



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

FIRST SECTION

CASE OF MP KINESKOP v. RUSSIA

(Application no. 16141/05)

JUDGMENT

STRASBOURG

22 December 2009

FINAL

22/03/2010

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 MP Kineskop v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 16141/05) 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 MP Kineskop, a company incorporated in Ukraine, (“the applicant company”), on 1 March 2005.

2. The applicant company was represented by Mr A.V. Kiryanov and Mrs E.V. Kiryanova, lawyers practising in Taganrog. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, the former representatives 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. On 3 December 2009 the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of *Gorovaya v. Russia* and *Makarova v. Russia* (applications nos. 20882/04 and 20886/04) (Rule 42).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 31 July 1998 the applicant company, together with three other plaintiffs, Mr Kesyan, Ms Gorovaya and Ms Makarova, all represented by the same lawyer, filed an action against the Rostov Regional Department of the Federal Treasury and Mrs O. seeking compensation for pecuniary and non-pecuniary damage on account of the unlawful seizure of goods.

A. First round of court proceedings

6. The first hearing was scheduled for 22 September 1998 but was adjourned owing to the judge's leave. The following hearing on 28 December 1998 did not take place owing to the defendants' failure to appear in court.

7. On 11 February 1999, at the plaintiffs' request, the District Court ordered an expert examination and stayed the proceedings.

8. In September 1999 the experts' report was received. In October and November 1999 the applicant company's representative amended the claims.

9. On 25 November 1999 the court proceedings were resumed.

10. Between 25 November 1999 and 3 October 2000 the District Court listed eight hearings, of which three were adjourned because the defendants failed to attend and five because none of the parties attended.

11. By a decision of 3 October 2000, the District Court declined to examine the applicant company's claims on the merits on the ground of its repeated failure to appear in court.

12. On 9 July 2001 the applicant company's representative requested that the decision of 3 October 2000 be set aside for the reason that neither he, nor the applicant company had been duly notified of the hearings. By a decision of 12 July 2001, the District Court allowed the request and resumed the proceedings.

13. By a decision of 5 September 2001, the District Court invited the Taganrog Custom Service to join the civil proceedings as a third party.

14. At the third party's request of 10 October 2001, the proceedings were stayed because a related administrative case was pending before another court. On 30 September 2002 they were resumed.

15. Between 30 September and 20 December 2002, three hearings were adjourned because the parties failed to attend.

16. On 20 December 2002 the District Court declined to examine the applicant company's claims on the merits on the ground of its repeated failure to appear in court.

17. The proceedings were resumed on 23 January 2004, at the request of the applicant company's representative of 19 January 2004, for the reason

that neither he, nor the applicant company had been properly summoned to the hearings.

18. Of ten hearings listed between 20 February and 16 November 2004, four hearings were adjourned owing to Mrs O.'s absence, two owing to the parties' absence, one at the applicant company's representative's request and two because the presiding judge was on leave.

19. By a judgment of 16 November 2004, the Kuybyshevskiy District Court dismissed the applicant company's claim. On 16 February 2005 the Rostov Regional Court quashed the judgment of 16 November 2004 on appeal and remitted the matter to the first-instance court for fresh examination.

B. Second round of court proceedings

20. The Kuybyshevskiy District Court listed the first hearing for 18 May 2005. Of three hearings fixed between 18 May and 28 June 2005, two were adjourned because the defendants failed to attend and one was adjourned at the defendants' request.

21. On 28 June 2005, at the plaintiffs' request, the District Court ordered an expert examination and stayed the proceedings.

22. The proceedings were later resumed and, by a judgment of 15 December 2005, the Kyubyshevskiy District Court allowed the applicant company's action in part. The judgment of 15 December 2005 was upheld on appeal by the Rostov Regional Court on 8 February 2006.

