



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

FIRST SECTION

CASE OF SUSLIN v. RUSSIA

(Application no. 34938/04)

JUDGMENT

STRASBOURG

23 October 2008

FINAL

23/01/2009

This judgment may be subject to editorial revision.

In the case of Suslin v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 34938/04) 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, Mr Nikolay Nikolayevich Suslin (“the applicant”), on 6 September 2004.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2006 the President of the First Section decided to communicate the complaints concerning the non-enforcement of a final judgment and the excessive length of proceedings to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Volgograd, Volgograd region.

A. First examination of the case

5. According to the applicant, on an unspecified date in March or April 1999 he brought a court action against a local Welfare Office before the Traktorzavodskoy District Court of Volgograd (“the District Court”). He claimed an increase in the rate of disability allowance due to him as a Chernobyl victim, that the increase should be backdated and that the unpaid amounts should be recovered. The Government submitted that the applicant lodged his claims on 16 August 1999.

6. On 27 October 1999 the District Court rejected the applicant’s claims. On 14 January 2000 the Volgograd Regional Court (“the Regional Court”) upheld that judgment.

B. Supervisory review and second examination of the case

7. On 21 May 2001 the Presidium of the Regional Court quashed the judgment of 27 October 1999, as upheld on 14 January 2000, and remitted the case for fresh examination to the first-instance court on the grounds that the lower courts had failed to apply the appropriate substantive law.

8. On 3 July 2001 the District Court granted the applicant’s claims. It determined a new rate of monthly disability allowance and recovered the unpaid amounts. On 14 November 2001 the Regional Court upheld that judgment.

C. Supervisory review and third examination of the case

9. On 20 December 2002 the Presidium of the Regional Court, in the presence of the applicant, quashed the judgment of 3 July 2001, as upheld on 14 November 2001, and remitted the case for fresh examination to the first-instance court on the grounds that the above decisions had been made in breach of procedural and substantive law.

10. On 25 December 2002 the judgment of 3 July 2001 was enforced in so far as it had recovered the unpaid amounts.

11. On 27 December 2002 the District Court received the case for examination. Between 3 February and 1 September 2003 the proceedings were suspended pending the examination by the Supreme Court of the Russian Federation of a question relating to the application by the courts of the legislation on social protection of Chernobyl victims.

12. On 8 September 2003 the District Court granted the applicant’s claims. On 29 October 2003 the Regional Court quashed that judgment on appeal and remitted the case for fresh examination to the District Court on the grounds that the latter had failed to apply the appropriate law and had not complied with the ruling of the Presidium of the Regional Court of 20 December 2002.

D. Fourth examination of the case

13. On 12 January 2004 the District Court granted the applicant's claims. It determined a new rate of monthly disability allowance and recovered the unpaid amounts. On 24 March 2004 the Regional Court upheld that judgment.

14. In April 2004 the legislation governing the social protection of Chernobyl victims was modified and established a new rate of monthly disability allowance which was higher than that determined by the judgment of 12 January 2004.

15. On 16 March and 26 May 2005 the applicant received the amounts awarded by the judgment of 12 January 2004.

16. Subsequently, the applicant lodged several applications for supervisory review of the judgment of 12 January 2004, as upheld on 24 March 2004. He considered that those decisions were unlawful. However, the judicial authorities refused to refer the case for examination on the merits to a supervisory review court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENT OF 12 JANUARY 2004

17. The applicant complained that the judgment of 12 January 2004, as upheld on 24 March 2004, was not enforced in due time. He referred to Article 6 of the Convention and Article 1 of Protocol No. 1, which in their relevant parts provide as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

18. 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

19. The Government acknowledged that the delay in the enforcement of the judgment of 12 January 2004 had not been compatible with the requirements of Article 6 of the Convention and Article 1 of Protocol No.1.

20. The applicant confirmed that the amounts awarded to him by the judgment of 12 January 2004 had been paid to him, but with a substantial delay. He submitted that it was no longer necessary to enforce the judgment of 12 January 2004 in so far as it had established a certain rate of monthly disability allowance, because the newly adopted legislation had increased that rate.

21. The Court observes that on 12 January 2004 the applicant obtained a judgment by which the Welfare Office was to pay him substantial amounts in social benefits. That judgment became enforceable on 24 March 2004. However, the full amount of money awarded by the court was paid to the applicant on 26 May 2005, i.e. in one year and two months after the judgment had acquired legal force. In so far as the judgment of 12 January 2004 established a certain rate of monthly payments, the Court takes into account the applicant’s submissions and considers that it is no longer necessary to enforce that part of the judgment.

22. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, and *Svitich v. Russia*, no. 39013/05, 31 July 2007).

