



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

THIRD SECTION

CASE OF ZIMENKO v. RUSSIA

(Application no. 70190/01)

JUDGMENT

STRASBOURG

23 June 2005

FINAL

23/09/2005

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 Zimenko v. Russia,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER,
Mrs A. GYULUMYAN, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 2 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 70190/01) 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 Yuriy Aleksandrovich Zimenko (“the applicant”), on 10 March 2001.

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

3. On 21 June 2004 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1966 and lives in Ekaterinburg.

5. On 27 May 1997 the applicant instituted proceedings to challenge his dismissal from employment. He also claimed payment of his salary in respect of the period of enforced unemployment and damages.

6. On 13 October 1997 the Kirovskiy District Court of Ekaterinburg dismissed the applicant's claim. The applicant appealed against the judgment.

7. On 23 December 1997 the Sverdlovsk Regional Court quashed the judgment and remitted the case for a fresh examination. A new hearing on the merits was fixed for 4 March 1998.

8. Between 4 March 1998 and 8 September 1998 the hearing was postponed four times because of the parties' failure to appear.

9. Between 8 September 1998 and 21 December 1998 the hearing was postponed three times because of the defendant's failure to appear.

10. Between 21 December 1998 and 17 May 1999 the hearing was postponed three times: once for less than two months because of the parties' failure to appear and twice for an overall period of over three months because the judge was absent on sick leave.

11. On 17 May 1999 the hearing was postponed to 23 August 1999 because the judge was engaged in unrelated proceedings.

12. On 23 August 1999 the hearing was postponed to 26 August 1999 at the applicant's request, so that the court could obtain additional evidence.

13. On 26 August 1999 the Kirovskiy District Court of Ekaterinburg partially granted the applicant's claim. The applicant was not provided with a copy of the judgment. On 24 February 2000 and 10 April 2000 he filed two complaints about the failure to provide him with a copy of the judgment, to the Kirovskiy District Court of Ekaterinburg and to the Chairman of the Sverdlovsk Regional Court respectively.

14. On 28 April 2000 the Chairman of the Kirovskiy District Court of Ekaterinburg sent him a copy of the judgment. On an unspecified date the applicant appealed against the judgment.

15. On 20 June 2000 the Sverdlovsk Regional Court quashed the judgment of 26 August 1999 on appeal and remitted the case for a fresh examination. A new hearing on the merits was fixed for 18 December 2000.

16. On 18 December 2000 the hearing was postponed to 21 February 2001 at the applicant's request.

17. On 21 February 2001 the hearing was postponed to 25 April 2001 because of the parties' failure to appear.

18. Between 25 April 2001 and 23 October 2001 the hearing was postponed twice at the defendant's request.

19. On 23 October 2001 the hearing was postponed to 4 January 2002 because the judge was absent on sick leave. A new date for the hearing was then fixed for 10 January 2002.

20. On 10 January 2002 the hearing was postponed to 31 January 2002 on account of the parties' failure to appear. On 31 January 2002 a new hearing was fixed for 5 March 2002. The hearing was then postponed to 27 March 2002 because the court ordered the applicant to submit a clarified statement of claim.

21. On 27 March 2002 the Kirovskiy District Court of Ekaterinburg declared the applicant's dismissal unlawful, ordered that he be paid his salary in respect of the period of enforced unemployment and partially granted the claim for damages. The applicant appealed against the judgment.

22. On 20 June 2002 the Sverdlovsk Regional Court reversed the judgment in the part relating to the payment of the applicant's salary on the grounds that the trial court had miscalculated it, and remitted the case for a fresh examination. A new hearing on the merits was fixed for 16 October 2002.

23. Between 16 October 2002 and 30 December 2003 the hearing was postponed three times for an overall period of ten months because the judge was engaged in unrelated proceedings and once for a period of over four months because of the defendant's failure to appear. It appears that no hearing took place on 30 December 2003. A new date for the hearing was fixed for 26 March 2004.

24. On 26 March 2004 the hearing was postponed to 22 April 2004 because of the defendant's failure to appear. The court filed a number of requests to establish the defendant's whereabouts.

25. On 22 April 2004 the Kirovskiy District Court of Ekaterinburg terminated the proceedings concerning the applicant's claim due to the liquidation of the defendant company.

THE LAW

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

26. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement provided in 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..."