II. RELEVANT DOMESTIC LAW

23. The Code of Civil Procedure of the Russian Federation, which has been in force since 1 February 2003, provides as follows:

Article 113. Court notices and summons

“1. The parties to the proceedings, as well as witnesses, experts, specialists and interpreters, shall be summoned to a hearing by a letter sent by registered mail with an acknowledgment of receipt, by court summons with an acknowledgment of receipt, by telegram, by phone or fax or by any other means which can guarantee a record of the fact that the summons was sent and was received by the party...

3. Summons shall be served on the parties in such a way that they have enough time to prepare their case and appear at the hearing.”

Article 222. Ground for leaving the case without consideration on merits

“A court shall leave a case without examination on the merits if the parties to the proceedings have failed to attend at least two scheduled hearings.”

**Article 223. Procedure and consequences of leaving the case
without consideration on merits**

“1. Where a case is left without examination on the merits, the proceedings shall be discontinued by a decision of the court...”

3. The court shall revoke its decision if the party concerned adduced evidence disclosing a valid excuse for not attending the hearing(s).”

THE LAW

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

24. The applicant company 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...”

25. The Government contested that argument.

A. Admissibility

26. The Government submitted that the applicant company had not exhausted the following domestic remedies which had been available to it in respect of the excessive length of court proceedings: (1) a complaint to the Qualification of Judges Board of the Rostov Regional Court; (2) an appeal against the District Court's decisions to adjourn hearings and the decisions to carry out the expert examinations, which could have been lodged in accordance with the Code of Civil Procedure; (3) an application to the judge to replace the experts, if the applicant company had considered the expert examinations to have taken an unreasonably long time; and (4) a complaint to the competent court that the judgment had not been executed.

27. The Court notes that the Government did not indicate whether and, if so, how the applicant company could obtain relief – either preventive or compensatory – by having recourse to the first three suggested remedies. In particular, the Government failed to spell out how a complaint to the Rostov Regional Qualification of Judges Board could have expedited the impugned proceedings (see *Kormacheva v. Russia*, no. 53084/99, §§ 61-64, 29 January 2004, and *Mikhaylovich v. Russia*, no. 30019/05, § 21, 12 February 2009). The Government also failed to refer to provisions of the Code of Civil Procedure which would have allowed the applicant company to appeal against the adjournment of the hearings. Furthermore, the Government

failed to explain why, in order to ensure the right to a fair trial within a reasonable time, the applicant company should have appealed against the court's decisions to carry out the expert examinations requested by all of the plaintiffs, including itself (see §§ 7 and 21 above) and how replacing the experts could have accelerated the completion of the examinations. As to the fourth and last avenue of redress referred to by the Government, it should be noted that any issue of the non-enforcement of a final judgment is beyond the scope of the present case. The Court therefore dismisses the Government's non-exhaustion plea.

28. It further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

29. The period to be taken into consideration began on 31 July 1998 when the applicant company lodged its action with the Kuybyshevskiy District Court and ended on 8 February 2006 with the final judgment of the Rostov Regional Court. It thus lasted approximately seven years and seven months at two levels of jurisdiction.

30. 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).

31. It is noted that in the present case the Government argued that the domestic courts examined the applicant company's claim within a reasonable time. They relied on three groups of arguments, which will be examined below.

1. Complexity of the case

32. First of all, the Government indicated that there had been a large number of participants, that is to say four plaintiffs, two respondents and one third party and that the plaintiffs, their representatives and witnesses had all resided in other regions. The District Court had had to rely on the assistance of the competent court of a neighbouring region in order to take evidence from the witnesses residing there.

33. They further pointed to the considerable financial value of the plaintiffs' claims which had meant that the District Court had had to check the veracity of a significant amount of material. The conducting of the two expert examinations had been a further complicating factor.

34. Finally, the Government stated that the parallel progression of a related administrative case, the outcome of which was of significant

importance for the resolution of the present civil dispute, had rendered the stay of the civil proceedings unavoidable and that domestic courts at two levels of jurisdiction had been involved in the examination of the case.

