



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

FIRST SECTION

CASE OF ANGELOVA v. RUSSIA

(Application no. 33820/04)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Angelova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 22 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 33820/04) 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, Ms Mariya Alekseyevna Angelova ("the applicant"), on 29 July 2004.

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 17 November 2005 the Court decided to give notice of the complaint concerning the length of the proceedings in the applicant's case 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 1926 and lives in Korolev, a town in the Moscow Region.

5. In 1990 the applicant underwent surgery on her right hand in a local hospital. The applicant alleges that the operation was unsuccessful because of the negligence of the medical personnel, with the result that her ability to move her right hand was impaired.

6. On 24 April 1994 the applicant brought proceedings against the hospital, seeking compensation for harm inflicted on her as a result of medical negligence.

7. Following an order of the court, on 10 April 1995 the applicant underwent a forensic medical examination at the Forensic Examination Bureau of the Moscow City Health Department (“the Bureau”).

8. On 14 December 1995 the Koptevskiy District Court of Moscow (“the District Court”) dismissed the applicant's civil action as unfounded. The judgment was upheld on appeal by the Moscow City Court on 12 February 1996.

9. Following a request by the applicant, on 5 December 1996 the Presidium of the Moscow City Court quashed the judgment of 14 December 1995, as upheld on 12 February 1996, by way of supervisory review, and remitted the case for a fresh examination to the first-instance court.

10. On 2 February 1998 the District Court ordered another forensic examination to be performed by the Bureau and stayed the proceedings pending its results. However, on an unspecified date the Bureau informed the District Court that it could not proceed with the examination, because it had already conducted the initial forensic examination in the applicant's case.

11. On 23 April 1998 the District Court ordered another forensic examination to be performed by the Forensic Medical Examination Centre of the Russian Ministry of Health (“the Centre”).

12. On 12 May 1998 the Centre informed the District Court that the examination was rather costly and required an advance payment. However, since both parties to the proceedings refused to make an advance payment, on an unspecified date the case file was returned to the District Court.

13. Following a request by the applicant, on 21 October 1998 the District Court put further questions to the Bureau. The applicant was requested to provide the Bureau with her medical documents. The proceedings were stayed pending the outcome of the examination.

14. On 21 October 1998 the applicant asked the Institute of Traumatology and Orthopaedics to issue her with her medical file, but the request was refused.

15. On 22 July 1999 the applicant's medical file was obtained from the above Institute by the District Court. The case file does not contain any information on whether the Bureau provided the District Court with answers to the further questions raised by the applicant.

16. Following a request by the applicant, on 6 September 1999 the District Court again ordered the new forensic examination to be performed by the Centre.

17. Between 5 January and 10 February 2000 the Centre carried out a new forensic examination.

18. On 29 March 2000 the District Court resumed the proceedings and scheduled a hearing for 25 April 2000. However, on 25 April and 8 June 2000 the District Court postponed the hearing until 8 June and

29 June 2000 respectively, because the applicant's lawyer was busy and could not attend. On 29 June 2000 the hearing was postponed until 6 July 2000, because the respondent's representative could not attend.

19. On 6 July 2000 the District Court ordered an additional forensic examination to be performed by the Bureau, with the participation of experts from the Centre. The proceedings were stayed pending the outcome of the above examination. However, on 26 February 2001 the Bureau informed the District Court that it could not proceed with the examination, because it had already given its opinion after having conducted the initial examination.

20. From 11 May to 31 October 2001 no hearings were scheduled, because the case was being transferred to another judge.

21. Following a request by the applicant, on 31 October 2001 the District Court ruled out the Institute of Traumatology and Orthopaedics as a defendant in the case. The hearing was postponed until 7 December 2001.

22. On 7 December 2001 the District Court excluded the expert opinion gained between 5 January and 10 February 2000 from the evidence.

23. On 14 December 2001 the hearing was postponed until 11 February 2002 because of the judge's illness.

24. On 11 February 2002 the District Court, in the applicant's absence, ordered a new forensic examination to be performed by the Centre. The court ordered the defendant to cover the costs connected with the above examination and stayed the proceedings pending the outcome of the examination. There is no information in the case file on whether the above examination ever took place.

