



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

FIRST SECTION

CASE OF PLAKSIN v. RUSSIA

(Application no. 14949/02)

JUDGMENT

STRASBOURG

29 April 2004

FINAL

10/11/2004

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 Plaksin v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 6 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 14949/02) 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 Mr Aleksandr Sergeyevich Plaksin, a Russian national. He was represented before the Court by Mr A. Romanov, a lawyer practising in St. Petersburg.

2. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 7 May 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1965 and lives in the town of Pyatigorsk.

5. On 28 October 1996 a fire broke out in the applicant's flat. The possessions of the applicant's family were destroyed and the applicant's daughter was severely injured.

6. On 15 April 1997 (on 6 July 1998, according to the Government) the applicant and his wife brought a civil action for damages before the Pyatigorsk Town Court of the Stavropol Region against the local housing maintenance authority, the "Stavropol Tobacco Company" that rented the

flat where the fire had begun, and Mr S., an employee of that company whose negligence during gas welding had apparently caused the fire.

7. On 6 August 1998 the applicant and his wife requested the court to summon additional witnesses on their behalf. The hearing was adjourned until 24 August.

8. On 24 August 1998 the Pyatigorsk Town Court stayed the proceedings in the applicant's action pending the completion of the criminal investigation against Mr S.

9. On 18 September 2001 the criminal case against Mr S. was terminated because of an amnesty act. Mr S. disagreed with this decision and complained to the regional prosecutor's office.

10. On unspecified dates in 1999 and 2000 Judge Ivleva of the Pyatigorsk Town Court confirmed to the applicant that the proceedings were still pending.

11. According to the Government, on 26 February 2001 the proceedings in the applicant's case were resumed. On 28 February 2001 the applicant and his wife increased their claims to take account of their loss of earnings and medical expenses incurred in connection with the treatment of their injured child.

12. On 15 March 2001 the court took statements by the parties and fixed a new hearing for 29 March after the applicant and his wife had left the courtroom.

13. On 29 March 2001 the hearing was adjourned until 5 April as both parties failed to appear.

14. On an unspecified date the applicant's lawyer complained to the Stavropol Regional Court about the excessive length of proceedings in the applicant's case. On 4 April 2001 the Stavropol Regional Court replied that "a regional court cannot interfere with the proceedings pending before [lower] courts of the region".

15. On 5 April 2001 the court stayed the proceedings and ordered an expert examination of the commercial value of lost possessions. After both parties refused to pay for the examination, on 19 October 2001 the proceedings were resumed.

16. On 24 October 2001 the Pyatigorsk Town Court gave its judgment. It ordered the defendants to pay the applicant and his wife compensation for damage to their property and non-pecuniary damage to their daughter. The court dismissed the applicant's request concerning compensation for non-pecuniary damage sustained by the applicant and his wife and for their loss of earnings.

17. On 16 November 2001 the applicant's lawyer appealed against the judgment. The defendant company also appealed.

18. On 19 December 2001 the Stavropol Regional Court quashed the judgment of 24 October 2001 on procedural grounds and remitted the case

for a new examination. On 3 January 2002 the case was assigned to a new judge.

19. On 2 February 2002 the applicant's lawyer complained to the President of the Stavropol Regional Court that neither the applicant, nor himself had been given a copy of the judgment of 19 December 2001, which had allegedly impaired their ability to prepare their case before the first instance court.

20. On 6 February 2002 the Pyatigorsk Town Court stayed the proceedings and ordered a third medical examination of the applicant's injured daughter. The applicant's lawyer submits that a copy of this decision has never been made available to him or to the applicant under various logistical pretexts ("the judge is too busy"; "there is no photocopying machine"; "the case-file is not bound", etc.)

21. On 27 May 2002 (on 27 June, according to the Government) the medical examination was completed.

22. On 5 July 2002 (on 8 July, according to the Government) the Pyatigorsk Town Court resumed the proceedings and in the same hearing made a decision to stay the proceedings again and ordered a new forensic medico-social expert examination. The applicant submits that he objected to the examination; however, in the transcript of the hearing it was recorded that "the plaintiff leaves this matter for the court to decide".

23. On 14 October 2002 the examination was completed. On 21 October 2002 the proceedings were resumed.

24. On 23 October 2002 the Pyatigorsk Town Court stayed the proceedings and on the defendants' motion ordered a new pyrotechnic expert examination.

25. On 30 October 2003 the Pyatigorsk Town Court delivered a judgment in the applicant's favour. The defendant company lodged an appeal.

26. On 14 January 2004 the Stavropol Regional Court, at the request of the applicant's representative, extended the time-limit for lodging an appeal.

27. The appeal proceedings in the applicant's case are now pending.

Separate proceedings concerning compensation for damage

28. On 31 August 2001 the applicant and his wife brought an action before the Pyatigorsk Town Court against the Federal Treasury of the Russian Federation for compensation for non-pecuniary damage resulting from unlawful court actions. The plaintiffs claimed that damage was caused by excessive delays in the examination of their case, the court's failure to properly prepare the case for examination, unjustified adjournments of the hearing and other procedural irregularities.

29. On 13 September 2001 the Pyatigorsk Town Court disallowed the action citing the court's lack of territorial jurisdiction.

