



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

FIRST SECTION

CASE OF VLADIMIR NIKITIN v. RUSSIA

(Application no. 15969/02)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

02/02/2007

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 Vladimir Nikitin 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 12 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 15969/02) 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 Vladimir Grigoryevich Nikitin ("the applicant"), on 15 June 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 2 September 2005 the Court decided to give notice of the application to the Government. 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 1936 and lives in the town of Vorkuta in the Komi Republic of the Russian Federation.

5. On 8 August 1994 the applicant sued his employer, a mining company, for payment of royalties. The first hearing, fixed for 25 August 1994, was adjourned due to the applicant's absence. The following hearings of 9 December 1994 and 20 January 1995 were also postponed upon his requests.

6. On 22 February 1995 the Vorkuta Town Court found for the applicant. However, that judgment was quashed on appeal on 30 March 1995 and re-examination was ordered. The applicant amended his claims.

7. On 11 March 1996 the Town Court ordered an expert study. The proceedings were stayed until January 1997 when the Town Court received the expert report. In April 1997 another expert study was ordered. The applicant again amended his claims.

8. On 16 May 1997 the Vorkuta Town Court dismissed the action. That judgment was quashed on appeal on 25 August 1997 and the case was remitted for a fresh examination.

9. A judge was assigned to the case in December 1997 and the first hearing was listed for 13 November 1998. However, that hearing was adjourned because the parties defaulted. The following hearing of 18 October 1999 was postponed upon the parties' request for provision of additional evidence.

10. On 22 October 1999 the Town Court ordered an expert examination. The proceedings were resumed on 15 March 2000 after the expert report had been submitted to the Town Court.

11. Two hearings, fixed between March and 17 November 2000, were adjourned because the defendant defaulted and the court wanted to call an expert.

12. On 17 November 2000 the Vorkuta Town Court ordered an expert study. The proceedings were resumed a week later.

13. On 19 February 2001 the Vorkuta Town Court found for the applicant. The judgment was quashed on appeal and the case was remitted for re-examination on 21 May 2001.

14. A judge was assigned to the case on 22 August 2001. In September and November 2001 the presiding judge inquired several expert organisations about a possibility to perform expert studies. A hearing was fixed for 17 January 2002. However, it was adjourned for provision of additional evidence by the defendant. The following hearing was fixed for 26 March 2002.

15. On 27 March 2002 the Vorkuta Town Court ordered another expert examination. The applicant appealed against that decision, but on 20 May 2002 his appeal was dismissed.

16. In May 2002 the Town Court sent the case-file to an expert bureau. A month later the experts asked the Town Court for additional documents. The documents were submitted to the experts in August 2002. In October and November 2002 the experts inquired the Town Court about the fees for their work.

17. In February 2003 the Town Court asked the Judicial Department of the Komi Republic to bear the costs of the expert examination. It appears that the expert fees were paid in July 2003.

18. In August and October 2003 the Vorkuta Town Court inquired the experts about the progress in their work. On 1 April 2004 the experts informed the Town Court that the expert report had been submitted to it on 19 September 2002.

19. In May 2004 the experts once again sent the report to the Town Court. The report contained certain procedural defects and the Town Court asked for corrections. In July and September 2004 the Town Court repeated its request. No response followed.

20. From 29 January to 28 April 2005 the applicant lived in Ukraine.

21. On 11 February 2005 the Town Court received the corrected expert report. Three days later the proceedings were resumed and a hearing was fixed for 10 March 2005. The parties were summoned. The summonses to the applicant were sent to all known addresses, including one in Ukraine.

22. The hearing of 10 March 2005 was postponed because the applicant defaulted. The advice of receipt concerning the applicant's summonses returned from Ukraine with the note indicating that the applicant had refused to accept them. The following hearing was fixed for 4 April 2005. The Town Court sent summonses to all known addresses of the applicant, including one in Ukraine. It also unsuccessfully attempted to summon the applicant by phone.

23. On 4 April 2005 the Vorkuta Town Court disallowed the applicant's action because he had failed to attend two hearings and had not notified of the reasons for his absence.

