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

THIRD SECTION

DECISION

Application no. 72109/14
Natalya Gennadyevna AKULOVA
against Russia

The European Court of Human Rights (Third Section), sitting on 10 May 2022 as a Committee composed of:

Darian Pavli, *President,*
Andreas Zünd,
Mikhail Lobov, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 72109/14) 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") on 30 October 2014 by a Russian national, Ms Natalya Gennadyevna Akulova ("the applicant"), who was born in 1976 and lives in Moscow;

the decision to give notice of the complaint concerning unfair civil proceedings to the Russian Government ("the Government"), initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. In 2008 the applicant brought a civil claim against a private hospital relating to the allegedly poor quality of a surgical procedure.

2. In October 2013 the Presnenskiy District Court of Moscow ordered a medical expert examination to be performed by experts appointed by the Forensic Examination Office of the Moscow Public Health Department. The applicant was invited to attend the examination, but she refused.

3. The applicant challenged the experts appointed by the District Court and their report, stating, in particular, that the experts were subordinates of Mr P., who was a senior doctor at the hospital and a shareholder thereof. He had also been appointed head of the Moscow Public Health Department and, subsequently, deputy head of the Moscow Government, the body charged with supervising the Moscow Public Health Department. The court dismissed her challenge. The hospital argued that Mr P. had indeed worked at the hospital but had left five years before and that he was no longer a shareholder.

4. In April 2014 the Presnenskiy District Court dismissed the applicant's claim, holding that according to the expert report, there was no causal link between her treatment and her health problems. It also rejected her challenge against the experts, stating that they had the necessary qualifications and professional experience, they were aware of the possibility of criminal prosecution for forged expert reports, they did not have an interest in the outcome of the case, and the expert report had been drawn up in line with the applicable law, which stated that it was the expert's duty to provide an objective view of the subject of the examination.

5. In August 2014 the Moscow City Court upheld the above-mentioned decision on appeal.

THE COURT'S ASSESSMENT

6. The applicant complained under Article 6 of the Convention that the civil proceedings in respect of her surgery had been unfair because the expert examination procedure had been flawed and the domestic courts had grounded their decisions on a deficient expert report and had failed to provide adequate reasoning.

7. The general principles concerning the use of expert evidence in civil proceedings are set out in *Letinčić v. Croatia* (no. 7183/11, §§ 50-51, 3 May 2016). In particular, where an expert has been appointed by a court, the parties must in all instances be able to attend the interviews held by him or her or to be shown the documents he or she has taken into account. The parties should be able to participate properly in the proceedings before the "tribunal". The procedural position occupied by the experts throughout the proceedings, the manner in which they perform their functions and the way the judges assess their opinions are relevant factors to be taken into account in assessing whether the principle of equality of arms has been complied with (see *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47, 5 July 2007; *Letinčić*, cited above, § 50; and *Devinar v. Slovenia*, no. 28621/15, § 47, 22 May 2018).

8. In the present case, in order to determine the applicant's claim, the first-instance court commissioned an expert report from the Moscow Public Health Department. On the basis of that report, which found no causal link between her health problems and her treatment at the hospital, the courts dismissed the applicant's claim. The expert report at issue therefore had a

decisive role in the assessment of the merits of the applicant's claim (see, *mutatis mutandis*, *Krunoslava Zovko v. Croatia*, no. 56935/13, § 43, 23 May 2017).

9. At the same time, neither the contents of the case file nor the applicant's submissions disclose any evidence that the experts lacked the requisite objectivity. The applicant stated that the experts were subordinates of the former senior doctor of the hospital, Mr P. However, at the time of the court hearings, Mr P. did not work at the hospital, nor had he had any established connection with the hospital in the previous five years – a significant amount of time. There is no indication that Mr P. could have influenced the positions of the experts in question. Lastly, as Mr P. was not involved in the proceedings against the hospital, he did not make any statements with regard to the parties' positions on the case (see, by contrast, *Sara Lind Eggertsdóttir*, cited above, § 52).

10. Moreover, the expert report was delivered by experts with a considerable professional and educational background and the relevant domestic law sets out guarantees in the area of expert examinations – in particular, an overriding duty for experts to provide their opinions impartially and relevantly within their own areas of expertise.

11. The applicant participated effectively in the procedure of ordering and obtaining the expert report used to determine the merits of her claim. She had the opportunity to submit her questions to the experts, was invited to the expert examination (although she did not attend the examination by her own choice) and had cognisance of and was able to comment on all the documents taken into consideration by the experts, and to put forward all her arguments with the purpose of influencing the experts' findings. The domestic courts provided sufficient reasons for their decision based on the expert report in question.

12. There is nothing to prompt the Court to consider that the proceedings before the domestic courts concerning the applicant's claim were unfair, also taking into account the way those proceedings were conducted.

13. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 June 2022.

Olga Chernishova Deputy Registrar	Darian Pavli President