect of Russia on 5 May 1998.

26. It follows that these complaints are incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Complaints related to the period from 2001 to 2003

27. The applicant further complained that the domestic courts had failed to assess correctly the facts and evidence in the case.

28. The Court observes that it is not its task under the Convention to act as a court of appeal, or a so-called court of fourth instance, where decisions taken by domestic courts may be contested. It is the role of the latter to apply the domestic law and assess the evidence before them (see, amongst many authorities, *Vidal v. Belgium* judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 33, and *Edwards v. the United Kingdom* judgment of 16 December 1992, Series A no. 247-B, § 34).

29. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 1,500,000 euros (EUR) in respect of non-pecuniary damage.

32. The Government contested the claim as unsubstantiated.

33. The Court considers that the applicant must have sustained non-pecuniary damage, which would not be adequately compensated by the findings of a violation alone. However, the amount claimed by the applicant appears to be excessive. Ruling on an equitable basis, the Court awards the applicant EUR 1,500 plus any tax that may be chargeable on that amount.

B. Costs and expenses

34. The applicant did not claim reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

35. 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

1. *Declares* the complaint concerning the excessive length of the proceedings 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*
   (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, EUR 1,500 (one thousand five hundred euros), in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President