



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

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1959 · 50 · 2009

FIRST SECTION

**CASE OF ZAYTSEV AND OTHERS v. RUSSIA**

*(Application no. 42046/06)*

JUDGMENT

STRASBOURG

25 June 2009

**FINAL**

***06/11/2009***

*This judgment may be subject to editorial revision.*



**In the case of Zaytsev and Others v. Russia,**

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 June 2009,

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

## PROCEDURE

1. The case originated in an application (no. 42046/06) 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 three Russian nationals, Mr Yevgeniy Mikhaylovich Zaytsev, Ms Irina Vasilyevna Zaytseva and Mr Yaroslav Yevgenyevich Zaytsev (“the applicants”), on 14 April 2004.

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

3. On 20 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).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1950, 1959 and 1989 respectively and live in St. Petersburg. They are relatives.

6. On 17 July 1996 the first applicant lodged an action before the Nevskiy District Court of St. Petersburg against a private company and its owner, Mr P., claiming execution of a contract and compensation for damage. According to the Government, the action was lodged on 30 October 1996.

7. The Nevskiy District Court fixed a hearing for 12 September 1996 and ordered the first applicant to provide a detailed calculation of the damages claimed. The first applicant submitted the calculation and amended his claims.

8. On 15 October 1996 the Nevskiy District Court adjourned the examination of the action because the first applicant had not followed the pre-trial procedure for settling the dispute.

9. Three days later the first applicant appealed against the decision of 15 October 1996 to the St. Petersburg City Court. On the same day he lodged another action before the Nevskiy District Court against Mr P. seeking compensation for damage and execution of a contract. The action was based on the same set of facts as the action of 17 July 1996.

10. On 18 November 1996 the St. Petersburg City Court upheld the decision of 15 October 1996.

11. On 17 June 1997 the District Court partly granted the action of 18 October 1996. The judgment was quashed on appeal on 1 December 1997 and a re-examination of the case was ordered.

12. Having received the case file, on 11 March 1998 the Nevskiy District Court joined the two sets of the proceedings pertaining to the applicant's actions and listed a hearing for 3 April 1998. Between April 1998 and March 2000 the District Court fixed fourteen hearings, of which, according to the Government, three hearings in 1998, one hearing in 1999 and five hearings in 2000 were adjourned due to the parties' failure to attend. The first applicant, relying on a letter of 15 December 1998 from a deputy president of the Nevskiy District Court, disputed the Government's assertion, arguing that one hearing in 1998 had been postponed due to the parties' absence, two had been adjourned because the presiding judge had been involved in other unrelated proceedings or had been ill and the remaining eight hearings had been adjourned because the respondent had defaulted.

13. In the meantime, on 12 March 1999 the first applicant, who at that time lived in the town of Sestroretsk, asked the District Court to examine the action in his absence and to serve him with a copy of the judgment. The first applicant provided the Court with copies of summonses for the hearings, neither of which contained a notification that his presence before the District Court was mandatory.

14. On 28 March 2000 the Nevskiy District Court partly accepted the action. The first applicant appealed. On 14 August 2000 the District Court

adjourned the appeal proceedings and asked the first applicant to pay a court fee.

15. On 5 February 2001, following a complaint by the first applicant, the St. Petersburg City Court quashed the decision of 14 August 2000 and accepted the appeal. On the same day the City Court quashed the judgment of 28 March 2000 in part and sent the case for a fresh examination.

16. On 25 April 2001 the first applicant once again asked the Nevskiy District Court to consider the case in his absence.

17. As it appears from the parties' submissions, after the District Court had received the case file from the St. Petersburg City Court, it fixed the first hearing for 4 March 2002.

18. On 4 March 2002 the District Court postponed the hearing. According to the Government, the District Court held that the first applicant's presence was mandatory. They further submitted that summonses had been served on the parties, including the first applicant, with a note stating that their presence was required.

19. Hearings scheduled for 5 August and 30 September 2002 were also adjourned due to the first applicant's absence. According to the Government, summonses containing an order for the first applicant's presence had been served on him in due time. Copies of the summonses presented by the first applicant, including those for the hearings scheduled for 4 March, 5 August and 14 November 2002, did not contain notification that his presence was mandatory.

20. On 14 November 2002 the Nevskiy District Court discontinued the examination of the action because the first applicant had defaulted at the hearings on 4 March, 30 September and 14 November 2002 and had apparently lost interest in his case.

21. The first applicant was not notified of the decision of 14 November 2002. Accordingly, he complained to various domestic officials and the Supreme Court of the Russian Federation about the excessive length of the proceedings in his case.

