



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

1959 · 50 · 2009

FIRST SECTION

CASE OF DOVIDYAN v. RUSSIA

(Application no. 42277/04)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

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 Dovidyan v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 42277/04) 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 Aleksandr Avitokovich Dovidyan (“the applicant”), on 3 November 2004.

2. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. On 13 February 2008 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 considered the Government's objection, the Court dismissed it.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1918 and lives in St Petersburg.

6. On 15 October 2001 the applicant brought proceedings before the Oktyabrskiy District Court of St Petersburg (“the District Court”) against

the St Petersburg Fuel and Energy Complex, a State energy supply enterprise, for damages. He complained that the defendant had deprived him of his right to a reduced price for heating, to which he was entitled as a disabled veteran of the Second World War.

7. In a judgment of 14 May 2002 the District Court granted the applicant's claim in part and ordered the defendant to repay the sums overpaid by the applicant between December 1998 and November 2001.

8. On 12 February 2003, upon the defendant's appeal, the St Petersburg City Court ("the City Court") quashed the judgment in part and ordered a fresh examination by the first-instance court.

9. On 31 March 2003 Judge K. of the District Court took up the case and fixed a hearing for 26 June 2003.

10. According to the Government, the applicant modified his claims on 26 May 2003.

11. During the hearing on 26 June 2003 the applicant waived part of his claims and lodged claims against new defendants, with the result that the hearing was postponed until 13 November 2003.

12. In the Government's submission, the applicant modified his claims on 13 October 2003.

13. According to the Government, the hearing scheduled for 13 November 2003 was not held owing to the fact that Judge K. had resigned from office, with the result that on 30 September 2003 the case was transferred to Judge P. The latter was on sick leave between October 2003 and January 2004. Subsequently all cases assigned to Judge P. were transferred to Judge I., who fixed a hearing in the applicant's case for 16 December 2004. On the latter date the hearing was postponed until 7 July 2005 as the judge was engaged in unrelated proceedings.

14. In the Government's submission, the applicant modified his claims on 7 and 11 July 2005.

15. On 7 July 2005 the hearing was adjourned until 11 August 2005 because the defendants and a third party had failed to appear, and then until the following day because the judge was engaged in unrelated proceedings. Then the hearing was postponed until 4 October 2005 in view of the defendant's failure to appear.

16. On 4 October 2005 the hearing was adjourned until 17 November 2005 at the applicant's request; he asked for more time to adduce some evidence and consult his lawyer, and then until 22 December 2005 as the judge was on leave. In the Government's submission, on 22 December 2005 the applicant modified his claims. On the same date the hearing was postponed until 1 February 2006, as the defendants had failed to appear and there was no evidence in the case file that they had been duly notified of the hearing.

17. By a judgment of 1 February 2006 the District Court dismissed the applicant's claims. The applicant's appeal against this judgment was stayed

on 3 February 2006 owing to his failure to comply with certain formal requirements and he was invited to remedy the shortcomings by 15 March 2006. On the latter date the applicant lodged an amended appeal.

18. On 17 May 2006 the City Court upheld the judgment of 1 February 2006 on appeal.

THE LAW

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

19. 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 ...”

20. The applicant maintained that he had not in any way contributed to the protraction of the proceedings and that significant delays had been imputable to the State.

21. The Government argued that delays in the examination of the applicant's case had been caused by the complexity of the case and the applicant's conduct. According to them, the applicant had repeatedly amended and supplemented his claims with the result that the first-instance court had had to spend time on studying new materials. Moreover, on 26 June 2003 the applicant altered his claims so significantly that, in the Government's opinion, the proceedings could be regarded as having commenced anew, and therefore the period to be taken into account should start on this date. The Government also pointed out that on several occasions court hearings had been postponed due to the defendants' failure to appear, for which the State was not responsible. The Government further conceded that a period of inactivity between 13 October 2003 and 22 December 2005, totalling one year, eight months and twenty-six days, could be imputed to the authorities; however, they gave objective reasons for this, namely judges' sickness, annual leave, dismissal from service and their exceptional caseload. In the Government's opinion, apart from the aforementioned period, the examination of the applicant's case was rather expeditious and conformed with the requirements of Article 6 of the Convention.

22. The period to be taken into consideration began on 15 October 2001 and ended on 17 May 2006. The proceedings thus lasted four years seven months and two days during which period the case was examined twice at two levels of jurisdiction.

A. Admissibility

23. The Court notes that 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.

B. Merits

24. 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).

25. The Court observes that the applicant's civil case does not appear to be particularly complex as, in so far as appears from the parties' submission on the facts, it did not involve any complex expert examinations, questioning of numerous witnesses or study of any voluminous evidence. As regards the Government's argument that the case was complicated by the fact that the applicant repeatedly altered his claims, it was only on two occasions, and namely on 26 June 2003, when the applicant modified his claims, and on 4 October 2005, when the applicant requested additional time for submission of evidence, that the court postponed the hearings because of the applicant. The Court reiterates in this respect that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interest (see, for instance, *Kutsenko v. Russia*, no. 12049/02, § 50, 1 June 2006).

26. The Court further notes that the proceedings were mostly protracted during the second examination of the applicant's case and, in particular, almost three years elapsed between the quashing on appeal of the first-instance judgment on 12 February 2003, and delivery by the first-instance court of a new judgment on 1 February 2006. As it has been noted above, during this period a court hearing was postponed twice due to the applicant's conduct. The aggregate delay totalled to approximately five months. As regards the conduct of the authorities, the Court notes that out of ten hearings fixed during the aforementioned period, six hearings were postponed because the judges to whom the applicant's case was assigned were unavailable for various reasons (see paragraphs 13, 15 and 16 above), which protracted the proceeding for overall period of approximately one year and nine months. The Court finds that this period of inactivity is imputable to the State, as it is the States' duty to organise their judicial systems 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, § 21, 3 October 2000).

27. In the light of the criteria laid down in its case-law and having regard to the circumstances of the present case, and in particular to the fact that during the second examination of the applicant's case the proceedings were pending for almost three years before the first instance court, out of which at least one year and nine months directly imputable to the authorities, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

28. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested the claim as excessive stating that the reasonable amount of just satisfaction in the present case would range between EUR 1,500 and EUR 3,000.

32. Having regard to the particular circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,500, together with any tax that may be chargeable to him on that amount.

B. Costs and expenses

33. The applicant did not submit any claim under this head. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

34. 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 application admissible;
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 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President