25. On 30 May 2002 the District Court ordered an additional forensic examination to be performed by the Bureau.

26. Between 19 September 2002 and 25 February 2003 the Bureau conducted the additional forensic examination.

27. On an unspecified date the proceedings resumed.

28. On 9 October 2003 the District Court held a hearing and questioned the experts. It appears that the applicant was not apprised of this hearing. For this reason, on 10 October 2003 she requested the court to call the experts once again so that she could cross-examine them.

29. It appears that the District Court granted the applicant's request and scheduled a new hearing for 13 November 2003, but the applicant was unable to appear before the court on that date because of illness. The court apparently postponed the hearing and rescheduled it for 3 December 2003.

30. On 1 December 2003 the applicant informed the District Court by telegram that she would be unable to attend the hearing on 3 December 2003 because she was ill, and requested the court to postpone it. The registry of the court received the telegram on the same date.

31. On 3 December 2003 the District Court refused the applicant's request to postpone the hearing. The court observed that the applicant had

not formulated any new claims in addition to those contained in her written submissions, nor had she presented any supplementary evidence. The court accordingly decided to hold the hearing and to examine the applicant's claims on the basis of her written submissions. The representatives of the defendant hospital were present at the hearing. Having heard the experts and the defendant's representatives, the District Court allowed the applicant's claims in part and ordered the hospital to pay her damages.

32. The applicant appealed, complaining in particular that the first-instance judgment had been given in her absence. On 2 February 2004 the Moscow City Court delivered its decision. The court reviewed the applicant's case on points of facts and law and upheld the judgment of 3 December 2003, having noted that the applicant's absence from the first-instance court had in no way affected the lawfulness of its judgment. The applicant, as well as the defendant hospital's representatives, attended the appeal hearing and made oral submissions. It does not appear that the applicant presented any new arguments or evidence in support of her claims.

33. Following a request by the applicant, on 29 September 2005 the Presidium of the Moscow City Court quashed the judgment of 3 December 2003 and the appeal decision of 2 February 2004 and remitted the case for a fresh examination to the first-instance court. The reasons for the above quashing were not made available to the Court.

34. On 2 February 2006 the District Court allowed the applicant's claims in part and ordered the hospital to pay her damages. It appears that the applicant was present at the above hearing. The case file does not contain any further information as to whether the judgment was appealed against.

THE LAW

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

35. 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..."

A. Admissibility

36. The Court recalls that the proceedings commenced on 24 April 1994, when the applicant submitted her statement of claim to the Koptevskiy District Court of Moscow. The proceedings were pending during three

periods. The first period commenced on 24 April 1994 and ended on 12 February 1996, when the judgment of 14 December 1995 became final. The second period began on 5 December 1996 with the supervisory-review decision and ended on 2 February 2004, when the judgment of 3 December 2003 became final. The third period began on 29 September 2005 with another supervisory-review decision and ended with the judgment of 2 February 2006.

37. The proceedings thus lasted for approximately nine years and four 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. Therefore, at least six years and one month are in the Court's competence *ratione temporis*. During this period the case was determined by the courts of three instances. The Court reiterates that in assessing the reasonableness of the length of the proceedings account must be taken of the state of the proceedings on the date of entry of the Convention into force in respect of the Contracting State (see, among other authorities, *Billi v. Italy*, judgment of 26 February 1993, Series A no. 257-G, § 16). In this respect the Court observes that by 5 May 1998 the proceedings had been pending for approximately three years and three months.