35. The Court accepts the Government's argument that the proceedings in question were rather complex as regards the procedural and factual aspects. However, taken on its own, the complexity of the civil dispute cannot justify the seven years and seven months taken for its judicial examination (see *Kesyan v. Russia*, cited above, § 54).

2. The conduct of the applicant company and its representatives

36. The Government asserted that, though the participants' efforts to ensure the best representation of their interests were understandable, the manner in which the applicant company and its representatives had exercised their procedural rights had contributed to the prolongation of the proceedings. They referred, in particular, to the requests by the applicant company's representative to conduct the two expert examinations and to take evidence from witnesses residing in another region.

37. They also imputed to the applicant company's representatives a repeated failure to appear in court and lack of diligence in keeping up with developments in the proceedings. The former factor had twice resulted in the proceedings being discontinued and the latter had been a cause for their belated resumption (see §§ 10-12 and 15-17). Together, these factors had caused a delay of approximately two years and six months.

38. As regards the applicant company's procedural applications, the Court notes that they were not abusive, frivolous or vexatious but were legitimate and aimed at obtaining additional evidence. It has been the Court's consistent approach that an applicant cannot be criticised for taking full advantage of resources afforded by national law in the defence of his or her interests, even if it results in a certain increase in the length of the proceedings (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A and *Sürmeli v. Germany* [GC], no. 75529/01, § 131, ECHR 2006-VII). The opposite approach would render the concept of litigation meaningless.

39. The Court cannot accept the Government's further argument that the applicant company's representatives continually failed to attend the hearings and then failed to enquire about the progress of the proceedings. It is noted that the national law explicitly provides for an obligation on the part of the domestic courts to inform the parties, in a proper manner, of the dates of scheduled hearings (see § 23 above). In the present case, the District Court twice discontinued the proceedings on the ground that the applicant company's representatives had failed to appear in court, although that was, in fact, owing to its own failure to notify them of the hearings (see §§ 12 and 17 above). In such circumstances, the time that elapsed while the

applicant company and its representatives waited in vain for the court summons and before the discontinued proceedings were resumed cannot be imputable to the applicant company.

3. The conduct of the national authorities

40. The Government alleged that the domestic courts had, in general, complied with the reasonable time requirement as they had made it possible for the expert examinations to be carried out promptly, had cooperated in collecting evidence from the witnesses and had even twice taken measures to discipline the applicant company's representatives, that is by discontinuing the civil proceedings. At the same time, the Government acknowledged that on several occasions one of the defendants, a State authority, had failed to attend the court hearings. They stated, however, that having regard to the overall length of the proceedings the delay of approximately five months thereby incurred was negligible.

41. The Court is not convinced by the Government's arguments. It observes that it is incumbent on the Contracting 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 *Süirmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006).

42. As has been established above, the District Court repeatedly failed to properly inform the applicant company and its representatives of the scheduled hearings. For that reason, an aggregate delay of approximately two years and six months is to be attributed to the respondent State.

43. The Court further observes that the domestic court failed to take procedural measures in order to ensure that the defendants were present at the hearings, despite the fact that such measures were twice taken with respect to the other party to the dispute.

4. Conclusion

44. In the light of the criteria laid down in its case-law, and having regard to all the circumstances of the case, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the reasonable time requirement. It finds no reason to distinguish between the present case and that of *Kesyan v. Russia* (cited above).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant company claimed 2,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of a violation of its right to a fair trial within a reasonable time.

47. The Government submitted that the claim was excessive and unreasonable and if the Court were to find a violation of the Convention, this would in itself be sufficient just satisfaction.

48. The Court considers that the applicant company must have sustained non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. The Court considers that it should award the full sum claimed.

B. Costs and expenses

49. The applicant company did not claim reimbursement of its costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

50. 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 company, within three months of 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 on 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 amounts 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 22 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President