



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

FIRST SECTION

CASE OF SHELOMKOV v. RUSSIA

(Application no. 36219/02)

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 Shelomkov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *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. 36219/02) 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 Aleksandr Igorevich Shelomkov ("the applicant"), on 31 August 2002.

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. The applicant complained, in particular, that the length of the proceedings in the dispute to which he was a party had been excessively long.

4. On 13 May 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.

5. The applicant and Government each filed observations on the admissibility, merits and just satisfaction. The Court decided, after consulting the parties, that no hearing was required (Rule 59 § 3 of the Rules of Court).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1961 and lives in Moscow.

A. Proceedings concerning dismissal in 1995

7. In May 1995 the applicant was dismissed from his position as a musical accompanist in the municipal school. On 11 August 1995 he appealed against his dismissal to the Butyrskiy District Court of Moscow. He also sought payment of wage arrears and compensation for non-pecuniary damage.

8. On 4 June 1996 the Butyrskiy District Court dismissed the applicant's claim concerning the reinstatement and ordered that the claim for the wage arrears should be considered separately. The judgment became final on 14 August 1996 when the Moscow City Court upheld it on appeal.

9. By way of a supervisory review, on 20 March 1997 the Presidium of the Moscow City Court quashed the judgments of 4 June and 14 August 1996 and remitted the case for a fresh examination to the District Court.

10. Between May and October 1998 the Butyrskiy District Court listed six hearings, of which two were adjourned upon the applicant's request and three were postponed due to the defendant's absence.

11. On 22 October 1998 the Butyrskiy District Court dismissed the applicant's action. That judgment was quashed on appeal by the Moscow City Court on 16 December 1998. The case was returned for a new examination by the District Court.

12. On 9 September 1999 a new judge of the District Court was assigned to the applicant's case. He listed the first hearing for 12 October 1999.

13. Of the six hearings fixed between 12 October 1999 and 4 April 2000, three hearings were postponed because the defendant defaulted or asked for an adjournment and two were adjourned to allow the parties to submit additional evidence.

14. On 4 April 2000 the Butyrskiy District Court granted the applicant's claims in part. The court ordered that the applicant should be reinstated and paid 20,201.98 Russian roubles (RUR) in wage arrears and RUR 300 for non-pecuniary damage. The District Court, by an interim decision, also decided that the claim concerning calculation of the applicant's wage should be determined in a separate set of the proceedings.

15. The judgment of 4 April 2000 was upheld on appeal on 20 June 2000 by the Moscow City Court.

16. On 28 September 2000 the Presidium of the Moscow City Court, by way of supervisory-review proceedings, quashed the judgments of 4 April and 20 June 2000 in the part concerning payment of the wage arrears and remitted this matter for a new examination.

17. It appears that the District Court received the case-file on 15 February 2001 and fixed the first hearing for 6 March 2001.

18. Between 6 March 2001 and 11 January 2002 the District Court listed seven hearings, of which four hearings were adjourned because the defendant defaulted or asked for an adjournment, one was postponed

because the parties did not attend and two hearings were adjourned because the applicant amended his claims.

19. No hearings were held between 11 January and 18 March 2002 because the judge was involved in other unrelated proceedings.

20. Of the three hearings listed between 18 March and 30 April 2002, one hearing was adjourned upon the defendant's request and one was postponed because the parties could not attend.

21. On 30 April 2002 the Butyrskiy District Court accepted the applicant's claims for wage arrears and awarded him RUR 768,885.34. That judgment was quashed by the Moscow City Court on 30 July 2002. The case was remitted for a fresh examination to the District Court.

B. Proceedings concerning dismissal in 2000

22. On 4 April 2000 the applicant was reinstated in his position. However, on the following day his employer informed him about his forthcoming dismissal on 6 June 2000. The applicant appealed against the dismissal to a court on 30 June 2000.

23. A judge was assigned to the case on 23 October 2000 and the first hearing was listed for 22 November 2000. Of the fifteen hearings listed between 22 November 2000 and 24 May 2002, six hearings were adjourned because the parties did not attend, three were postponed to obtain additional evidence, three were adjourned because the defendant defaulted and one was postponed because a fire broke out in the courthouse.

