



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

1959 · 50 · 2009

FIRST SECTION

CASE OF KHARITONOV v. RUSSIA

(Application no. 39898/03)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Kharitonov 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 39898/03) 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 Kharitonov (“the applicant”), on 5 December 2003.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 29 August 2006 the President of the First Section decided to give notice of the application 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1932 and lives in Moscow.

5. According to the applicant, on 27 April 2000 he brought proceedings before the Timiryazevskiy District Court of Moscow seeking compensation in respect of non-pecuniary damage against a municipal maintenance enterprise. According to him, the enterprise should have repaired the bathroom or plumbing equipment on upper floors of the building in which he was living. As can be seen from a copy of his statement of claim,

submitted to the Court, this statement had a handwritten inscription “lodged on 27 April 2000 [unreadable signature]”. According to the Government the claim was lodged and assigned to a judge on 3 May 2001.

6. On 16 August 2001 the District Court discontinued the proceedings considering that there had already been a final judgment in the same matter issued on 2 July 2001. On 6 September 2001 the Moscow City Court quashed the above decision and remitted the case to the District Court. The City Court considered that it had not been properly established by the first-instance court that the above cases concerned the same subject-matter.

7. On 21 September 2001 the case was assigned to a professional judge sitting with lay judges. Eight hearings were scheduled and adjourned between October 2001 and February 2002 on account of the lay judges’ failure to attend hearings. On 12 and 27 February 2002 the court requested a local hospital to provide information on the applicant’s state of health. Further six hearings were adjourned to collect evidence and summon witnesses. Two hearings were adjourned because the applicant defaulted.

8. By a judgment of 1 August 2002, the District Court granted the applicant’s claim in part and awarded him 2,000 Russian roubles (RUB). The applicant appealed. On 22 January 2003 the City Court quashed the judgment and remitted the case for re-examination. The City Court considered that the District Court had misinterpreted the subject-matter of the applicant’s claims.

9. On 29 April 2003 the applicant requested the District Court to examine the case in his absence. The court granted this request. On 18 July 2003 the District Court discontinued the case referring to the applicant’s failure to attend hearings. On 26 August 2003 the City Court quashed the decision and required the District Court to examine the case. According to the Government, on an unspecified date the District Court issued a notice that the applicant’s presence at the hearings had been indispensable.

10. By a decision of 29 December 2003 the District Court again discontinued the case on grounds of the applicant’s failure to attend an unspecified number of hearings. The text of the decision indicated that “the plaintiff could challenge this decision by applying to a court within ten days”. Considering that this decision was amenable to appeal to a higher court, on 16 January 2004 the applicant appealed to the City Court alleging that the discontinuation had been unlawful. According to the Government, on an unspecified date, the City or District Court returned the appeal to the applicant and informed him of his right to challenge the decision not to examine the case before the same District Court.

11. In March 2004 the applicant complained to the President of the City Court that his appeal had not been examined. This complaint was forwarded to the District Court. No reply was received.

12. On 2 October 2006 the applicant sought an extension of the time-limit for his appeal. He also explained that he had waived his right to be

present at hearings listed in late 2003 and thus had not attended any of those hearings. On 12 October 2006 the District Court granted his request and quashed the decision of 29 December 2003. The court noted that the above decision did not contain sufficient detail as to the procedure for appeal. It also observed that the applicant had waived his right to be present at hearings in 2003 and that no decision had been taken in order to recognise his personal presence at those hearings indispensable for the proper conduct of the proceedings.

13. By judgment of 18 October 2006, the District Court awarded the applicant RUB 3,000. Having heard the parties, on 9 November 2006 the City Court upheld the judgment.

II. RELEVANT DOMESTIC LAW

14. Pursuant to Article 222 of the Code of Civil Procedure, a court could refuse to examine a claim if the plaintiff/defendant had failed to attend at least two scheduled hearings and had not waived their right to be present at hearings. In such circumstances the court issued a decision not to examine the claim. The court could revoke its own above decision if the relevant party adduced evidence disclosing a valid excuse for not attending the hearing(s) (Article 223 of the Code).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

15. Referring to Articles 3, 6 and 13 of the Convention, the applicant complained about the length of the civil proceedings and the court's failure to process his appeal against the decision of 29 December 2003. The Court will examine these complaints under Article 6 § 1 of the Convention, which reads in the relevant part 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. Submissions by the parties

16. The Government submitted that the claim had been lodged and assigned to a judge on 3 May 2001. There had been no significant delays between May 2001 and June 2003. The applicant had failed to attend court on seven occasions without a valid excuse and despite the court's written

notice that his presence had been necessary. Thus, he had not displayed much interest in pursuing his claim, which, in any event, was “insignificant”.

