



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

1959 · 50 · 2009

FIRST SECTION

CASE OF TROSHKIN v. RUSSIA

(Application no. 7514/05)

JUDGMENT

STRASBOURG

29 October 2009

FINAL

29/01/2010

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 Troshkin 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 Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 7514/05) 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 Igor Viktorovich Troshkin (“the applicant”), on 10 February 2005.

2. The applicant was represented by Mr M. Kuchayev, a lawyer practising in Chelyabinsk. 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 Mr A. Savenkov, First Deputy Minister of Justice of the Russian Federation.

3. On 13 December 2007 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**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1968 and lives in Chelyabinsk.

A. The first round of the proceedings

6. In 1995 the applicant's vehicle was damaged in a road traffic accident. On 25 June 1997 he sued a private company in charge of road maintenance for damages. He alleged that the accident had been caused by its failure to clean up the road. The examination of the matter was stayed pending the payment of the court fee by the applicant. The proceedings were resumed on 13 October 1997.

7. On 29 October 1997 the Sovetskiy District Court of Chelyabinsk granted a request by the respondent company to adjourn the proceedings pending the criminal investigation into the road traffic accident. The proceedings were resumed on 27 April 1998.

8. On 25 May 1998 the representative of the respondent company failed to appear and the hearing was adjourned.

9. On 4 and 16 June and 5 October 1998 the District Court adjourned the court hearing as the applicant modified his claims.

10. On 9 October 1998 the District Court granted a request by the respondent company for an expert report to determine the value of the applicant's vehicle and stayed the proceedings. The respondent company failed to pay the expert's fee and the case file was returned to the court.

11. On 27 January and 11 March 1999 the District Court adjourned the hearing, granting the respondent company's requests to study the case file.

12. Between 4 November 1999 and 13 April 2000 the proceedings were adjourned pending the criminal investigation further to requests by the respondent company and the applicant.

13. On 1 December 2000 the District Court adjourned the hearing further to a request by the respondent company to summon new witnesses.

14. On 20 March 2001 the applicant asked the court to adjourn the hearing pending the criminal investigation.

15. On 27 September 2001 the District Court granted the applicant's claims in part. On 15 November 2001 the Chelyabinsk Regional Court quashed that judgment and remitted the case to the District Court for a fresh examination. The Regional Court noted that the District Court had failed to properly establish the circumstances of the road traffic accident and to determine the responsibility of all the parties involved.

B. The second round of the proceedings

16. On 4 February 2002 the District Court adjourned the preparatory hearing owing to the parties' failure to appear. The preparatory hearing was subsequently held on 13 March 2002.

17. On 27 May and 6 November 2002 the District Court granted the applicant's request and adjourned the hearing pending the criminal investigation.

18. On 2 February 2004 the applicant asked the court to resume the hearing of the matter. On 2 March 2004 the District Court annulled its own decision of 6 November 2002 and resumed the proceedings.

19. On 19 March 2004 the applicant asked the court to adjourn the hearing in order to modify his claims.

20. On 13 May 2004 the applicant submitted the modified claims and asked the court to summon certain witnesses.

21. On 17 June 2004 the District Court dismissed the applicant's claims in full. On 9 December 2004 the Regional Court quashed that judgment and granted the applicant's claim in part. The court based its findings, *inter alia*, on the materials in the criminal investigation file, such as the crime-scene investigation and forensic expert reports.

THE LAW

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

22. 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...”

23. The Government contested that argument. They considered the length of the civil proceedings in the instant case to be reasonable given that the significant delays in the proceedings were due to the applicant, who had repeatedly modified his claims and asked for adjournments. The judicial authorities had dealt with the case with due care. The hearings had been scheduled on a regular basis and the parties' requests had been examined at the same hearing. The matter was complex and the court of first instance had had to stay the proceedings pending the ongoing criminal investigation into the road traffic accident, the findings of which were decisive for the proper resolution of the civil dispute.

24. The applicant maintained his complaint. He submitted that the case was not complex, that significant delays had occurred as a result of the *mala fide* conduct of the respondent company, whose representative had deliberately protracted the proceedings, and that the domestic judicial authorities had done nothing to rectify the situation.

