



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

FIRST SECTION

CASE OF VOLOVICH v. RUSSIA

(Application no. 10374/02)

JUDGMENT

STRASBOURG

5 October 2006

FINAL

12/02/2007

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 Volovich v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 10374/02) 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 Borisovich Volovich (“the applicant”), on 4 December 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 4 April 2005 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 1950 and lives in Yekaterinburg. He suffers from an occupational disease.

5. On 15 May 1997 the applicant sued his former employers, private companies, for compensation for health damage. The Zheleznodorozhniy District Court of Yekaterinburg registered his statement of claim and listed the first preliminary hearing for 9 July 1997. Another preliminary hearing was held on 4 September 1997.

6. Of six hearings listed between 5 February 1998 and 13 June 2000 two hearings were adjourned because the judge was ill or involved in other proceedings and two hearings were postponed for provision of additional evidence and obtaining statements by witnesses.

7. In June 1999 and January 2000 the applicant asked the District Court to order expert medical examinations. The examinations were not ordered because the applicant withdrew his requests.

8. On 13 June 2000 the Zheleznodorozhniy District Court dismissed the applicant's action as unsubstantiated.

9. That judgment was quashed on appeal by the Sverdlovsk Regional Court on 1 August 2000. The case was remitted for a fresh examination to the District Court.

10. It appears that the District Court received the case-file on 3 October 2000 and listed a hearing for 30 November 2000. At that hearing the applicant amended his claims and requested the District Court not to perform a medical examination.

11. Between 16 January and 5 June 2001 the District Court listed three hearings. All of the hearings were adjourned because the judge was ill or involved in other unrelated proceedings.

12. On 5 June 2001 the Zheleznodorozhniy District Court ordered a medical examination of the applicant. The court noted that the defendants should bear the expenses of the examination and stayed the proceedings pending completion. The applicant appealed against that decision, claiming that the examination was not necessary.

13. The Sverdlovsk Regional Court upheld the decision of 5 June 2001 on 7 August 2001.

14. On 9 July 2002 the Zheleznodorozhniy District Court sent the case-file and the applicant's medical records to the Moscow-based Federal expert council on occupational diseases (*Федеральный экспертный совет по профзаболеваниям*).

15. In November 2002 the council informed the applicant that the examination had not been carried out because it had not been paid for.

16. The examination was performed on 10 April 2003 by the Russian Academy of the medical sciences. The expert report was sent to the District Court on 16 April 2003. A month later the District Court received the case-file.

17. On 23 May 2003 the case was assigned to another judge and a hearing was fixed for 18 June 2003. Between 18 June and 4 August 2003 the District Court fixed two hearings which were adjourned because the defendants defaulted and the judge was ill.

18. On 4 August 2003 the Zheleznodorozhniy District Court dismissed the applicant's claims.

19. That judgment was upheld on 2 October 2003 by the Sverdlovsk Regional Court.

THE LAW

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

20. 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 5 May 1998, when the Convention entered 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 proceedings at the time.

The period in question ended on 2 October 2003 with the final judgment of the Sverdlovsk Regional Court. It thus lasted approximately five years and five months before two levels of jurisdiction.

A. Admissibility

23. 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

24. The Government argued that the case was complex. The District Court had to order expert examinations and collect necessary medical data. The applicant had contributed to the delay in the proceedings by challenging the results of the expert examination. There had been certain difficulties in financing the work of the experts.

25. The applicant averred that he had withdrawn his requests for expert examinations as he had considered them futile. The expert examination had been performed upon the District Court's own initiative. The defendants had possessed the necessary data for the examinations but had refused to submit it to the District Court. The District Court had not taken any steps to force the defendants to provide evidence.

26. 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).

27. The Court agrees that the proceedings at issue were of some complexity as they required the taking of an expert opinion and examination of voluminous medical data. The Court considers that the task of the courts was rendered more difficult by these factors, although it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings.

28. As to the applicant's conduct, the Government claimed that the applicant had contributed to the delay in the proceedings by asking for an expert examination and then by challenging its results. In this respect, the Court notes that the sole examination which was performed in the course of the proceedings was initiated by the District Court. The applicant never challenged the results of that examination. He merely appealed against the decision by which the examination had been ordered (see paragraph 12 above). In any event, irrespective of the reasons for the applicant's objection to the expert examination, the delay incurred therefrom was negligible.

29. 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. It took the District Court several months to fix hearings. For example, no hearings appear to have been listed between 5 February and 10 September 1998 and between 10 June 1999 and 18 January 2000. The aggregated length of the delays occasioned by the judge's absence and his participation in unrelated proceedings amounted to approximately twelve months. Another delay of approximately two months was caused by the transfer of the case-file from the Regional to the District courts (see paragraph 10 above).

30. The Court also notes that it took the domestic authorities approximately twenty-one months to order an expert examination and obtain its results. In particular, almost a year elapsed between 7 August 2001, when the Regional Court, in the final instance, authorised an expert examination, and 9 July 2002, when the expert council received the case-file and medical data (see paragraphs 14 and 15 above). Another delay of approximately four months was caused by the defendants' failure to pay for the examination. The Court reiterates in this respect that the principal responsibility for the delay due to the expert opinions rests ultimately with the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32). It was incumbent on the domestic court to ensure that the defendants had promptly paid for the expert examination and that the examination had been performed without delay.

31. Having regard to the overall length of the proceedings and the circumstances of the case, the Court concludes that the applicant's case was not examined within a "reasonable time". There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant finally complained under Articles 4 § 2, 6, 10, 13 and 14 of the Convention that he earned less than several years before and that he was currently unemployed, that the courts had not applied international treaties and misinterpreted the law, that experts had not provided him with information he had asked for, and that he had been discriminated against on the ground of his profession. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 978,144.78 Russian roubles (RUR) in respect of pecuniary damage, representing wage losses (RUR 912,819.98) and outstanding insurance payments made to the Pension Fund (RUR 65,324.80). He also claimed 300,000 euros in respect of non-pecuniary damage.

35. The Government contested these claims. They argued that no causal link existed between the alleged violation and the pecuniary damage claimed by the applicant. The claims in respect of non-pecuniary damage were excessive and unreasonable.

36. 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 because of unreasonable length of the proceedings in his case. Making its assessment on an equitable basis and taking into account relevant aspects, such as the nature of the dispute and what was at stake for the applicant, the Court awards him EUR 4,400 under that head, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

37. The applicant also claimed RUR 548 for the costs and expenses incurred before the Court.

38. The Government noted that the applicant had substantiated his claim and it may be granted.

39. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum claimed under this head, plus any tax that may be chargeable on this amount.

C. Default interest

40. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings in the applicant's case;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 4,400 (four thousand and four hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement;
 - (ii) RUR 548 (five hundred and forty-eight Russian roubles) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 5 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President