38. 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. Submissions by the parties

39. The Government submitted that forensic medical examinations had been conducted in the applicant's case between 5 May 1998 and 7 July 2000, and between 12 September 2000 and 9 October 2003. In particular, between 5 January and 10 February 2000 the Forensic Medical Examination Centre of the Russian Ministry of Health had carried out a new forensic examination, and between 19 September 2002 and 25 February 2003 the Forensic Examination Bureau of the Moscow City Health Department had carried out a comprehensive forensic examination. The Government argued that the applicant had contributed to the length of the above expert examinations, because she had objected to the examinations, refused to submit her medical file to experts, requested additional examinations and asked to put additional questions to experts. Furthermore, the applicant had failed to attend the hearings scheduled to take place on 25 April, 8 June and 29 June 2000, and later between 9 October and 3 December 2003. The Government further submitted that the case had been examined three times by the first-instance court, and each time had required determination both of

the facts and the law. Furthermore, following the applicant's requests the case had twice been quashed by way of the supervisory review procedure. Throughout the proceedings the applicant had been able to exercise her procedural rights in full. Finally, the outcome of the proceedings had been successful for the applicant. As regards the conduct of the domestic authorities, the Government submitted that there had been no periods of inactivity attributable to them.

40. The applicant contested the Government's submissions. She argued that it had taken the domestic courts twelve years to examine her claims. The applicant submitted that the expert examinations had been scheduled without reference to her and that her questions had not been put to the experts. The examinations had been assigned several times to the same expert establishments, and as a result the materials submitted had been returned unexamined. The applicant further submitted that the hearings of 23 April and 8 June 2000 had been postponed at her request, because her lawyer was busy and could not attend. The hearing of 29 June 2000 had been postponed at the request of the defendant's representative. Between 11 May and 5 October 2000 no hearings had been scheduled, because the case had been transferred to another judge. The applicant had not been apprised of the hearings of 17 August 2000 and 9 October 2003.

2. The Court's assessment

41. 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).

42. Although the parties did not argue that the case was particularly difficult to determine, the Court observes that the proceedings at issue were of some complexity, as they required expert opinions and study of the applicant's medical records. 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. Moreover, the Court considers that special diligence is necessary in disputes concerning compensation for damage caused to a person's health.

43. As to the applicant's conduct, the Court notes the Government's argument that the applicant contributed to the delay in the proceedings by failing to attend and requesting the adjournment of hearings. The Court observes that the applicant was absent from the hearings of 25 April and 8 June 2000, and 13 November and 3 December 2003. The aggregate delay incurred amounted to less than three months, which is negligible in view of the overall duration of the proceedings. Besides, the Court does not lose sight of the fact that, in any event, the hearing of 3 December 2003 took

place and the judgment was delivered in the applicant's absence. As regards the hearings which took place on 29 June 2000 and 9 October 2003, the parties' submissions are contradictory.

44. The Government also indicated that the applicant had contributed to the delay in the proceedings by objecting to forensic medical examinations, refusing to submit her medical file to experts, filing requests for additional examinations and putting additional questions to experts. As to the applicant's activity with regard to the appointment and conduct of forensic medical examinations, the Court reiterates that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of her interests (see *Sokolov v. Russia*, no. 3734/02, § 38, 22 September 2005). As to the applicant's failure to submit her medical file promptly to experts, the Court observes that the applicant asked the Institute of Traumatology and Orthopaedics to issue her with her medical documents as soon as the District Court put further questions to the Forensic Examination Bureau on 21 October 1998; however, her attempts proved futile. Later it took the District Court about nine months to obtain those documents on its own initiative. In any event, it does not follow from the parties' submissions as to the circumstances of the case that the Bureau ever answered the questions put by the District Court on 21 October 1998. Therefore, even if the applicant was at fault in not informing the District Court of the Institute's refusal to issue her with her medical file as soon as she knew about it, that is not in itself sufficient to explain the overall length of the proceedings.

45. 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. The Court notes that from 5 May 1998 to 9 October 2003 there was virtually no progress in the applicant's case. In particular, between 11 May and 31 October 2001 no hearings were listed or held, because the case was being transferred to another judge. As regards the remaining period, although it would seem that quite a number of different types of forensic medical examinations were ordered by the District Court, it appears that only two of them were actually conducted: the one that took place between 5 January and 10 February 2000 and another, which took much longer and was carried out between 19 September 2002 and 25 February 2003. In this connection, the Court reiterates that it is not called upon to determine the reasons for the delay in preparation of the expert report, because Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial systems 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). Furthermore, 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).

