



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

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1959 · 50 · 2009

FIRST SECTION

**CASE OF YELISEYEV v. RUSSIA**

*(Application no. 12098/04)*

JUDGMENT

STRASBOURG

28 May 2009

**FINAL**

**28/08/2009**

*This judgment may be subject to editorial revision.*



**In the case of Yelisseyev v. Russia,**

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 May 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 12098/04) 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 Vladimir Pavlovich Yelisseyev (“the applicant”), on 28 February 2004.

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

3. On 7 November 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1952 and lives in St Petersburg.

5. On 2 August 1999 the applicant lodged an action against two private companies seeking compensation for damage caused to his car. On the same day the Sestroretskiy District Court of St. Petersburg adjourned the examination of the action until 9 February 2000 and ordered that the applicant should pay a court fee in instalments.

6. On 23 May 2000 the Sestroretskiy District Court once again adjourned the examination of the action, requesting the applicant to pay an additional court fee because he had amended his claims on 9 February 2000. The applicant paid the fee in full on 30 June 2000.

7. No hearings were fixed between September 2000 and 17 October 2000 because the case file had been sent to the St. Petersburg City Court and the composition of the District Court examining the applicant's case had been changed.

8. The hearing fixed for 17 October 2002 was adjourned because the case file had been sent to the St. Petersburg City Prosecutor's office. The following hearing was listed for 11 March 2003.

9. According to the Government, hearings fixed between 11 March 2003 and 1 November 2004 were postponed because the companies' representatives defaulted or asked for adjournments, and because the presiding judge was ill or involved in other unrelated proceedings.

10. On 1 November 2004 the Sestroretskiy District Court dismissed the action. On the same day the applicant lodged a short version of the statement of appeal against the judgment of 1 November 2004.

11. On 15 November 2004 the applicant complained to the president of the Sestroretskiy District Court that he had not been served with the full text of the judgment of 1 November 2004 and that he had not been allowed to study the case file to prepare his appeal statement.

12. On 15 December 2004 the Sestroretskiy District Court adjourned the appeal proceedings because the applicant had not submitted the "reasoned" appeal statement and a certificate showing that he had paid the court fee.

13. The applicant complained about the decision of 15 December 2004 before the St. Petersburg City Court.

14. On 22 April 2005 the St. Petersburg City Court refused to examine the applicant's appeal, noting that he had failed to comply with the District Court's decision of 15 December 2004.

## THE LAW

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

15. 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..."

16. The Government, relying on the information provided by the Supreme Court of the Russian Federation, stated that “the time-limit, established by the Russian civil procedural law for the examination of the applicant’s case, had been substantially violated”. They further stressed that the length of the proceedings in the applicant’s case had been excessive, in violation of the “reasonable time” requirement of Article 6 § 1 of the Convention.

#### **A. Admissibility**

17. The Court notes that the period to be taken into consideration began on 2 August 1999 and ended on 22 April 2005 when the St. Petersburg City Court refused to examine the applicant’s appeal against the decision of 15 December 2004. It thus lasted approximately five years and nine months for two instances.

18. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### **B. Merits**

19. 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).

20. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

21. Turning to the present case, the Court observes substantial delays caused by the transfer of the case to the higher-instance court and prosecutor’s office, change in the composition of the bench, failure to fix hearings, judge’s illness and his participation in unrelated proceedings (see paragraphs 7-9 above). The failure to comply with domestic time-limits was acknowledged by the Supreme Court of the Russian Federation. The Court is also mindful of the Government’s assertion that the “reasonable time” requirement of Article 6 § 1 of the Convention was violated in the applicant’s case.

22. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. The applicant further complained under Articles 3, 4, 5 and 6 of the Convention that the decisions of 2000 concerning the payment of the court fees had been unfair and that he had been forced to work in order to pay the fees.

24. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 37.555 Russian roubles (RUB) in respect of pecuniary damage, representing the cost of his car allegedly damaged by the respondent company and repair costs. He further claimed RUB 1.560 and 1 percent of the car's cost in losses for each day he could not use his car. In addition, he claimed compensation for non-pecuniary damage, leaving the determination of the sum to the Court.

27. The Government submitted that the claims for compensation for pecuniary damage were unrelated to the violation which had occurred in the applicant's case.

28. 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, it considers that the applicant suffered distress, anxiety and frustration because of an unreasonable length of the proceedings in his case. Making its assessment on an equitable basis, it awards the applicant 2,400 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

## **B. Costs and expenses**

29. Without indicating the sum or providing documents in support, the applicant also claimed compensation for the costs and expenses incurred before the domestic courts and the Court.

30. The Government stressed that the claims were unsubstantiated.

31. According to the Court's case-law, an applicant is entitled to the 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 rejects the claim for costs and expenses.

## **C. Default interest**

32. 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 2,400 (two thousand and four 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President