



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

FIRST SECTION

CASE OF VASYAGIN v. RUSSIA

(Application no. 75475/01)

JUDGMENT

STRASBOURG

22 September 2005

FINAL

22/12/2005

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 Vasyagin v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 75475/01) 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, Vladimir Petrovich Vasyagin (“the applicant”), on 6 July 2001.

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

3. On 13 February 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

I. THE CIRCUMSTANCES OF THE CASE

1. Proceedings prior to 5 May 1998 (the date of the entry into force of the Convention in respect of Russia)

4. The applicant was born in 1932 and lives in Moscow. He is retired.

5. On 5 October 1993 the applicant bought a motorbike, produced in Belarus. The motorbike was sold by a Russian dealer company under a

service warranty. The next day the motorbike got out of order. The service centre, indicated by the dealer company, refused to repair the motorbike.

6. On 2 December 1993 the applicant brought an action against four defendants: the dealer company, the factory having produced the motorbike, based in Belarus, the service centre, and the Moscow Bureau of Technical Expertise. On 4 October 1994 the Meshchanskiy District Court of Moscow ordered the dealer company to pay damages to the applicant. The defendant appealed. On 28 March 1995 the Moscow City Court quashed the judgment and remitted the case to the first instance court.

7. In 1995-1997 hearings were adjourned on five occasions due to both parties' failure to appear, on two occasions – due to the defendant's failure to appear, and on six occasions – because of the judge having been busy with other cases. Finally, on 12 November 1997 the Meshchanskiy District Court severed the applicant's claims against the service centre. At the same time the court dismissed the applicant's claims against the dealer company. On 12 January 1998 the Moscow City Court upheld this judgment. The proceedings against the service centre continued.

2. Proceedings after 5 May 1998

8. In the proceedings against the service centre no hearings were held between 12 January 1998 and 12 April 1999. In the following months the examination of the case was adjourned on three occasions due to the defendant's failure to appear.

9. By a default judgment of 20 December 1999 the Meshchanskiy District Court held against the service centre awarding the applicant damages in the amount of 261,690 Russian roubles (RUR). Since no appeal followed within the time-limits established by law, on 31 December 1999 the judgment became final. The court issued an execution warrant and opened the enforcement proceedings.

10. On 6 February 2000 the defendant lodged an appeal seeking, *inter alia*, to restore the time-limits allowed for the appeal. On 9 March 2003 the court decided to restore the time-limits and accepted the statement of appeal for examination on the merits. In the meantime RUR 30,267 were recovered from the service centre on the account of the amount due to the applicant under the judgment of 20 December 1999.

11. By the decision of 18 May 2000 the Moscow City Court quashed the judgment of 20 December 1999, stating that the first instance court had failed to properly notify the defendant about the hearings. The case was remitted to the first instance court for new examination.

12. By a judgment of 20 June 2000 the Meshchanskiy District Court dismissed the applicant's action against the service centre. The court also ordered the applicant to reimburse the amount recovered from the service centre pursuant to the judgment of 20 December 1999.

13. On 26 July 2000 the Public Prosecutor of the Meshchanskiy District of Moscow lodged with the Moscow City Court an appeal on behalf of the applicant. On 12 September 2000 the Moscow City Court quashed the decision of 20 June 2000 and remitted the case to the first instance.

14. After the remittal of the case, the proceedings were stayed for a certain period of time. Within this period higher judicial authorities were examining the materials of the case-file for the purpose of bringing a supervisory review appeal against the decision of 12 September 2000. However, no supervisory review proceedings followed.

15. The first hearing on the merits was scheduled for 2 October 2001. However, on this date the court decided to adjourn the case for two months due to the plaintiff's failure to appear. In the subsequent months the examination of the case was adjourned on six occasions due to the defendants' failure to appear or the absence either of the presiding judge (adjourned from 27 November 2001 until 29 January 2002) or the lay judges (adjourned from 20 May 2002 until 26 June 2002).

16. In a letter of 7 February 2001, the Vice-President of the Moscow City Court informed the President of the Meshchanskiy District Court that the applicant's claim against the producer factory remained unresolved since 1995.

17. On 3 October 2002 the first instance court, by a default judgment, satisfied the applicant's claim against the producer factory and rejected his claim against the dealer company.

18. The producer factory appealed against this judgment. On 28 January 2003 the Moscow City Court quashed the judgment of 3 October 2002 and remitted the case to the first instance.

19. In the following months the case was adjourned several times. Thus, on 16 April 2003 the case was adjourned due to the defendant's failure to appear. On 1 July 2003 the court adjourned the case, ordering the plaintiff (the applicant) to clarify his claims, in particular, to indicate the amounts of damages claimed from each defendant. On 4 August 2003 the case was adjourned because of the judge having been busy with another case.

20. In August 2003 the applicant complained about the length of proceedings to the Moscow City Court. In a reply letter of 30 September 2003 the Vice-President of the Moscow City Court acknowledged that since 1993 the dispute remained unresolved. The Vice-President reassured the applicant that the Moscow City Court would take charge of this case.

21. On 3 September 2003 the applicant requested the court to adjourn the next hearing because of his absence from Moscow at the relevant dates. On 29 September 2003 the case was adjourned until 31 October 2003.

