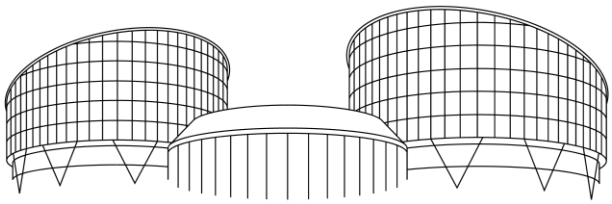

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ROSLOV v. RUSSIA

(Application no. 40616/02)

JUDGMENT

STRASBOURG

17 June 2010

FINAL

17/09/2010

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

In the case of Roslov v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 40616/02) 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 Andrey Nikolayevich Roslov ("the applicant"), on 1 October 2002.

2. The applicant, who had been granted legal aid, was represented by Ms K.A. Moskalenko, a lawyer practising in Moscow. 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. On 14 September 2005 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 the principal of a secondary school in Orel.

5. On 21 December 1998 the prosecutor of Orel initiated criminal proceedings for misappropriation against an unknown person, in which the applicant was questioned as a witness.

6. On 20 April 1999 the preliminary investigation was suspended due to the applicant's illness.

7. On 22 August 1999 the above decision was quashed for lack of lawful grounds, and the investigation resumed.

8. On 20 September 1999 the applicant was charged with misappropriation. An undertaking not to leave his place of residence was imposed on him at the same date.

9. On 21 September 1999 the applicant was invited to study the case file, which he continued to do till 4 October 1999.

10. On 8 October 1999 the case file was received by the Zheleznodorozhnyy District Court of Orel ("the District Court"). The first hearing did not occur until 17 December 1999 due to the applicant's illness and his legal counsel's other commitments.

11. On 17 December 1999 and 26 May 2000 the District Court granted the prosecutor's motions, the first one supported and the second one opposed by the applicant, to remit the case for additional investigation on account of a violation of procedural time-limits and incomplete examination of the case. Both decisions were set aside on appeal by the Orel Regional Court ("the Regional Court") on 18 January 2000 and 11 July 2000, respectively, and the case was remitted to the District Court for fresh examination.

12. From 11 July to 4 September 2000 the prosecutor kept the case file, while, according to the Government, deciding whether to bring an application for supervisory review of the Regional Court's decisions.

13. No hearings were held between 14 and 30 November 2000 due to the applicant's illness.

14. On 25 December 2000 the District Court again took a decision, upheld by the Regional Court on 6 February 2001, to grant the prosecutor's motion to remit the case for additional investigation. The applicant objected to the motion.

15. On 26 July 2001 the investigation authorities returned the case file to the District Court. A hearing was scheduled for 6 September 2001.

16. Between 6 September 2001 and 28 March 2002 five hearings were adjourned following the applicant's request to summon certain witnesses, and one hearing was adjourned to let the applicant's legal counsel study the case file. Two hearings did not take place due to the applicant's illness.

17. On 27 March 2002 the applicant waived his counsel alleging that the latter had not had enough time to study the case file.

18. On 28 March 2002 the District Court convicted the applicant as charged and gave him a suspended sentence of three years' imprisonment. The judgment was upheld on appeal by the Regional Court on 23 April 2002.

19. On 24 April 2002 the applicant lodged an application for supervisory review of the conviction.

20. On 28 November 2002 the Presidium of the Regional Court quashed the conviction by way of supervisory review on account of a violation of the applicant's right to prepare his defence and right to legal assistance and remitted the case to the District Court for fresh examination.

21. On 6 January 2003 the District Court fixed a hearing for 20 January 2003. The applicant appealed.

22. Between 20 January and 8 April 2003 the case file stayed at the Regional Court while the applicant's appeal was being examined.

23. Between 8 April 2003 and 2 February 2004 nine hearings did not take place due to the applicant's illness and his counsel's other commitments. Four hearings were adjourned following the applicant's request to summon certain witnesses.

24. On 9 February 2004 the District Court acquitted the applicant.

25. On 30 March 2004 the Regional Court overturned the acquittal on appeal on account of incorrect assessment of evidence and application of the law and remitted the case to the District Court for fresh examination.