24. The applicant applied to the Town Court for annulment of the decision of 4 April 2005. On 20 October 2005 the Vorkuta Town Court dismissed the request. The court held that the applicant had been properly summoned. Moreover, there was evidence that he had refused to accept the summonses for the hearing of 10 March 2005. The applicant did not appeal against the decision of 20 October 2005 to the Supreme Court of the Komi Republic.

THE LAW

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

25. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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...”

26. The period to be taken into consideration only 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 20 October 2005 with the decision of the Vorkuta Town Court. Thus, the Court has competence *ratione temporis* to examine the period of approximately seven years and six months when the proceedings were pending before courts of two levels of jurisdiction.

A. Admissibility

27. 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

28. The Government argued that the case had been very complex as it had required taking of evidence, including statements by specialists and several expert examinations. The applicant contributed to the delays in the proceedings by amending his claims on several occasions.

29. The applicant averred that he could not be blamed for amending his claims because he had been forced to do so due to frequent changes in economic situation while the proceedings had been pending.

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. The Court agrees that the proceedings at issue were complex as they required examination of voluminous technical documents and several expert studies. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings.

32. As concerns the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be responsible for amending his claims and seeking to obtain additional evidence. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66). The Court, however, notes a delay of approximately one month which was caused by the applicant's failure to accept the summonses for the hearings of 10 March and 4 April 2005 (see paragraphs 21-22 above). Nevertheless, the period attributable to the applicant's behaviour is negligible, considering the overall length of the proceedings.

33. The Court, further, observes the substantial periods of inactivity for which the Government have not submitted any satisfactory explanation, are attributable to the domestic courts. It took them up to twelve months to fix hearings (see paragraphs 9, 11 and 14 above). The Court also notes a delay of approximately two and a half years caused by the Court's inability to obtain an expert report in 2002-2005 (see paragraphs 16-21 above). The Court is not called upon to determine the reason for the delay in the preparation of the report (either there were certain difficulties in financing the expert work or the expert report was merely lost in September 2002, etc.), because Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria*, no. 30546/96, § 57, 3 October 2000). The Court observes that the principal responsibility for a delay caused by the expert examinations rests ultimately with the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32, and *Antonov v. Russia*, (dec.), 38020/03, 3 November 2005).

34. Having examined all the material submitted to it and having regard to the overall length of the proceedings and what was at stake for the applicant, the Court considers 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

35. The applicant further complained under Article 6 of the Convention that the proceedings had been unfair because the courts had committed serious errors of fact and had wrongly assessed evidence and that the decision of 20 October 2005 was unlawful as he had not been properly summoned for the hearings.

36. The Court notes that the applicant did not appeal against the first-instance decision of 20 October 2005 to a higher-instance court in order to obtain redress in this respect. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 208,077,750 Russian roubles (RUR) in respect of pecuniary damage, representing royalties allegedly due to him by his former employer and interest thereon. He also claimed RUR 6,000,000 in respect of non-pecuniary damage.

39. The Government argued that there was no causal link between the violation found and the damage alleged. In any event, the claims were unreasonable and excessive.

40. 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 because of the excessive length of the proceedings in his case. However, the particular amount claimed appears excessive. The Court takes into account the overall length of the proceedings and the subject-matter of the dispute to which the applicant was a party. Making its assessment on an equitable basis, it awards the applicant EUR 5,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The applicant also claimed RUR 718.9 for postage expenses, RUR 5,000 for translation expenses and RUR 200,000 for legal costs incurred before the Court.

42. The Government indicated that the applicant's claims were not supported by appropriate documentation.

43. 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 the applicant was granted leave to represent himself and use the Russian language in the Strasbourg proceedings. He also did not provide the Court with any document (copies of contracts with a lawyer or a translator, vouchers or receipts) to substantiate his claims relating to legal and translation expenses. Therefore, the Court makes no award in respect of those claims. As to the claim in respect of postage expenses, the Court observes that the applicant provided the Court with copies of postage receipts. Thus, regard being had to the information in its possession and the above criteria, the Court considers it

reasonable to award the sum of EUR 25 under this head, plus any tax that may be chargeable on that amount.

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 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 according to 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 5,900 (five thousand and nine hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 25 (twenty-five 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 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President