24. On 24 May 2002 the Butyrskiy District Court held that the applicant's dismissal in 2000 had been unlawful and awarded him wage arrears and compensation for non-pecuniary damage.

25. On 14 November 2002 the Moscow City Court quashed the judgment of 24 May 2002 in the part concerning the wage arrears, remitted this matter for a fresh examination and upheld the remainder of the judgment.

C. Joint proceedings

26. On 26 November 2002 the Butyrskiy District Court joined two sets of the proceedings related to the applicant's dismissals in 1995 and 2000.

27. On 18 December 2002 the Butyrskiy District Court partly granted the applicant's action and awarded him RUR 45,648.14 to be paid by the Department of Culture of the North-Eastern Administrative District of Moscow. That judgment was upheld on appeal by the Moscow City Court on 24 March 2003.

28. Enforcement proceedings were opened and on 21 July 2003 the Department of Culture transferred the sum of RUR 45,648.14 to the deposit account of a public notary. The applicant was invited to receive money.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF THE PROCEEDINGS

29. 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

30. The Government considered that the applicant's complaint about the length of the proceedings was inadmissible under Article 35 § 3 of the Convention. As to the period to be taken into consideration, the Government submitted that that period had commenced on 5 May 1998 and ended in December 2002 in respect of one of the applicant's claims and in March 2003 in respect of the remainder of his claims.

31. The applicant contested the Government's view. He insisted that he had initiated the proceedings in August 1995. In his view, the duration of the enforcement should be included in the overall length. Thus the proceedings were still pending because the judgment of 18 December 2002, as upheld on appeal on 24 March 2003, remained unenforced.

32. The Court observes that 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.

33. With the view to determining when the period in question ended, the Court reiterates that the period 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 when it was incumbent on the State to enforce the judgment in the applicant's favour (cf. *Sokolov v. Russia*, no. 3734/02, § 32, 22 September 2005). The Court observes that on 24 March 2003 the Moscow City Court issued a final judgment by which the applicant was to be paid a certain sum of money by the Department of Culture, a State body. On 21 July 2003 the sum in question was transferred to the deposit account of a notary public and the applicant was able to receive it. The Court is of the view that the period from 5 May 1998 to 21 July 2003 should be regarded as a whole. It thus lasted approximately five years and three months.

34. 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

35. The Government argued that the delays in the adjudication of the applicant's action had been caused by the fact that the parties had actively made use of their procedural rights, including the rights to obtain and submit evidence, to challenge the composition of the bench, to amend the claims, etc. At least thirty-five hearings were adjourned because the parties defaulted, of which the applicant failed to attend six hearings.

36. The applicant averred that the delays in the proceedings had been caused by the defendant's failure to attend. The District Court did not take any measures to discipline the defendant, a State body. The applicant insisted that he had defaulted because he had been ill and his absence had not caused a substantial delay. He could not be blamed for amending his claims and petitioning the District Court for certain procedural actions because those requests had been dismissed or left without any consideration. The applicant argued that the Court should take into account that his dispute had concerned employment-related issues, it had required special diligence and it had already been pending before the domestic courts for almost three years before 5 May 1998.

37. 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).

38. The Court notes that the parties did not argue that the case was complex. Thus the Court has no reason to conclude otherwise.

39. As to the applicant's conduct, the Government argued that the applicant had contributed to the delay in the proceedings by amending his claims, submitting additional evidence and consulting the case-file. In this respect, 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).

40. The Court observes, however, that the applicant contributed to the delay in the proceedings by failing to attend hearings. As it appears from the list of hearings included in the Government's memorandum, the applicant did not appear at six hearings, although the defendant attended. The

aggregated delay resulting therefrom amounted to approximately four months.

41. As regards the conduct of the authorities, the Court considers that the overall period less the period attributable to the applicant's conduct leaves the authorities accountable for approximately four years and eleven months which fall in the Court's competence *ratione temporis*.

