



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

FIRST SECTION

CASE OF SHNEYDERMAN v. RUSSIA

(Application no. 36045/02)

JUDGMENT

STRASBOURG

11 January 2007

FINAL

11/04/2007

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 Shneyderman 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 7 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 36045/02) 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 Mark Abramovich Shneyderman ("the applicant"), on 11 September 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. On 30 August 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 1935 and lives in the village of Kresty in the Tula Region.

5. On 20 October 1993 the applicant sued the Chernskiy District Social Security Services for pension arrears, an increase of his monthly pension and compensation for damage.

6. On 16 December 1993 the Chernskiy District Court accepted the action in full. The judgment was quashed on 1 February 1994 and the case was remitted for a fresh examination.

7. On 15 June 1998 the Chernskiy District Court partly accepted the applicant's action and decided to determine his claim concerning compensation for damage in separate proceedings.

8. The Social Services appealed against the judgment to the Tula Regional Court. The first appeal hearing was fixed for 27 August 1998. However, it was adjourned until 6 October 1998 because the respondent did not attend.

9. On 6 October 1998 the Tula Regional Court quashed the judgment of 15 June 1998 and remitted the case for a fresh examination.

10. The case was assigned to the judge Isayev and the first hearing was fixed for 12 May 1999. That hearing was adjourned upon the parties' request until 23 September 1999.

11. On 23 August 2000 the Chernskiy District Court received the applicant's amended statement of claims.

12. On 24 January 2001 the judge Milyokhin was assigned to the case and on 2 July 2001 he scheduled a preliminary hearing. The following hearing, fixed for 7 August 2001, was adjourned because the representative of the Social Services defaulted.

13. At the hearing of 7 August 2001 the applicant successfully amended his claims and asked to invite the Tula Regional Department of the Social Protection of Population to the proceedings.

14. The following hearing, fixed for 1 November 2001, was adjourned until 14 December 2001 because the respondent defaulted.

15. On 14 December 2001 the Chernskiy District Court stayed the proceedings in the applicant's case to await the outcome of the proceedings before the Constitutional Court of the Russian Federation. The Constitutional Court was to give interpretation of the pension legislation applicable to the applicant's case. The decision of 14 December 2001 was upheld on appeal on 12 March 2002.

16. On 12 March 2003 the Chernskiy District Court resumed the proceedings and fixed a hearing for 2 April 2003. That hearing was adjourned until 28 April 2003 to allow the respondent to study the case-file. The applicant once again amended his claims at the hearing of 28 April 2003.

17. Of the five hearings fixed between 28 April 2003 and 30 November 2005, one hearing was adjourned because the respondent defaulted and three were adjourned upon the applicant's request.

18. On 8 December 2005 the Chernskiy District Court dismissed the applicant's action. The judgment was upheld on appeal by the Tula Regional Court on 9 February 2006.

19. On numerous occasions the applicant unsuccessfully complained about the excessive length of the proceedings in his case to the prosecutor of the Tula Region and the Judicial Qualification Board of the Tula Region.

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, 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...”

21. The period to be taken into consideration began only 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 9 February 2006 when the Tula Regional Court issued the final judgment. It thus lasted approximately seven years and nine months before courts of two levels of jurisdiction.

A. Admissibility

22. 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

23. The Government argued that the case had been complex as it had concerned interpretation of pension legislation and its application to the applicant's case. The applicant had caused delays by amending his claims on 23 August 2000 and 28 April 2003 and asking for adjournment of four hearings. He had also defaulted on one occasion. Further delays in the proceedings had been caused by adjournment in December 2001 and the respondent's failure to attend at least four hearings.

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

25. 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).

26. The Court agrees that the proceedings at issue were complex. However, it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings. Moreover, the Court considers that special diligence is necessary in disputes concerning the person's means of subsistence, such as pensions.

27. As concerns the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be held responsible for amending his claims and asking to adjourn hearings in order 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 *Skorobogatova v. Russia*, no. 33914/02, § 47, 1 December 2005). The Court further considers negligible the delay caused by the applicant's failure to attend one hearing.

28. The Court, however, 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 seven months to fix hearings. A delay of approximately eighteen months was caused by the reassignment of the case from one presiding judge to another one (see paragraphs 10 and 12 above). The Court also notes a delay of approximately fifteen months caused by the stay in the proceedings awaiting the opinion of the Constitutional Court (see paragraphs 15 and 16 above). The Court is not called upon to determine the reason for the delay in the preparation of the Constitutional Court's decision, 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 that delay rests ultimately with the State. The same applies to delays resulting from the failure to attend hearings by the respondent, a State body (see *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005).

29. 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 13 OF THE CONVENTION

30. The applicant further complained that all his complaints about the excessive length of the proceedings had been futile. The Court considers that 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.”

31. The Government contested the applicant's arguments.

A. Admissibility

32. 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

33. 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). 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).

34. 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

35. The applicant also complained under Article 6 § 1 of the Convention that the courts had wrongly interpreted and applied law and incorrectly assessed evidence in his case.

36. 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 two levels of jurisdiction and dismissed. The decisions of the domestic courts do not appear unreasonable or arbitrary.

37. 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

38. 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

39. The applicant claimed 60,665 Russian roubles in respect of pecuniary damage. The sum represented pension payments which the applicant had expected to receive for the period of thirteen years. He further claimed 100,000 euros in respect of non-pecuniary damage.

40. The Government argued that no causal link had been shown between the facts of the case and the damage allegedly suffered by the applicant. They further noted that the applicant's claims in respect of non-pecuniary damage were excessive.

41. 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 an unreasonable length of the proceedings in his case 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 6,200 in respect of non-pecuniary damage, plus any tax that may be charged on the above amount.

B. Costs and expenses

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

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

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 complaints concerning the excessive length of the proceedings and absence of 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 in accordance with Article 44 § 2 of the Convention, EUR 6,200 (six thousand and two hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the 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 claim for just satisfaction.

Done in English, and notified in writing on 11 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President