



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

FIRST SECTION

CASE OF SOKOLOV v. RUSSIA

(Application no. 3734/02)

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 Sokolov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *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. 3734/02) 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 Mikhail Aleksandrovich Sokolov ("the applicant"), on 25 December 2001.

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 5 January 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Moscow.

1. Labour dispute

5. In July 1996 the applicant sued his former employer, a private company, for wage arrears and compensation for non-pecuniary damage.

6. On 31 January and 4 December 1997 the Nikulinskiy District Court of Moscow issued judgments in the applicant's action which were subsequently quashed on appeal.

7. The applicant amended his claims seeking reinstatement because he had been meanwhile dismissed.

8. Between 13 July 1998 and 18 May 1999 the Nikulinskiy District Court of Moscow listed thirteen hearings, of which the hearing on 13 July 1998 was adjourned due to the applicant's absence and eight hearings were adjourned so as to give time to his former employer to produce additional evidence or to read materials submitted by the applicant. The hearings of 3 and 18 March 1999 were adjourned due to the employer's absence.

9. On 8 June 1999 the Nikulinskiy District Court of Moscow allowed the applicant's claim in part.

10. On an unspecified date the applicant complained about the bailiffs' failure to enforce the judgment of 8 June 1999. On 17 November 1999 the Nikulinskiy District Court of Moscow confirmed that the bailiffs had failed to comply with the domestic time-limit for the enforcement of judgments.

11. On 26 November 1999 the Moscow City Court upheld the judgment of 8 June 1999. The judgments remained unenforced.

12. On 14 December 2000 the Presidium of the Moscow City Court quashed the judgments of 8 June and 26 November 1999 and remitted the case to a differently composed bench.

13. On 23 January 2001 the President of the Nikulinskiy District Court assigned the case to a judge.

14. Of nineteen hearings scheduled between 7 February 2001 and 19 December 2002 two hearings were adjourned on the applicant's request. Six hearings were adjourned due to the defendant's failure to attend and five hearings were postponed as to give the defendant time to submit additional evidence. Three hearings were adjourned because the presiding judge was on leave or was involved in other proceedings.

15. On 22 January 2003 the Nikulinskiy District Court of Moscow reinstated the applicant, awarded him the arrears and a partial compensation for non-pecuniary damage.

16. On 28 July 2003 the Moscow City Court upheld the judgment.

2. Enforcement proceedings

17. On 6 March 2003 bailiffs instituted enforcement proceedings.

18. On 15 April 2003 the Nikulinskiy District Court of Moscow, upon the bailiff's request, stayed the enforcement proceedings pending clarification of the judgment of 22 January 2003.

19. The applicant complained to a court that the judgment of 22 January 2003, as upheld on 28 July 2003, had not been enforced. On 13 August 2003 the Nikulinskiy District Court of Moscow dismissed the complaint holding that the enforcement proceedings had been lawfully stayed.

20. On 4 September 2003 the Nikulinskiy District Court of Moscow clarified the judgment of 22 January 2003, as upheld on 28 July 2003, and

held that the applicant had to be immediately reinstated in his previous position. The court resumed the enforcement proceedings.

21. On 9 February 2004 the employer issued an order reinstating the applicant in his previous position. On 17 February 2004 the applicant asked the employer to grant him annual leave for all years of absence since 1996 and to dismiss him after the leave.

22. On 19 February 2004 the bailiffs asked the court to stay the enforcement until the applicant would return from his leave.

23. On 14 April 2004 the Nikulinskiy District Court of Moscow stayed the proceedings until the end of the applicant's leave. The applicant appealed against that decision on 7 June 2004.

24. On 15 June 2004 the Nikulinskiy District Court of Moscow disallowed the appeal because the applicant had missed the time-limit for lodging it.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF THE PROCEEDINGS

25. 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..."

A. Admissibility

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

27. The applicant contested the Government's view.

28. 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.

29. 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

1. The period to be taken into consideration

30. The Government submitted that the proceedings had begun in July 1996 and ended on 28 July 2003 with the final judgment of the Moscow City Court.

31. The applicant submitted that none of the judgments in his case, including the one of 28 July 2003, had been enforced. In his view, the duration of the enforcement should be included in the overall length.