30. On 17 October 2001 the Stavropol Regional Court upheld the decision of 13 September 2001. The court pointed out that the plaintiffs had failed to comply with the rules on territorial jurisdiction of courts, and they should have brought their action before a court in Moscow where the Federal Treasury was located.

31. The applicant did not pursue these proceedings at that time because, on 24 October 2001, the Pyatigorsk Town Court gave its aforementioned judgment.

THE LAW

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

32. The applicant complained under Articles 6 and 8 of the Convention that the proceedings in his civil action had been excessively long. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

33. The period to be taken into consideration began only on 5 May 1998 when the recognition by Russia of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted more than five years and six months.

A. Admissibility

34. The Government submit that the proceedings are still pending before the domestic courts, and the applicant's complaints are inadmissible because they are premature.

35. The Court notes that according to the Convention organs' constant case-law complaints concerning length of procedure can be brought before it before the final termination of the proceedings in question (see, *e.g.*, *Todorov v. Bulgaria* (dec.), no. 39832/98, 6 November 2003, with further references). Accordingly, the Government's objection must be dismissed.

36. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

37. The Government submit that the length of proceedings in the applicant's case was justified because of the need to carry out a thorough, comprehensive and objective examination of the facts, for which purpose the courts had to stay the proceedings and order a number of expert examinations. The Government contend that the applicant did not object to these orders and did not appeal against them to a higher court. They claim that the applicant was mainly responsible for the delays because he had requested additional witnesses to be summoned, failed to appear before the court or walked out of the room without permission and failed to appeal against procedural orders to a higher court.

38. The applicant challenges the Government's statements. He submits that the case was not particularly complex: it was an ordinary tort action involving strict liability of the defendants for the use of hazardous devices (a gas-operated welder in the instant case). In his view, the Government's statements are very generic and contain no facts or references to specific measures aimed at expediting the proceedings that have lasted so far for six years. The applicant contends that he objected to all expert examinations, save for one ordered on 5 April 2001. In any event he could not be blamed for a failure to appeal against the procedural orders because the responsibility for the compliance with procedural deadlines lies with the court and he has attempted in good faith to expedite the proceedings by lodging a civil action for compensation for delays. He only requested additional witnesses once, on 6 August 1998, which request resulted in an adjournment of the hearing for mere 18 days, and the Government's allegations about his failures to appear for a hearing are not supported by references to specific dates or by evidence, such as court summons. Finally, he alleges that the judges of the town court abused their position to delay the examination of his case.

39. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

40. The Court considers that the case was not particularly difficult to determine. Consequently, it takes the view that an overall period of more than five and a half years could not, in itself, be deemed to satisfy the "reasonable time" requirement in Article 6 § 1 of the Convention.

41. The Court also notes that the Government did not advance any explanation for the period of the courts' inactivity between 24 August 1998 and 26 February 2001 when the proceedings were stayed pending the

outcome of the criminal investigation against Mr S. Given that the defendant company had strict liability for the damage caused by its employees, which the Pyatigorsk Town Court confirmed in its judgment of 24 October 2001, there was no apparent need to adjourn the proceedings for more than two years and six months until the criminal investigation was complete.

42. The Court does not find convincing the Government's argument that the applicant failed to make full use of the procedures available to him under domestic law to challenge the orders of the first instance court to a higher court. The applicant clearly objected to court-appointed repetitive expert examinations of the same matters and to appeal against procedural orders would undeniably have created further delays in the proceedings. On the contrary, the Court takes note of the applicant's requests for expedition lodged with the higher court and his attempt to seek compensation for unreasonable delays.

43. Finally, in the light of the generic and unsubstantiated nature of the Government's observations the Court does not consider it established that the applicant has contributed to the delays through his alleged failures to appear at a hearing or stay until its end.

44. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

45. The applicant further complained that in Russia there was no court to which application could be made to complain about the excessive length of proceedings. This complaint falls to be examined under Article 13 of the Convention which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

46. The Government's objection to the admissibility of this complaint is identical to the one raised under Article 6 § 1 (see § 34 above).

47. The Court recalls that an effective remedy required by Article 13 of the Convention is intended to be capable of providing the applicant, in particular, with adequate redress for delays that had already occurred. In the light of the above finding that the proceedings in the applicant's case had been plagued with unjustified delays already by the time the application was lodged (see §§ 41-44 above), the Court considers that this complaint is not premature. Accordingly, the Government's objection must be dismissed.

48. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

49. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, 29 January 2004, § 64). In particular, the Government did not claim that the proceedings against the Federal Treasury for compensation for non-pecuniary damage caused by allegedly unlawful court actions could, had the applicant pursued them (see §§ 28-31 above), provide the applicant with adequate redress as required by Article 13.

50. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed USD 100,000 and EUR 10,000 in respect of pecuniary and non-pecuniary damage.

53. The Government considered this claim to be excessive and unreasonable.

54. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant suffered distress, anxiety and frustration exacerbated by the unreasonable length of the proceedings. Making its assessment on an equitable basis, it awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

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

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

C. Default interest

57. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,400 (two thousand four 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;

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 29 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President