23. Having examined the materials submitted to it, the Court notes that the Government have acknowledged that the delay in the enforcement of the judgment of 12 January 2004, as upheld on 24 March 2004, was not compatible with the requirements of Article 6 of the Convention and Article 1 of Protocol No. 1. The Court finds no reason to hold otherwise. Thus, by failing for a long period of time to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he had legitimately expected to receive.

24. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

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

25. The applicant complained that his claim against the Welfare Office had not been determined within a reasonable time, contrary to Article 6 § 1 of the Convention, which provides, as far as relevant, 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

26. 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

1. Period to be considered

27. According to the Government, the proceedings commenced on 16 August 1999 and ended on 24 March 2004 with the decision of the Regional Court.

28. The applicant admitted that he had not put a date on his statement of claim, but he insisted that he had lodged it in March or April 1999. He argued that the final decision in his case had still not been adopted, because his case should have been re-examined by way of supervisory review.

29. The Court observes that the date on which the proceedings commenced is in dispute between the parties. It notes that the Government gave an exact date on which the claim had been lodged, whereas the applicant was not sure even about the month. Therefore, the Court will consider that the proceedings commenced on 16 August 1999.

30. The Court recalls that only those periods when the case was actually pending before the domestic courts, i.e. the periods when there was no effective judgment in the determination of the merits of the applicant's dispute and when the authorities were under an obligation to pass such a judgment should be taken into account (see, for example, *Skorobogatova v. Russia*, no.33914/02, § 39, 1 December 2005 with further references). Therefore, the proceedings were pending during the following periods:

(a) between 16 August 1999 and 14 January 2000 (four months and 29 days);

(b) between 21 May and 14 November 2001 (five months and 25 days);

(c) between 20 December 2002 and 24 March 2004 (one year, three months and 4 days).

31. Furthermore, the Court has previously held that enforcement proceedings must be regarded as a second stage of proceedings (see *Di Pede v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 24) and that the execution of a judgment given by a court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, § 40). Therefore, the periods when the authorities were under obligation to enforce the judgments of 3 July 2001 and of 12 January 2004 have to be taken into account. The first period started on 14 November 2001, when the judgment of 3 July 2001 became enforceable, and ended on 20 December 2002, when the Regional Court quashed it by way of supervisory review (one year, one month and six days). The second period started on 24 March 2004, when the judgment of 12 January 2004 became enforceable, and ended on 26 May 2005, when it was fully enforced (one year, two months and two days).

32. Taking into account the above, the Court considers that the period to be considered is of approximately four years and five months.

2. Reasonableness of the length of proceedings

33. The Government submitted that the length of proceedings in the present case complied with the "reasonable time" requirement of Article 6. The proceedings were factually complex, the applicant and the defendant had contributed to the length of the proceedings by appealing against the decisions of lower courts. The domestic authorities were not responsible for any important delays in the examination of the case. The hearings had been scheduled regularly; the court examined the case on the merits several times.

34. The applicant maintained his complaint.

35. The Court recalls 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).

36. The Court considers that the proceedings at issue were of a certain complexity. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of proceedings.

37. As regards the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be held responsible for lodging appeals. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by the 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 considers that the applicant was not responsible for any substantial delays in the proceedings.

38. As regards the conduct of the judicial authorities, the Court notes the Government's argument that during the period under consideration the domestic authorities examined the case in four rounds of proceedings. The Court observes in this respect that on two occasions the supervisory review court quashed the decisions of the lower courts on the grounds that they had not properly applied substantive and procedural law. During the third examination of the case the first-instance court failed to implement the instructions given by the supervisory review court and as a result the Regional Court set the judgment aside. The Court considers that the shifting of the case between several levels of jurisdictions several times was the main reason for the lengthy examination of the case. Those delays are entirely attributable to the domestic authorities and their failure to examine the case properly. The fact that the domestic courts heard the case several times did not absolve them from complying with the reasonable time requirement of Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

39. Finally, the Court observes that an important interest was at stake for the applicant in the present case, as the proceedings were aimed at determining the rate of his monthly disability allowance. The Court is of the opinion that the nature of the dispute called for particular diligence on the part of the domestic courts.

40. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. The applicant complained under Article 6 of the Convention about the quashing, by way of supervisory review, of the judgment of 3 July 2001. The Court recalls that the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a reopening of the proceedings as in the present case (see *Sardin v. Russia* (dec.), no. 69582/01, 12 February 2004 and *Khanyan v. Armenia* (dec.), no. 19065/05, 5 July 2007). The Court further recalls that, in accordance with Article 35 § 1 of the Convention, it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months from the date of the “final” domestic decision. If there is no adequate remedy against a particular act, which is alleged to be in breach of the Convention, the date when that act takes place is taken to be “final” for the purposes of the six months’ rule (see, for example, *Valašinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000).