22. On 31 October 2003 the first instance court dismissed the applicant's complaints against the service centre and the producer factory. The court found that, although the name and address of the service centre had been

indicated by the dealer company in the guarantee slip, there existed no contract imposing an obligation on the service centre to repair defective goods sold by the dealer company. As to the producer factory, based in Belarus, the court found that under the applicable Belarus law the producer could not have been held liable directly before the consumer of the goods. On 20 February 2004 the Moscow City Court upheld this decision.

II. RELEVANT DOMESTIC LAW

23. Article 282 of the Code of Civil Procedure of 1964 (in force at the material time) provides that the first instance court decision on the merits of the case can be appealed against (*обжалованы в кассационном порядке*) by the parties or other participants of the proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

24. The applicant complained about the length of domestic proceedings. He also complained, in substance, about the absence of effective domestic remedies in this respect. The applicant's complaints fall to be examined under Articles 6 § 1 and 13 of the Convention, which read, insofar as relevant, as follows:

Article 6

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

Article 13

"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."

25. The Government contested the applicant's submissions. They indicated that the length of the proceedings in the present case could be explained by "systematic failures of the parties to attend the hearings", the complexity of the case, as well as by the fact that one of the defendants was a foreign company. Therefore, in the Government's submissions, the applicant's complaint under Article 6 § 1 was manifestly ill-founded.

26. As regards the complaint under Article 13 of the Convention, the Government argued that the applicant had had effective remedies at his

disposal, and, moreover, had used them more than once. Article 282 of the Code of Civil Procedure, as in force at the relevant time, provided that any procedural act of a judge could be appealed against. The Government submitted that on several occasions the applicant had successfully challenged the judgments in his case before higher-instance courts, making use of this provision. Therefore, this complaint was also manifestly-ill-founded.

27. The applicant, in reply, maintained his complaints.

28. The Court observes that the proceedings commenced on 2 December 1993 and ended on 20 February 2004. Thus, the overall length of the proceedings at issue was ten years, two months, and eighteen days. The Court notes that part of this period lies outside the Court's jurisdiction *ratione temporis* as the Convention came into force in respect of Russia on 5 May 1998. However, when deciding whether the total length of the proceedings was "reasonable" regards must be had to the state of the case on 5 May 1998 (see *Sawicka v. Poland*, no. 37645/97, §§ 42-43, 1 October 2002). After the entry into force of the Convention with respect to Russia the proceedings lasted five years, nine months and fifteen days.

A. Admissibility

29. The Court observes that the applicant's complaints about the length of proceedings and absence of domestic remedies in this respect are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

30. 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).

31. As to the complexity of the present case, the Court observes that the dispute was a relatively simple one and did not involve complex factual or legal analysis: the domestic courts had to decide which one of the three co-defendants - the dealer company, the service centre or the producer - should have been held liable for the defects of the motorbike, bought by the applicant. It is true that one of the co-defendants, the producer, was a legal

entity registered in Belarus. However, this fact cannot explain why the case required ten years of examination.

32. As to the conduct of the parties, the Court notes that by 5 May 1998 the proceedings had lasted more than four years and five months. The case had been examined in two instances and had reached an advanced stage in the proceedings. However, it took the domestic courts another five years, nine months and fifteen days to give a final answer to the applicant's case. Within this period the hearings were adjourned at the applicant's request or because of his failure to appear three times, for an overall period of six months and eight days. The rest of the length is attributable to the State authorities or the defendant's failure to appear at the hearings. Thus, the delay between 20 December 1999 and 20 June 2000 was due to the district court's failure to notify the defendant about the hearing. Further, the courts held no hearings between 12 January 1998 and 12 April 1999, and between 12 September 2000 and 2 October 2001. The Government did not present any plausible explanation for these periods of inactivity. In the following period the case was adjourned on three occasions due to the judges' participation in other proceedings and the absence of lay judges. In this respect the Court recalls that it is the States' duty to organise their judicial systems in such a way that their courts can meet the requirement of Article 6 § 1 (see *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15). Therefore, counting from 5 May 1998, the State may be held responsible for an overall delay of two years, ten months and four days.

33. Finally, the Court notes that whereas the subject-matter of the civil dispute at issue may not have been of crucial importance to the applicant, it nevertheless represented a certain value for him, having in mind, in particular, the fact that the applicant is a pensioner.

34. Thus, in the circumstances of the case, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

2. Article 13 of the Convention

36. 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 *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

37. In their submissions the Government relied on Article 282 of the Code of Civil Procedure, as providing an effective remedy against the delays in the proceedings. The Court notes that this article deals with the appeals against decisions of a judge on the merits of the case. The Government did not explain how the appeal on the merits of the case could have expedited the proceedings or how the applicant could have obtained

relief – either preventive or compensatory – by having recourse to a higher judicial authority on the subject-matter of the case. It notes that the Government did not indicate any other remedy that could enforce her right to a “hearing within a reasonable time” as guaranteed by Article 6 § 1 of the Convention.

38. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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.”

40. After the communication of the application to the respondent Government, the applicant was invited to submit his claims for just satisfaction under Article 41 of the Convention. However, he failed to do so. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* unanimously that there has been a violation of Articles 6 § 1 and 13 of the Convention;
3. *Decides* to make no award under Article 41 of the Convention.

Done in English, and notified in writing on 22 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President