46. The Court is also mindful of the Government's argument as regards the fact that the case several times spanned three levels of jurisdiction. Nevertheless, this alone cannot justify the overall length of the proceedings. Furthermore, as regards the Government's closing argument concerning the favourable outcome of the proceedings for the applicant, even assuming that the allowing in part 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, a recognition of a violation of Article 6 or reparation for the damage allegedly caused to the applicant by the length of the proceedings (see *Byrn v. Denmark*, no. 13156/87, Commission decision of 1 July 1992, Decisions and Reports 74, p. 5).

47. In view of the above considerations, the Court considers that the overall period less the period attributable to the applicant's conduct leaves the authorities accountable for approximately five years and ten months.

48. Finally, the Court points out that the dispute in the present case concerned compensation for damage to health. The Court is of the opinion that the nature of the dispute called for particular diligence on the part of the domestic courts (see *Marchenko v. Russia*, no. 29510/04, § 40, 5 October 2006).

49. Having examined all the material submitted to it and taking into account 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 § 1 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF THE PROCEEDINGS

50. The applicant complained under Article 6 of the Convention that the judgment of 3 December 2003 had been given in her absence. She further alleged that the examinations of experts had been carried out in breach of the national law, that the domestic courts had refused to assist her in collecting the evidence and that the amount of compensation awarded was insufficient.

51. As regards the applicant's first complaint, the Court observes that on 29 September 2005 the Presidium of the Moscow City Court quashed the judgment of 3 December 2003 by way of supervisory review and remitted the case for a fresh examination to the first-instance court. It appears that the applicant was present at the fresh examination of the case on 2 February 2006. In these circumstances the Court finds that she can no longer claim to be a victim of the alleged violation.

52. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

53. As regards the remainder of the applicant's complaints, the Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among other authorities, *Čekić and Others v. Croatia* (dec.), no. 15085/02, 9 October 2003). Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

54. Turning to the facts of the present case, the Court finds that there is nothing to indicate that the domestic courts' evaluation of the facts and evidence presented in the applicant's case was contrary to Article 6 of the Convention. The applicant was provided with ample opportunities to present her arguments and to challenge the submissions of the opposing party in the proceedings and the judicial authorities gave them due consideration. In the light of the foregoing consideration, the Court finds that the reasons on which the national courts based their conclusions are sufficient to exclude any concern that the way in which they established and assessed the evidence in the applicant's case was unfair or arbitrary.

55. It follows that this complaint must also 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

56. 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

57. The applicant claimed 4,673 euros (EUR) in respect of pecuniary damage. This sum represents the difference between the sum the applicant recovered as a result of the proceedings and the sum she had expected to recover. She further claimed EUR 2,920 in respect of non-pecuniary damage.

58. The Government considered that no award should be made in respect of pecuniary damage, in the absence of a causal link between the damage alleged by the applicant and the alleged violation. As regards non-pecuniary damage, the Government considered the applicant's claim excessive and unreasonable.

59. The Court considers that the applicant has failed to demonstrate that the pecuniary damage was actually caused by the violation of the Convention in her case. Consequently, there is no cause to make an award under that head. On the other hand, the Court accepts that the applicant suffered distress, anxiety and frustration because of the unreasonable length of the proceedings. Making its assessment on an equitable basis and taking into account that the proceedings in the applicant's case concerned compensation for damage to health, the Court awards the applicant EUR 2,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

60. The applicant also claimed EUR 1,460 for costs and expenses incurred before the domestic courts and the Court.

61. The Government considered that the applicant's claim should be allowed in part, as she has only shown proof of having spent 7,601.42 Russian roubles in the course of the proceedings before the domestic courts and before the Court.

62. According to the Court's case-law, an applicant is entitled to reimbursement of 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 applicant the sum of EUR 220 under this head, plus any tax that may be chargeable on the above amount.

C. Default interest

63. 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;
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, EUR 2,900 (two thousand nine hundred euros) in respect of non-pecuniary damage and EUR 220 (two hundred and twenty euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus 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 amount 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 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President