22. On 1 October 2003 the St. Petersburg City Court, in reply to numerous complaints by the first applicant, sent a letter informing him that on 14 November 2002 the proceedings in his case had been discontinued due to his failure to attend hearings. The City Court, explained in detail to the first applicant the various judicial avenues he could follow if he wanted to challenge the decision of 14 November 2002. A copy of the decision of 14 November 2002 was not enclosed.

23. The first applicant asked the President of the Nevskiy District Court to serve him with the decision of 14 November 2002. He also argued that he had requested the Nevskiy District Court to examine his action in his absence and that therefore his absence from the hearings should not have been interpreted as proof that he had lost interest in the case.

24. On 23 January 2004 the District Court President informed the first applicant that his requests for the examination of his action in his absence had been included in the case file and that the District Court had taken them into consideration. However, the District Court had considered that the first applicant's presence at the hearings had been absolutely necessary and thus, following unsuccessful attempts to obtain his attendance, on 14 November 2002 it had decided to discontinue the examination of the case. The President of the District Court enclosed a copy of the decision of 14 November 2002.

25. On 12 March 2003 the St. Petersburg City Prosecutor's office, in response to complaints by the applicant about the discontinuation of the proceedings, once again informed the first applicant of the procedure for challenging the decision of 14 November 2002.

## II. RELEVANT DOMESTIC LAW

26. The RSFSR Code on Civil Procedure of 11 June 1964 (in force at the material time) provided that civil cases were to be prepared for a hearing no later than seven days after the action had been lodged with the court. Civil cases were to be examined no later than one month after the preparation for the hearing had been completed (Article 99)

27. Summonses were to be served on the parties and their representatives in a way that allowed them enough time to attend the hearing on time and prepare their case. If necessary, the parties could be summoned by a phone call or a telegram (Article 106).

28. Parties could ask a court to examine a case in their absence and to serve them with a copy of a judgment. A court could decide that the presence of a party was mandatory on the basis of the particular circumstances of a case (Article 157).

29. Article 221 set out a list of grounds for issuing an interim decision on discontinuation of the proceedings (*определение об оставлении заявления без рассмотрения*), that is, if parties failed to make use of a preliminary non-judicial avenue of solving a dispute; if an action was lodged by an incapacitated person or by a person lacking the authority to act; if the parties, who had not asked for the examination of a case in their absence, without valid reasons, failed to attend two hearings and the court considered it impossible to decide the case on the basis of case file materials; if a claimant, who had not asked for the examination of a case in his/her absence, failed to attend two hearings and a respondent did not insist on the examination of the merits of the case; and if the same dispute between the same parties was pending before a court.

30. A copy of a decision on discontinuation of the proceedings was to be sent to the absent party no later than three days after its delivery (Article 213).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS AND ARTICLE 13 OF THE CONVENTION

31. The applicants 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...”

Relying on Article 13 of the Convention, they further complained of the fact that in Russia there was no court to which an application could be made to complain about the length of proceedings. Article 13 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.”

#### A. Submissions by the parties

32. In their observations lodged with the Court on 30 March 2007 the Government submitted that the proceedings in the present case had lasted from 30 October 1996, when the first applicant had lodged his action with the District Court, to 23 January 2004, when he had been served, for the first time, with a copy of the decision of 14 November 2002. Noting that although the Court only has competence to examine the period after 5 May 1998, when the Convention entered into force in respect of Russia, the Government stressed that the period under consideration, that is, approximately five years and eight months, was still extremely long. They observed that, despite the complexity of the case, the parties’ failure to attend and the absence of particular diligence on the first applicant’s part, the period in question could not be considered reasonable. The Government accepted that there had been a violation of Article 6 of the Convention on account of the excessive length of the proceedings in the present case and a violation of Article 13 on account of the absence of effective remedies for the complaints about the excessive length of the proceedings.

33. In their further observations lodged with the Court on 18 September 2007, however, the Government reversed their position, arguing that the first applicant had contributed substantially to the delays in the proceedings by failing to attend a number of hearings, thus leaving the domestic courts accountable for a period of a little over two years. In addition, the Government submitted that the complaint was, in any event, inadmissible,

as the proceedings ended on 14 November 2002 and the application was lodged with the Court on 14 April 2004. In their opinion, the applicants had failed to comply with the six-month rule under Article 35 § 1 of the Convention.

34. The applicants maintained their complaints, insisting that the proceedings had been unreasonably long. They argued that on a number of occasions the first applicant had asked the District Court to examine the action in his absence and to serve him with a copy of the judgment. At least until March 2002 the District Court had accepted those requests, finding it possible to examine the merits of the first applicant's action in his absence. In particular, the applicants referred to the District Court's judgment of 28 March 2000 as the proof of that assertion.