32. The Court is of the view that the period between July 1996 and 9 February 2004 should be regarded as a whole because it was incumbent on the State to enforce the judgment once it was issued. Therefore the periods when the enforcement proceedings were pending must be regarded as an integral part of the “trial” for the purpose of Article 6 and should be included in the overall length (see *Kravchuk v. Russia* (dec.), no. 72749/01, 1 February 2005; *Ivanova v. Russia* (dec.), no. 74705/02, 1 April 2004). The Court considers that the proceedings lasted from July 1996 to 9 February 2004 when the employer issued the order reinstating the applicant in his position.

33. The proceedings therefore lasted more than seven years and seven months. The Court observes that the period to be taken into consideration began on 5 May 1998, when the Convention came into force in respect of Russia. Thus, in this case, at least five years and nine months fall within the Court’s competence *ratione temporis*.

2. Reasonableness of the length of the proceedings

34. The Government submitted that the delays in the adjudication of the applicant’s action had been caused by the applicant’s systematic failure to attend the hearings. Twenty-three hearings were adjourned because of his absence. Furthermore, the applicant amended his claims on several occasions. For that reason thirteen hearings were adjourned to give the defendant time to produce new evidence.

35. The applicant averred that he had attended all hearings, save for one on 13 July 1998 because he had not been summoned for it. He pointed out that the Government did not indicate any particular hearing that he had allegedly failed to attend, except that on 13 July 1998. He could not be blamed for amending his claims because he had been forced to do so due to his dismissal and a change in the employer’s legal status.

36. 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).

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

38. The Court notes that the parties disagreed on certain factual matters concerning the applicant’s attendance of the hearings. As it appears from the list of hearings included in the Government’s memorandum the applicant was present at all hearings, save for one on 13 July 1998. The Government did not indicate any other hearing which the applicant had failed to attend. Therefore the Court finds it established that the applicant had only been absent on 13 July 1998. Irrespective of the reasons for his absence, the delay incurred therefrom was negligible. As to the Government’s argument that the applicant contributed to the delay in the proceedings by amending his claims, the Court reiterates that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interest (see, *mutatis mutandis*, *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

39. The Court observes, however, that substantial periods of inactivity, for which the Government have not submitted any satisfactory explanation, are attributable to the domestic authorities. For more than a year, from 26 November 1999 to 14 December 2000, the enforcement proceedings languished with no apparent progress. The domestic courts admitted that the bailiffs had been responsible for their failure to enforce the judgment. The aggregated length of the delays occasioned by the judge’s absence and his participation in unrelated proceedings amounted to approximately seven months. The Court also finds it peculiar that in the case which was of no particular complexity so many hearings had to be adjourned to give time to the defendant to produce additional evidence (compare with *Di Pede v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV).

40. The Court furthermore notes that the conduct of the defendant was one of the reasons for the prolongation of the proceedings. In the Court’s opinion, the domestic authorities failed to take adequate steps in order to ensure the defendant’s attendance. The defendant defaulted on at least eight occasions which resulted in a delay of approximately seven months. There is no indication that the court reacted in any way to that behaviour. Accordingly, the Court considers that, the domestic courts did not avail themselves of the measures available to it under national law to discipline the participants to the proceedings and to ensure that the case be heard

within a reasonable time (see, *mutatis mutandis*, *Kuśmierek v. Poland*, no. 10675/02, § 65, 21 September 2004).

41. Finally, 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, 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. The applicant further complained that in Russia there was no authority to which application could be made to complain of 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.”

43. The Government submitted that on several occasions the applicant had successfully challenged the judgments before higher-instance courts.

A. Admissibility

44. The Court notes 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

45. 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 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.

46. 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. Lastly, the Court has examined the remainder of the applicant's complaints as submitted by him. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 930,141.64 Russian roubles (RUR) in respect of pecuniary and RUR 435,341.12 in respect of non-pecuniary damage.

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

51. 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 and the lack of an effective remedy for a breach of the requirement to hear his case within a reasonable time. Making its assessment on an equitable basis, it awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

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

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

C. Default interest

54. 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 complaints concerning the excessive length of the proceedings and the absence of an effective remedy 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* 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 22 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President