



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

FIRST SECTION

CASE OF MARUSEVA v. RUSSIA

(Application no. 28602/02)

JUDGMENT

STRASBOURG

29 May 2008

FINAL

29/08/2008

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 Maruseva v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 May 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 28602/02) 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, Mrs Valentina Pavlovna Maruseva (“the applicant”), on 26 June 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 alleged that the length of proceedings in her civil case exceeded the “reasonable time” requirement of Article 6 § 1 of the Convention.

4. By a decision of 1 June 2006, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

6. The applicant was born in 1962 and lives in Smolensk.

7. The applicant’s 6 year old son, Sergey, suffered from a serious congenital heart disease. On 8 February 1995 he died during heart surgery in a State-owned clinic. The applicant requested the Smolensk town prosecutor’s office to investigate her son’s death. She suspected that he had died as a result of medical negligence. On several occasions the case was

opened and then closed by the prosecutor's office on the ground that no fault on the part of the doctors had been established. The conclusions of the investigative authorities relied, in particular, on the results of the forensic examination carried out after the death of Sergey Marusev. The applicant challenged the refusal to prosecute the doctors in court, but to no avail. On 12 February 1997 the Zadneprovskiy District Court of Smolensk ("the District Court") upheld the prosecution's decision to discontinue the criminal proceedings. That judgment was upheld by the Smolensk Regional Court on 11 March 1997.

8. On 23 August 1995 the applicant brought a civil action for negligence against Dr M., who had performed the operation, and Hospital no. 1 of Smolensk, in which the operation had been carried out ("the hospital"). She sought compensation for pecuniary and non-pecuniary damage.

9. On 23 December 1996 the District Court rejected her claim, holding that her son had died of natural causes. On 11 February 1997 that judgment was upheld by the Smolensk Regional Court.

10. On an unspecified date the applicant requested the Supreme Court of the Russian Federation to examine her case by way of supervisory review (see the "Relevant Domestic Law" part below).

11. On 23 February 1999 the Vice-President of the Supreme Court brought an extraordinary appeal (*npomecm*), pointing to numerous errors of fact and law in the lower courts' decisions. On 18 March 1999 the Presidium of the Regional Court examined the case, allowed the extraordinary appeal and quashed the impugned judgments of 23 December 1996 and 11 February 1997. The case was remitted to the first-instance court.

12. According to the Government, on 21 March 1999 the District Court received the case file from the Supreme Court. The judge invited the parties to an informal preliminary meeting, which took place on 11 May 1999. The first hearing was held on 20 May 1999. The judge decided to summon additional witnesses and the case was adjourned to 8 July 1999.

13. On 9 July 1999 the District Court dismissed the applicant's action, holding that the defendants could not be held responsible for the death of Sergey Marusev. On an appeal by the applicant, on 21 October 1999 the Regional Court quashed that judgment, pointing out that the first-instance court had failed to assess important medical aspects of the case. It also recommended that certain additional steps be taken. The case was remitted to the first-instance court.

14. On 17 November 1999 the District Court again dismissed the applicant's action. On 28 December 1999 the Regional Court overruled the first-instance court and remitted the case to it for a fresh examination. The Regional Court noted that the first-instance court had failed to take certain procedural steps, breached procedural rules and failed to establish and analyse all the pertinent facts of the case.

15. On 19 January 2000 the District Court received the case file from the Regional Court. According to the Government, after having received the case file the judge tried to initiate a supervisory review of the decision of the Regional Court, but to no avail – on 30 March 2000 his request for supervisory review was rejected.

16. On 8 April 2000 the judge invited the parties to an informal preliminary meeting. The first hearing took place on 29 May 2000. On that date the judge decided that an additional forensic examination was needed to establish the cause of death of Sergey Marusev. He formulated eighteen questions to be answered by medical experts and transferred the documents from the case file to a clinic based in the Moscow Region. It took the court several months to obtain the results of that examination.

17. The next hearing was held on 21 December 2000. On that date the court decided to examine two more witnesses – Mr B., the director of the Scientific Centre of Cardiovascular Surgery of the Russian Academy of Sciences, and Mr P., his deputy.

18. On 11 January 2001 the District Court sent a rogatory letter to the Zamoskvoretskiy District Court of Moscow, requesting the questioning of those witnesses. The rogatory letter was received by the Zamoskvoretskiy District Court on 12 March 2001. Mr B. and Mr P. were summoned to the court but failed to appear. On several occasions the court bailiffs tried to reach them at their home and professional addresses, but to no avail.

19. In 2002 the applicant complained about the court's inactivity to the Administration of the President of Russia and to the Federal Ombudsman's Office. Her complaints were forwarded to the Moscow City Court. Finally, on 11 February 2002 the judge of the Zamoskvoretskiy District Court of Moscow questioned Mr B. and Mr P. and sent the transcript of their testimonies to the Zadneprovskiy District Court of Smolensk. It was received on 4 March 2002.

20. On 14 March 2002 the Zadneprovskiy District Court set the date for the next hearing at 15 May 2002. On 17 May 2002 it dismissed the applicant's action against the hospital and doctor M. The applicant appealed. On 15 October 2002 the Regional Court quashed the first-instance judgment and remitted the case to the first-instance court.

21. On 26 December 2002 the District Court delivered a new judgment. This time the court found that there had been certain counter-indications to performing the surgery and that the hospital had not obtained the relevant medical information before the operation. The court concluded that the surgical team and the hospital had therefore been responsible for the death of the applicant's son due to negligence and satisfied the applicant's claims in part, awarding her 15,000 Russian roubles ("RUB", approximately 457 euros) in compensation for non-pecuniary damage and 16,430 RUB (500 euros) for pecuniary damage. The court held that the above sums should be paid by the hospital, exonerating Doctor M. from any

liability. The remaining part of the applicant's claims (248,569 RUB in compensation for non-pecuniary damage) was rejected.