42. The Court notes that at the material time the Russian law of civil procedure did not provide for any ordinary appeal against a ruling adopted by way of supervisory review by the Presidium of a regional court. In the absence of an effective remedy the Court concludes that it was the very act of quashing the judgment of 3 July 2001 that triggered the start of the six-month time-limit for lodging this part of the application to the Court. In the present case the judgment of 3 July 2001 was quashed by the Presidium of the Regional Court on 20 December 2002 in the applicant’s presence, whereas the application was lodged on 6 September 2004. It follows that this part of the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

43. The applicant also complained under Article 14 about discrimination against him on the ground of his disability status. The Court considers that the facts as submitted do not disclose any appearance of discrimination against the applicant. 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

44. 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

45. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage caused by the lengthy examination of his case and EUR 5,000 in respect of non-pecuniary damage sustained as a result of the lengthy non-enforcement of the judgment of 12 January 2004. He also claimed the payment of the amounts awarded by the judgment of 3 July 2001 and EUR 4,000 in respect of non-pecuniary damage caused by the quashing of that judgment.

46. The Government contested the applicant's claims.

47. The Court observes that the issue of the non-enforcement of the judgment of 3 July 2001 was not examined in the present case and the complaint about the quashing of that judgment was declared inadmissible. Therefore the Court rejects the applicant's claims in so far as they related to the judgment of 3 July 2001.

48. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to determine his claim within a reasonable time and to enforce the judgment of 12 January 2004 in due time. However, the amount claimed appears excessive. The Court takes into account the nature of the award at stake in the present case, namely a benefit linked to the applicant's disability as a Chernobyl victim, the length of the proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 3,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

49. The applicant did not claim reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court considers that there is no call to award him any sum on this account.

C. Default interest

50. 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

1. *Declares* unanimously the complaints concerning the non-enforcement of the judgment of 12 January 2004 and the length of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the lengthy non-enforcement of the judgment of 12 January 2004;
3. *Holds* by six votes to one that there has been a violation of Article 6 of the Convention on account of the unreasonable length of proceedings;
4. *Holds* by six votes to one
 - (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 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Ms Vajić is annexed to this judgment.

NAV
AMW

PARTLY DISSENTING OPINION OF JUDGE VAJIĆ

In numerous cases against Russia the Court has previously held that a failing over a long period of time to comply with an enforceable judgment may lead to finding of a violation of both Article 6 and Article 1 of Protocol No. 1 to the Convention. The same approach obtains in the present case.

In the present case, however, the majority has decided to adopt a novel technique. This consists in examining separately the non-enforcement of the domestic judgment and the overall length of the proceedings. This results in a duplication of part of the violation under Article 6 and a further duplication of the non-pecuniary damage under Article 41 of the Convention – in both instances by calculating twice the same period of non-enforcement of the judgment.

I disagree with such an approach on the grounds of consistency in the Court's case-law and of clarity in the judgment itself. It is the Court's long-established case-law that the execution of a judgment given by a court is to be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

The period during which the authorities are under an obligation to enforce a judgment creating or confirming a property right may thus give rise to both a violation of Article 6 and of Article 1 of Protocol No. 1. In the present case, the Court has found a violation on these grounds, taking into account the lengthy non-enforcement (the "second part" of the "trial").

Subsequently the Court proceeded also to examine the global length of the proceedings, that is, the entire "trial" (four years and four months for two levels of jurisdiction, see paragraph 32 of the judgment). In order to do so it had to take into account not only the "judicial stage" of the proceedings but also - and for a second time - the period of non-enforcement.

In my opinion, it was not necessary to find two separate violations of the reasonable-time requirement in this case. It would have been sufficient to concentrate on only one period, namely that during which the delays were more significant. It was for the Court to determine which period that was. Such a solution would have been in line with its reasoning in other cases (see, for example, *Lukyanchenko v. Ukraine*, no. 17327/02, §§ 33-34, 15 May 2008; *Androsov v. Russia*, no. 63973/00, §§ 73-76, 6 October 2005).

At the same time, the approach outlined above would also have made it easier to read the judgment. Given the difficulties in calculating the periods to be taken into account in Russian length of proceedings cases (paragraph 30 of the judgment), and the duplication of the non-enforcement period (paragraphs 21 and 31 of the judgment), as it currently stands the judgment may appear overly complicated.

For the reasons set out above I am also unable to agree with the approach taken in awarding non-pecuniary damage in this case, as it simply adds together the two amounts normally awarded in such cases, namely the award in respect of the total length of the proceedings (four years) and that in respect of the non-enforcement period (14 months).