27. The period to be taken into consideration began only on 5 May 1998, when the Convention came into force in respect of Russia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the proceedings in May 1998.

The period in question ended on 22 April 2004. It thus lasted 5 years, 11 months and 17 days. The overall length of the proceedings, including the period before 5 May 1998, is 6 years, 10 month and 26 days.

A. Admissibility

28. The Government submitted that the applicant was no longer a victim since the domestic courts had granted his claim.

29. The applicant contested the Government's statement. He maintained, *inter alia*, that the domestic courts had not granted his claim for the payment of his salary.

30. However, even assuming that the partial granting of the applicant's claim may be regarded as a favourable outcome of the proceedings, the Court notes that such an outcome was not directly connected with the length of the proceedings and cannot therefore be considered, either directly or by implication, as a recognition of a violation of Article 6 or as reparation for the damage allegedly caused to the applicant by the length of the proceedings (see, *mutatis mutandis*, *Byrn v. Denmark*, no. 13156/87, Commission decision of 1 July 1992, Decisions and Reports (DR) 74, p. 5). Accordingly, the Government's objection should be dismissed.

31. The Court notes that the application 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

32. The Government submitted that the delays in the proceedings were caused by the defendant and by the applicant himself who, despite having been summoned by the courts, had failed to appear at the hearings on a number of occasions. Furthermore, the delays were due to the fact that the applicant had altered his claim several times and had requested the court to obtain additional evidence. The Government concluded that the State could not be held responsible for the lengthy consideration of the applicant's claim.

33. The applicant maintained that the Government's allegations as regards his failure to appear at the hearing despite the summons were unsubstantiated. He claimed that he did not appear at the hearings only because he had never been notified of them in due time and that the Government had failed to produce any evidence of such notification. He further submitted that a hearing was postponed due to his request to obtain additional evidence only once, on 23 August 1999, for three days. In his view, taking into account the overall length of the proceedings, such a delay should not even be taken into consideration. The applicant contended that the length of the proceedings was "unreasonable".

34. 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, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

35. The Court considers that the case was not particularly difficult to determine. Consequently, it takes the view that an overall period of over six years could not, in itself, be deemed to satisfy the “reasonable time” requirement in Article 6 § 1 of the Convention.

36. The Court notes that the parties disagreed on certain factual matters concerning the applicant's notification of the hearings. However, the Court does not find it necessary to decide on this matter because of the following considerations. The Court notes that between 5 May 1998 and 22 April 2004 the case was postponed a number of times at the parties' requests or because of their failure to appear at the hearing. The aggregated length of such delays is approximately one year and nine months. The Court further notes that a period of three years and two months falling within its competence *ratione temporis* remains to be accounted for. Within this period the aggregated length of the delays incurred because of the judge's sick leave and participation in unrelated proceedings, including the delay caused by the courts' failure to provide the applicant with a copy of the first instance judgment in due time, is over two years. The Court also notes that on 20 June 2002 the Sverdlovsk Regional Court reversed in part the judgment of the Kirovskiy District Court of 27 March 2002 on appeal and remitted the case for a fresh examination because the first instance court had miscalculated the amount to be paid to the applicant. Moreover, the domestic courts continued the proceedings even after the defendant company had ceased to exist. It follows that the above delays were caused by repeated omissions by the domestic courts. Furthermore, the proceedings were eventually terminated because of the liquidation of the defendant company, and no final judgment on the merits was delivered in respect of the applicant's claim for payment of his salary.

37. The Court recalls that employment disputes generally require particular diligence on the part of the domestic courts (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17). Having regard to the overall length of the proceedings and taking into account the period preceding the entry into force of the Convention (see *Ventura v. Italy*, no. 7438/76, Commission decision of 9 March 1978, Decisions and Reports (DR) 12, p. 38), the Court concludes that the applicant's case was not examined within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 10,000 euros (EUR) in compensation for non-pecuniary damage.

40. The Government did not express an opinion on the matter.

41. The Court accepts that the applicant suffered distress, anxiety and frustration caused by the unreasonable length of the proceedings. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

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

43. Accordingly, the Court makes no award under this head.

C. Default interest

44. 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*
 - (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 3,000 (three thousand euros) in compensation for non-pecuniary damage, to be converted into the

national currency of the respondent State 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 23 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President