## **B. The Court's assessment**

### *1. Admissibility*

#### **(a) Victim status**

35. As to the question whether all the applicants can be regarded as "victims" within the meaning of Article 34 of the Convention, the Court reiterates that there must be a sufficiently direct link between an applicant and the damage which he or she claims to have sustained as a result of the alleged violation for that applicant to be able to claim that he or she is the victim of a violation of one or more of the rights and freedoms recognised by the Convention and its Protocols (see *Smits and Others v. the Netherlands* (dec.), nos. 39032/97, 39343/98, etc., 3 May 2001).

36. The second and third applicants are not directly affected by the matters complained of. They were neither claimants in the domestic civil proceedings under consideration, nor were their own "civil rights and obligations" at issue in the proceedings before the competent domestic courts. The Court notes that the complaints before it concern the allegation that the delay in those proceedings breached the reasonable time requirement of Article 6 and that there was no effective remedy for it as required by Article 13 of the Convention. The Court does not consider that these two applicants can claim to be victims of violations of those provisions when neither of them were a party to those proceedings (see *O'Reilly and Others v. Ireland* (dec.), no. 54725/00, 4 September 2003). It follows that second and third applicants cannot claim to be "victims" of a violation of Articles 6 and 13 in the sense of Article 34 of the Convention. Their complaints under those provisions are thus incompatible *ratione personae* with the Convention's provisions and must be dismissed pursuant to Article 35 § 4 of the Convention.

**(b) Six-month rule**

37. The Court reiterates the Government's argument that the complaints were lodged out of time, as the proceedings ended on 14 November 2002 and the application was only brought on 14 April 2004. In this connection, the Court observes, and it was not disputed by the parties, that the first applicant had been notified of the District Court's decision of 14 November 2002 sometime in October 2003. However, it was not until 23 January 2004 that, in response to his requests, he was served with a written copy of that decision. The Court reiterates that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Jałowiecki v. Poland*, no. 34030/07, § 21, 17 February 2009, *Papachelas v. Greece* [GC], no. 31423/96, § 30, ECHR 1999-II, and *Worm v. Austria*, § 33, 29 August 1997, *Reports of Judgments and Decisions* 1997-V). The Court notes that the RSFSR Code of Civil Procedure provided for *ex officio* service of decisions on the discontinuation of proceedings (see paragraph 30 above). The first applicant lodged his application with the Court on 14 April 2004, that is, within less than six months from the date of the service of the decision. It could therefore not be said that the application was introduced out of time. The Government's objection should be dismissed.

**(c) Period to be considered**

38. 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. As to the end of the period in question, the Court, being mindful of the Government's admission made on 30 March 2007 (see paragraph 32 above), considers that the period ended on 23 January 2004 when the District Court complied with its statutory obligation to serve the first applicant with a copy of the decision of 14 November 2002 (see, for similar reasoning, *Skorobogatova v. Russia*, no. 33914/02, § 40, 1 December 2005, with further references). It thus lasted for approximately five years and nine months before two levels of jurisdiction.

**(d) Conclusion**

39. The Court therefore notes that the present complaints of the first applicant raised under Articles 6 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## 2. Merits

### (a) Article 6 § 1

40. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. The Court notes that the parties did not dispute that the case was complex. The Court has no reason to conclude otherwise. However, it cannot accept that the complexity of the case in itself was sufficient to justify the overall length of the proceedings.

42. As to the first applicant's conduct, the Government submitted that he had contributed to a delay in the proceedings by failing to attend fourteen hearings in 1998, 1999, 2000 and 2002. The Court is not convinced by the Government's arguments. In particular, in respect of the first applicant's alleged absence from the hearings in 1998, it observes that the Government did not refer to any source of information on the basis of which their assertion could be verified. It was open to the Government to submit copies of any decisions or records of court hearings in which the District Court gave reasons for the adjournments. No such documents were presented. At the same time, the first applicant provided the Court with a copy of the letter of the deputy president of the Nevskiy District Court, showing that in 1998 only one hearing had been adjourned due to the first applicant's absence. The remaining postponements were attributable to the domestic courts (see paragraph 12 above). The Court considers the delay caused by the first applicant's failure to attend one hearing negligible.

43. The Court further observes that by virtue of Article 157 of the RSFSF Code of Civil Procedure the first applicant was entitled to an examination of his case in absentia (see paragraph 28 above). As it appears from the documents presented by the parties, in March 1999 he successfully availed himself of that avenue. There is no evidence, and the Government did not argue otherwise, that either in 1999 or in 2000 the District Court had sought the first applicant's mandatory attendance. Moreover, on 28 March 2000 the District Court gave the judgment in the first applicant's absence, granting a part of his claims (see paragraphs 13 and 14 above). The Court therefore does not accept the Government's argument that the first applicant caused delays in the proceedings in 1999 and 2000 (see *Skorobogatova*, cited above, § 48).