A. Admissibility

25. 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. The period under consideration

26. The Court observes that the applicant initiated the civil proceedings on 25 June 1997. However, the period to be taken into consideration for the purposes of the present case began only on 5 May 1998, when the Convention entered into force in respect of Russia. In assessing the reasonableness of the time that elapsed after that date, account must, nevertheless, be taken of the state of the proceedings at the time. The period in question ended on 9 December 2004 with the final decision of the Regional Court. It lasted, accordingly, a total of seven years and five and a half months, of which six years and seven months fall within the Court's jurisdiction. During that period the case was examined twice at two levels of jurisdiction.

2. Reasonableness of the length of proceedings

27. 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). Only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see, among numerous authorities, *Proszak v. Poland*, 16 December 1997, § 40, *Reports of Judgments and Decisions* 1997-VIII).

28. The Court observes that the proceedings in question concerned issues of civil liability arising from a road traffic accident which was of a certain complexity. However, the complexity of the case cannot, in itself, justify the overall duration of the proceedings, namely six years and seven months.

29. As regards the applicant's conduct, the Court observes that he asked on several occasions for adjournments of the proceedings in order to modify his claims. Those requests caused in total a delay of seven months (see paragraphs 9 and 19 above). The Court also notes that on one occasion the applicant failed to appear for a preparatory hearing (see paragraph 16 above), causing another delay of approximately three weeks.

30. As for the applicant's requests to adjourn the proceedings pending

the criminal investigation into the road traffic accident, the Court takes note of the Government's argument that it was incumbent on the District Court to adjourn the proceedings pending the criminal investigation in the circumstances of the case. Accordingly, the applicant cannot be held responsible for any delay resulting from his requests to await the completion of the criminal investigation. The Court further observes that the proceedings were adjourned on at least three occasions pending the criminal investigation, causing delays of seven and a half months, six months and one year and eight months respectively (see paragraphs 12, 14 and 17 above). Admittedly, the findings of the criminal investigation were decisive for the resolution of the civil dispute initiated by the applicant and, as the Government pointed out, the District Court had to wait for the completion of the criminal investigation. However, the Court reiterates in that connection that it is incumbent on respondent States to organise their legal systems in such a way that their courts can meet the requirements of Article 6 of the Convention, including the obligation to hear cases within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-VII). Accordingly, the Court considers that the adjournments of the proceedings owing to the lengthy criminal investigation seriously protracted the proceedings and were attributable to the authorities.

31. Lastly, the Court notes that between 9 October 1998 and 11 March 1999 two hearings were adjourned following requests by the respondent company (1) to commission an expert report, which they subsequently failed to pay for, and (2) to study the case file, and that on one occasion its representative failed to appear. The respondent company's conduct thus caused another delay of five months in the proceedings. In the Court's opinion, it was incumbent on the District Court to discipline the defaulting party in order to ensure that the proceedings were conducted at an acceptable pace (see *Kuśmerek v. Poland*, no. 10675/02, § 34, 21 September 2004). However, the judicial authorities failed to do so and the above-mentioned delay in the proceedings is also attributable to the authorities.

32. Making an overall assessment, 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

33. The applicant further complained under Article 6 of the Convention that the domestic courts had erred in their findings and under Article 1 of Protocol No. 1 that they had not granted his claims in full.

34. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, the

Court finds that there is no 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

35. 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

36. The applicant claimed 19,006.88 euros (EUR) in respect of pecuniary damage, representing the value of his vehicle, which had been damaged as a result of the road traffic accident, and EUR 100,000 in respect of non-pecuniary damage.

37. The Government opined that the applicant's allegations should not give rise to an award of any compensation for non-pecuniary damage. In any event, they considered the applicant's claims excessive and submitted that a finding of a violation would constitute sufficient just satisfaction.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim. On the other hand, the Court considers that the applicant must have suffered distress and frustration resulting from the authorities' failure to determine his claims within a reasonable time. Ruling on an equitable basis, it awards him EUR 3,000 under that head.

B. Costs and expenses

39. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

40. 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 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President