22. On 4 January 2003 the applicant appealed. By a decision of 11 March 2003 the Regional Court increased the award for non-pecuniary damage to 100,000 RUB. As regards compensation for pecuniary damage, the judgment of 26 December 2002 was quashed and the case remitted to the first-instance court.

23. On 25 April 2003 the District Court awarded the applicant RUB 6,304 for pecuniary damage. On 24 June 2003 that judgment was quashed by the Regional Court.

24. On 22 August 2003 the District Court examined the case again. It partly satisfied the applicant's claims, awarding her RUB 43,984 in compensation for pecuniary damage. On 21 October 2003 that judgment was upheld by the Regional Court.

THE LAW

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

25. The applicant complained of the excessive length of the proceedings in her civil case, which ended on 21 October 2003 with the judgment of the Smolensk Regional Court. Article 6, in its relevant part, 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. In their observations on the merits the Government claimed that the length of the proceedings had not been excessive. The proceedings had never come to a standstill, the case had been examined four times at three levels of jurisdiction, and four forensic reports had been obtained. Furthermore, a certain delay had been caused by the failure of witnesses B. and P. to appear.

27. The applicant maintained her complaints.

28. The Court refers to its admissibility decision of 1 June 2006 in which it held that it would examine under Article 6 § 1 only the period between 23 February 1999, when the Vice-President of the Supreme Court reopened the case by way of supervisory review, and 21 October 2003, when the Smolensk Regional Court adopted the final decision in the case. The overall duration of the proceedings was therefore four years, seven months and twenty-eight days. That being said, the Court will have regard to the stage which the proceedings had reached on the date when the period under examination began (see *Kudła v. Poland* [GC], no. 30210/96, § 123, ECHR 2000-XI).

29. The Court also notes that the reasonableness of the length of the proceedings is usually assessed in the light of the particular circumstances of the case and with regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant also has to be taken into account (see *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35, and *Portington v. Greece*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2630, § 21).

30. Turning to the present case the Court accepts that the dispute between the applicant and the hospital involved complex medical issues. At the same time, by the time the proceedings had been reopened by way of supervisory review, the Zadneprovskiy District Court had obtained the results of the criminal investigation into the death of Sergey Marusev carried out by the prosecution, which had been confirmed by the courts in 1997. Therefore, even assuming that the previous courts' decisions were erroneous, by 23 February 1999 (the starting point for calculating the length of the proceedings) the case file must have contained a substantial amount of necessary information and evidence. In other words, the complexity of the case should not be overestimated.

31. The Court notes that after it was reopened the case was examined five times by the first-instance court and five times by the court of appeal. With regard to the applicant's conduct, the Court notes that it was always the applicant who appealed. However, she cannot be criticised for taking advantage of that remedy, especially given that the court of appeal accepted her arguments and remitted the case for a fresh examination four times (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

32. As to the conduct of the authorities, the Court notes that, first of all, it took the domestic courts more than a year to question two expert witnesses whose whereabouts, given their professional status, were well known. Furthermore, the case was remitted to the District Court for fresh examination five times (once by the Supreme Court, and four times by the Regional Court). The Court does not see any reason for that other than the failure of the District Court to examine the case in an appropriate manner. Although the length of proceedings could be explained by the involvement of many instances, it does not relieve the States of their duty to organise their legal systems in such a way that their courts can meet the requirement to hear cases within a reasonable time (see *Duclos v. France*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 55).

33. Finally, the Court notes that the case concerned the death of the applicant's son, a very delicate subject which would normally require special promptness.

34. Having examined all the material submitted to it and having regard to its case-law on the subject, 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed that the excessive length of the proceedings had caused her personal suffering, but did not claim any specific amount under this head. She left the issue to the discretion of the Court.

37. The Government contested her claim as unsubstantiated.

38. The Court considers that the applicant must have suffered feelings of frustration and distress as a result of the excessive length of the proceedings in the case concerning the death of her son. That suffering cannot be compensated solely by the finding of a violation. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,100 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

39. The applicant also claimed reimbursement of costs and expenses incurred in the proceedings before the domestic courts and before the European Court of Human Rights. She thus claimed RUB 1,764 in postal and copying expenses. She further claimed RUB 65,000 for loss of time caused by her having to participate in the domestic proceedings. She claimed that that sum was equal to the amount she would have paid a lawyer if she had had one.

40. The Government considered that her claims in that connection were unsubstantiated.

41. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999, § 79, and *Smith and Grady v. the United Kingdom* (just satisfaction),

nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX). This may include domestic legal costs actually and necessarily incurred to prevent or redress the breach of the Convention (see, for example, *I.J.L., G.M.R. and A.K.P. v. the United Kingdom (Article 41)*, nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001).

42. Turning to the present case, the Court notes that the applicant provided the Court with evidence confirming her statutory expenses. They appear to be reasonable as to the quantum and related to the domestic proceedings and the proceedings in Strasbourg. As regards the amount of RUB 65,000, claimed under the head of “loss of time”, the applicant’s method of calculation does not appear convincing. The Court, having examined the documents in its possession, awards the applicant EUR 47 under the head of costs and expenses.

C. Default interest

43. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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 the Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (i) EUR 2,100 (two thousand one hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 47 (forty seven euros) in respect of her 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;
3. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 29 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President