26. On 26 April 2004 the hearing was adjourned to reissue the civil claimant's counsel's expired power of attorney.

27. Between 6 May and 26 July 2004 two hearings were adjourned to accommodate the applicant's schedule, summon certain witnesses and settle some formalities, and other two hearings were adjourned to let the applicant choose a new legal counsel and to give the latter time to study the case file.

28. No hearings were held in August and September 2004 because the defence witnesses' attendance could not be secured.

29. Between 22 October and 26 November 2004 three hearings were adjourned to grant the applicant time to study the case file and to prepare his last statement, and to summon certain witnesses at both parties' requests.

30. On 26 November 2004 the District Court terminated the proceedings in respect of a part of the charge for lack of *corpus delicti*, found the applicant guilty of abuse of office and relieved him of criminal liability as time-barred.

31. On 25 January 2005 the Regional Court set the conviction aside and terminated criminal proceedings against the applicant for lack of *corpus delicti*. The applicant was apprised of his right to bring proceedings for compensation of the damage incurred by the criminal proceedings against him.

32. On 24 April 2007 the Regional Court took a final decision to grant in part the applicant's claims for compensation for pecuniary damage resulting from lost wages, the cost of legal assistance and medical care and awarded him 30,847 roubles.

33. On 1 August 2007 the Regional Court in the final instance awarded the applicant 300,000 roubles as compensation for non-pecuniary damage sustained as a result of unlawful prosecution.

THE LAW

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

34. 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. Admissibility

35. The Government submitted that the applicant had lost his victim status having obtained compensation for non-pecuniary damage from the national authorities. They also alleged that he had not exhausted the available domestic remedies by failing to complain to higher court instances about the length of the proceedings. In addition, the Government disagreed that the applicant could be understood to complain about the proceedings that continued after the date of his application to the Court.

36. The applicant insisted that he was still a victim of the alleged violation. He did not comment on the rest of the Government's assertions.

37. The Court reiterates that, according to its established case-law, "a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a victim, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see, among many other authorities, *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

38. Turning to the present case, the Court observes that even though the domestic courts awarded the applicant compensation for non-pecuniary damage inflicted by criminal proceedings against him, the award was not made in connection with undue length of the proceedings. Therefore, the Court rejects the Government's assertion that the applicant has lost his victim status under the Convention.

39. As to the Government's argument concerning the applicant's alleged failure to exhaust the available domestic remedies, the Court reiterates that according to its previous findings there was no effective remedy under Russian law capable of affording redress for the unreasonable length of criminal proceedings (see *Borzhonov v. Russia*, no. 18274/04, §§ 36, 22 January 2009). The Government failed to indicate in the present case how complaining to higher judicial authorities could have expedited the determination of the applicant's case or otherwise provided him with

adequate redress. Nor did they supply any example from domestic practice confirming effectiveness of this measure.

40. Finally, the Court remains unconvinced by the Government's contention that the applicant's complaint concerning the part of the proceedings that took place after the date of his initial application, 1 October 2002, should not be examined. It has been a long-standing practice of the Court that the period covered by the reasonable time guarantee in a particular case runs until the judgment is given by the Court (see, among others, *Bordikov v. Russia*, no. 921/03, 8 October 2009; *Polonskiy v. Russia*, no. 30033/05, 19 March 2009).

41. The Court notes that the 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

42. As to the substance of the complaint, the Government contended that the length of the proceedings in the present case had been reasonable, having regard to the applicant's numerous incidents of illness, his requests to adjourn court hearings and to remit the case for further investigation, as well as his application for supervisory review after the first set of proceedings. They also argued that a particular notice should be made of the fact that the applicant had not been detained pending trial.

43. The applicant contested the Government's arguments. In particular, he alleged that the de facto criminal investigation against him had been opened on 21 December 1998 and that the court had remitted the case for further investigation at the prosecutor's motions. He also noted that the cumulative length of his sick leaves of 42 days could not justify the length of the criminal proceedings against him.

44. The Court is satisfied that the criminal proceedings against the applicant commenced on 20 September 1999. Contrary to the applicant's submission, questioning him as a witness before this date did not amount to a formal charge. Even assuming that the authorities had suspected him of the wrongdoing, the applicant did not demonstrate that he had been substantially affected by it.