44. As to the first applicant's absence from the hearings in 2002, the Court finds it peculiar that the Government, while arguing that the District Court had considered his presence to be indispensable, did not produce a

copy of the District Court's decision to that effect or copies of summonses notifying the first applicant that his presence had been required. At the same time, the Court does not lose sight of the fact that on 25 April 2001 the first applicant repeated his request to the District Court for an examination of the case in his absence (see paragraph 16 above). Furthermore, the copies of summonses for the hearings in 2002 presented to the Court do not bear any indication that the District Court had rejected the first applicant's request for an in-absentia examination of the case (see paragraph 19 above). The Court therefore cannot conclude that the first applicant contributed to the prolongation 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. It took the District Court several months to fix hearings. A delay of approximately two years was caused by the District Court's refusal to accept the first applicant's appeal against the judgment of 28 March 2000 and the transfer of the case between the St. Petersburg City and Nevskiy District courts (see paragraphs 14-17 above). Furthermore, the Court finds it striking that it took the District Court over fourteen months to serve a written copy of the decision of 14 November 2002 on the first applicant. In this respect, the Court reiterates that 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). In addition, there were several shorter periods during which there was no apparent progress in the case.

46. The Court furthermore notes that the conduct of the defendants was one of the reasons for the prolongation of the proceedings. In the Court's opinion, the domestic authorities failed to take adequate steps in order to ensure their attendance. The defendants defaulted on at least thirteen occasions, which resulted in a delay of approximately fifteen months. There is no indication that the court reacted in any way to that behaviour. Accordingly, the Court considers that the domestic courts did not avail themselves of the measures available to them under national law to discipline the participants to the proceedings and to ensure that the case was heard within a reasonable time (see *Rybakov v. Russia*, no. 14983/04, § 32, 22 December 2005).

47. Having regard to the overall length of the proceedings, the Court concludes that the first applicant's case was not examined within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

**(b) Article 13**

48. 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 first applicant's case or provided him with adequate redress for the delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, 29 January 2004, § 64). Furthermore, the Court does not lose sight of the Government's submissions made on 30 March 2007 that there are no effective domestic remedies in the Russian Federation for complaints about the excessive length of proceedings.

49. 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 first 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.

**II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION**

50. Invoking Articles 1, 6, 8 and 14 of the Convention, the applicants finally complained that the decision of 14 November 2002 had been unfair, that they had been discriminated against as a family, that their consumer rights remain unprotected, that they had sustained pecuniary damage and that their health had deteriorated during the proceedings.

51. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that these complaints 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**

52. 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**

53. The first applicant claimed 40,179,063 Russian roubles (RUB) in respect of pecuniary damage, representing losses and expenses allegedly sustained as a result of the domestic courts' refusal to accept his claims, including medical expenses and loss of a plot of land. He further claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government submitted that the first applicant's claims were excessive and manifestly ill-founded.

55. The Court considers that the first applicant has failed to demonstrate that the pecuniary damage claimed was actually caused by the violation of the Convention in his case. Consequently, there is no cause to make an award under that head.

56. As to the claim for non-pecuniary damage, the Court accepts that the first applicant suffered distress, anxiety and frustration because of the unreasonable length of the proceedings and the lack of an effective remedy for the breach of the requirement to hear his case within a reasonable time. Making its assessment on an equitable basis, it awards the first applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

### **B. Costs and expenses**

57. The first applicant also claimed EUR 2,200 for the costs and expenses incurred before the domestic courts and the Court. This included RUB 27,000 for his legal representation in the proceedings before the domestic courts, RUB 1,944 in travel expenses, RUB 2,630 in postal expenses and office supplies and EUR 1,300 for the representation of his interests before the Court.

58. The Government submitted that the claims were unsubstantiated.

59. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession, in particular copies of postal receipts, certificates and invoices, and the above criteria, the Court considers it reasonable to award the first applicant, who was not represented by a lawyer, the sum of EUR 600 under this head.

### **C. Default interest**

60. 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 first applicant's complaints concerning the excessive length of the proceedings and the absence of an 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 first 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 Russian roubles at the rate applicable at the date of the settlement:
    - (i) EUR 2,400 (two thousand and four hundred euros) in respect of non-pecuniary damage;
    - (ii) EUR 600 (six hundred euros) in respect of 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;
5. *Dismisses* the remainder of the first applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President