42. The Court observes that the Government have not submitted any satisfactory explanation for substantial periods of inactivity which are attributable to the domestic authorities. The aggregated length of the delays occasioned by the judge's participation in unrelated proceedings, his belated assignment to the case and the transfer of the case-file (see paragraphs 11-12, 16-17, 19 and 22-23 above) amounted to approximately seventeen months. The Court also notes that it usually took the District Court up to three months to fix hearings. The Court finds it peculiar that in the case which was of no particular complexity so many hearings had to be adjourned in order to obtain additional evidence (compare with *Di Pede v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV).

43. The Court furthermore notes that the conduct of the defendant, a State body, was one of the reasons for the prolongation of the proceedings. The Court reiterates that the delay occasioned by the defendant's failure to attend at least twenty hearings and the domestic courts' failure to take adequate steps in order to ensure its attendance is attributable to the State (cf. *Sokolov v. Russia*, cited above, § 40).

44. Finally, the Court recalls that the employment disputes generally require particular diligence on the part of the domestic courts (see *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 what was at stake for the applicant, the Court concludes that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF THE PROCEEDINGS

45. The applicant complained under Article 6 the Convention that the proceedings had been unfair because the courts had committed serious errors of fact and had wrongly assessed evidence.

46. In this respect the Court recalls that it is not a court of appeal from the decisions of domestic courts and that, as a general rule, it is for those courts to assess the evidence before them. The Court's task under the Convention is to ascertain whether the proceedings as a whole were fair (see, among many authorities, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I). On the basis of the materials submitted by the

applicant, the Court notes that within the framework of the civil proceedings the applicant was able to introduce all necessary arguments in defence of his interests, and the judicial authorities gave them due consideration. His claims were examined on three levels of jurisdiction and partly accepted. The decisions of the domestic courts do not appear unreasonable or arbitrary.

47. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicant finally complained under Article 11 of the Convention and Article 1 of Protocol No. 1 that trade unions did not protect his rights, that the judgment of 18 December 2002 remained unenforced and that he could not receive the wage arrears because the proceedings in his case had been excessively long. However, having regard to all the material in its possession, the Court 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 3,350,576 Russian roubles (RUR) in respect of pecuniary damage, representing the wage arrears he had not received due to the excessive length of the proceedings in his case. He also claimed RUR 28,650,000 in respect of non-pecuniary damage.

51. The Government contested these claims. They indicated that there was no causal link between the violation alleged and the pecuniary damage claimed. In any event, the sums claimed in respect of pecuniary and non-pecuniary damage were unreasonable and excessive.

52. 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 considers that the applicant must have sustained

non-pecuniary damage. Ruling on an equitable basis and taking into account the nature of the dispute and the overall length of the proceedings in the present case, it awards him EUR 4,400 under that head, plus any tax that may be chargeable.

B. Costs and expenses

53. The applicant also claimed RUR 15,611.79 for the costs and expenses. Those included RUR 1,948.56 for postal expenses, RUR 10,993.91 for the purchase and maintenance of a fax, scanner and copying machine and use of the Internet, RUR 1,025.92 for office supplies and RUR 1,643.40 in respect of legal fees paid to a lawyer for representation in unrelated domestic proceedings and to a notary for attesting powers of authority.

54. The Government submitted that the applicant should only be granted RUR 1,948.56 as those expenses had actually been incurred.

55. 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. The Court observes that certain expenses claimed by the applicant were not incurred in connection with the domestic proceedings at issue or the Strasbourg proceedings. It thus rejects the applicant's claim in respect of the legal fees and the notary's services. As regards the remainder of the applicant's claims, the Court accepts that the applicant incurred some expenses. It considers, however, the amounts claimed to be excessive. Having regard to the elements at its disposal, the Court awards the applicant 200 EUR for the costs related to his application, plus any tax that may be chargeable.

C. Default interest

56. 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;
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, to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) EUR 4,400 (four thousand and four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 200 (two hundred euros) 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