45. The Court observes that the criminal proceedings against the applicant lasted from 20 September 1999 until 25 January 2005, which spanned the investigation stage and the judicial proceedings, where the courts reviewed the case three times at two levels of jurisdiction. However, the period from 23 April to 28 November 2002 has to be excluded from the overall length as the case was being examined on application for supervisory review and not pending. Accordingly, the period to be taken into consideration amounted approximately to four years and nine months.

46. 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 applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

47. The Court observes that the present case was not complex, having involved a charge of one count concerning a single incident.

48. As regards the applicant's conduct, the Court takes cognisance of the Government's submission that the proceedings were mainly adjourned on account of the applicant's illness, his counsel's other commitments and the defence's requests to summon additional witnesses. The Court accepts that the applicant cannot be blamed for taking advantage of the procedural rights available to him. At the same time it is of the opinion that the State cannot bear the responsibility for this either. Accordingly, the Court concludes that a cumulative delay of one year and eight months can be attributable to the applicant.

49. As regards the conduct of the authorities, the Court is mindful of the fact that a delay of one year and four months was caused by judicial consideration of the prosecutor's three motions to remit the case for further investigation, only one of which was supported by the applicant. The authorities' omissions that subsequently led to such an investigation also contributed to this delay.

50. However, it notes that with the exception of this delay the authorities demonstrated sufficient diligence in handling the proceedings. The hearings were scheduled regularly and the adjournments, as noted above, were normally for reasons not attributable to the court. It also recalls that the domestic courts examined the merits of the case three times at two levels of jurisdiction.

51. Regard being had to the overall diligence displayed by the authorities, the substantial delays attributable to the applicant and the levels of jurisdiction involved, the Court considers that the "reasonable time" requirement was not breached in the present case.

II. OTHER ALLEGED VIOLATIONS

52. The applicant complained under Article 6 § 1 that he had not been summoned to certain hearings in which the court examined his remarks on the minutes of previous hearings and that the court had wrongly established the facts in his case; under Article 6 § 2 that presumption of innocence in his respect had been violated by certain statements of the Department of Education of Orel; under Article 6 § 3 (b) and (c) that in the first round of proceedings he had not been afforded a reasonable opportunity to prepare his defence, nor had he had legal assistance because of dismissal of his

request to grant time to his lawyer to study the case file; under Article 6 § 3 (d) that in the first round of proceedings the courts had refused to obtain the attendance of witness K; under Article 2 of Protocol No. 4 that the obligation not to leave his place of residence imposed on him had been disproportionate.

53. The Court considers that the complaint under Article 6 § 1 of wrong assessment of evidence is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

54. As for the complaint under the same provision of lack of notification of certain hearings in which the court examined the applicant's remarks on hearing minutes, the applicant did not raise this grievance in his grounds of appeal. It follows that this complaint must be rejected on the ground of non-exhaustion of domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

55. The applicant did not raise the complaint under Article 6 § 2 of lack of presumption of innocence in his grounds of appeal, nor did he bring a civil action against the alleged offenders. It follows that this complaint also must be rejected on the ground of non-exhaustion of domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

56. As regards the complaint under Article 6 § 3 (b) and (c) of lack of time to prepare defence and lack of legal assistance, the applicant is no longer a victim under the Convention, as the relevant judgment had been quashed by the supervisory instance exactly for these reasons. The complaint must be rejected in accordance with Article 34 of the Convention.

57. As for the complaint under Article 6 § 3 (d), the applicant did not raise the issue in his grounds of appeal, nor did he explain in his application why questioning of this witness had been necessary for fair consideration of the case. It follows that this complaint must be rejected in accordance with Article 35 §§ 1 and 3 of the Convention.

58. Regarding the complaint under Article 2 of Protocol No. 4 of restriction on freedom of movement, the applicant did not appeal the court's decision to impose this measure of restraint. In any case, this restriction was imposed in the interest of justice and does not appear disproportionate to the aims pursued. It follows that this complaint must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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 no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 17 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President