17. The applicant maintained his complaints. He contended that he had not contributed to the length of the proceedings and that he had not been informed of any decision taken in relation to his appeal against the decision of 29 December 2003. As suggested by the President of the District Court, in October 2006 he applied for extension of the time-limit for appeal against the above decision.

B. The Court’s assessment

1. Admissibility

18. The Court observes that the applicant’s original complaint was twofold: (i) the allegedly excessive length of proceedings, and (ii) the alleged failure to examine his appeal against the procedural order of 29 December 2003 (compare *Sukhorubchenko v. Russia*, no. 69315/01, §§ 41-56, 10 February 2005).

19. As regards the second issue, concerning access to a court, the Court notes that in 2006 the City Court annulled the order of 29 December 2003 as unlawful and also referred to the fact that it did not contain sufficient details as to the procedure for appeal. The proceedings resumed thereafter and the applicant’s claim was eventually examined on the merits. Thus, the Court is satisfied that the applicant is no longer a victim in respect of this alleged violation. In any event, the above complaint is subsumed by the applicant’s complaint concerning the length of the civil proceedings.

20. In so far as length of proceedings is concerned, the Court considers that this part of the application 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.

2. Merits

(a) Period under consideration

21. Having examined the evidence adduced by the parties, the Court accepts that the applicant lodged his claim on 27 April 2000, as follows from the inscription made on his statement of claim. The case was determined at final instance on 9 November 2006. The Government adduced no evidence to refute the applicant’s allegation that he had not been notified that his appeal against the procedural order of 29 December 2003 would not be processed. Thus, in the Court’s opinion, the proceedings should be considered as pending for the purpose of Article 6 § 1 of

Convention, during three uninterrupted periods: from 27 April 2000 to 29 December 2003, from 29 December 2003 to 2 October 2006, and from 2 October to 9 November 2006. Lastly, the Court observes that it has not been alleged that the judgment in the applicant's favour was either not enforced or enforced after only a delay. Thus, the overall length of the proceedings to be taken into account amounted to six years, six months and fourteen days for two levels of jurisdiction.

(b) Reasonableness of the period

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

23. The Court considers that the case was not complex.

24. Even accepting that the applicant could be held accountable for certain short delays in 2002, the Court considers that the remaining periods of inactivity or delays were attributable to the State. The Court reiterates that the State has a duty to organise its legal system in such a way that its courts can meet the obligation to hear cases within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006). In particular, the Court considers that there was a substantial delay between the date when the claim was lodged (27 April 2000) and when it was first assigned to a judge, which was, according to the Government, on 3 May 2001.

25. Moreover, in the Court's opinion, the delay between December 2003 and October 2006 is also imputable to the State. As acknowledged by the District Court in its decision of 12 October 2006, the decision of 29 December 2003 did not contain sufficient detail, which would enable the applicant to understand the appropriate procedure to be followed for challenging the above decision (see paragraphs 12 and 14 above). At the same time, the Court considers that the applicant displayed sufficient diligence when he enquired about the state of proceedings on his appeal against the decision of 29 December 2003. Thus, even though the applicant was mistaken as to the procedure to be followed, it was incumbent on the national courts to inform him that his appeal would not be examined since it was not required by national law in the circumstances of the case. The Government produced no evidence that any such effective notification had been made to the applicant.

26. Lastly, the Court notes that certain other delays in the applicant's civil case were due to the defaulting members of the trial panel (lay judges) or the court's inability to determine correctly the subject-matter of the dispute.

27. The foregoing considerations are sufficient to enable the Court to conclude that there has been a breach of the “reasonable time” requirement in the present case. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government contested this claim as excessive.

31. Making its assessment on an equitable basis and taking into account the nature of the dispute, the Court awards the applicant the sum claimed, plus any tax that may be chargeable.

B. Costs and expenses

32. The applicant made no claim in respect of costs and expense. The Court does not make any award under this head.

C. Default interest

33. 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 length of 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 2,000 (two thousand 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.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President