CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 74705/01
by Nataliya Nikolayevna IVANOVA
against Russia

The European Court of Human Rights (First Section), sitting on 1 April 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S, NIELSEN, *Section Registrar*,

Having regard to the above application introduced on 5 September 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Nataliya Nikolayevna Ivanova, is a Russian national, who was born in 1953 and lives in Novokuznetsk. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

On 26 May 1994 the applicant's husband was killed in a sobering-up centre No. 4 in Novokuznetsk (*медвытрезвитель № 4 г. Новокузнецка*) by negligent behaviour of Mr G., another detainee.

On 9 September 1996 Mr G. was convicted by the Zavodskoy District Court of Novokuznetsk of the negligent manslaughter.

Shortly after the conviction the applicant brought civil proceedings for damages against Mr G.

On 3 December 1996 the Zavodskoy District Court of Novokuznetsk awarded her a lump-sum compensation and monthly payments. The Zavodskoy District Prosecutor appealed.

On 4 February 1997 the Kemerovo Regional Court reversed the judgment of 3 December 1996 and remitted the case for fresh examination by the district court.

On 10 April 1998, in the new proceedings, the applicant requested the Zavodskoy District Court of Novokuznetsk to replace the defendant by the Internal Affairs Department of Novokuznetsk (*Управление внутренних дел г. Новокузнецка*) which was in charge of the sobering-up centre. In its judgment of the same date the court decided that the damages should be paid by Mr G. and the Internal Affairs Department of Novokuznetsk in equal shares.

On 16 July 1998 the Kemerovo Regional Court reversed on appeal the judgment of 10 April 1998 due to incorrect calculation and a lack of legal grounds for civil liability of the sobering-up centre. It remitted the case for fresh examination by the first instance court.

On 6 October 1998 the Zavodskoy District Court of Novokuznetsk ordered the Internal Affairs Department of Novokuznetsk to pay the damages to the applicant. This judgment was appealed against by the Zavodskoy District Prosecutor of Novokuznetsk.

On 24 November 1998 the Kemerovo Regional Court reversed on appeal the judgment of 6 October 1998 and remitted the case for fresh examination by the first instance court.

On 8 June 1999 the Zavodskoy District Court of Novokuznetsk awarded the applicant damages to be paid both by the State (70%) and by Mr G. (30%). The Ministry of Finance appealed, claiming that the damages were to be charged from the municipal, not federal budget. Mr G. also appealed.

On 26 August 1999 the Kemerovo Regional Court upheld on appeal the judgment of 8 June 1999.

On 13 October 1999 the applicant was informed that the enforcement of the judgment was stayed pending the supervisory review proceedings.

On 12 April 2000 the President of the Kemerovo Regional Court lodged a request for a supervisory review of the judgment (*протест на решение суда, вступившее в законную силу, an extraordinary appeal*).

On 16 June 2000 the Presidium of the Kemerovo Regional Court granted the extraordinary appeal and quashed the judgment as it had found the State's liability in this case "disputable". It remitted the case for fresh examination by the district court.

On 19 December 2000 the Zavodskoy District Court of Novokuznetsk awarded a part of the damages to be paid to by the State (60%) and another part by Mr G. (40%).

On 10 July 2001 the Kemerovo Regional Court reversed on appeal the judgment of 19 December 2000 for lack of legal grounds for civil liability of the sobering-up centre. It remitted the case for fresh examination by the first instance court.

On 23 August 2001 Zavodskoy District Court of Novokuznetsk granted the applicant's request to stay the proceedings.

On 6 May 2003 the applicant sent a letter to the Zavodskoy District Court of Novokuznetsk. It follows from its context that the court had notified the applicant about the resumption of the proceedings. The applicant, however, was opposed to the continuation of the trial and insisted that the proceedings would remain stayed until the Strasbourg Court had decided on the admissibility and the merits of her application.

On 10 July 2003 the Novoilyinskiy District Court of Kemerovo nevertheless resumed the proceedings. The applicant expressly waived any claims against Mr G. but reiterated her claims against the State. In its judgment of the same day the court found that no fault or negligence of the sobering-up centre staff had been established in the criminal proceedings concerning the death of the applicant's husband, hence there were no statutory grounds to impose civil liability on the State. The court refused to award damages against the State and found that they could be awarded against Mr. G, but for the applicant's express refusal to sue him.

On 10 September 2003 the Kemerovo Regional Court upheld on appeal the judgment of 10 July 2003.

COMPLAINTS

The applicant complains under Article 2 of the Convention about the death of her husband in the sobering-up centre. In particular, she alleges that the staff of the sobering-up centre failed to secure her husband safe detention conditions. She also complains, under Article 13 of the Convention, that she had no effective remedy in respect of the complaint under Article 2 of the Convention.

The applicant complains under Article 6 of the Convention about the length of the proceedings for damages she brought against the Internal Affairs Department of Novokuznetsk.

THE LAW

1. The applicant alleges that the authorities are responsible for the death of her husband in the sobering-up centre and that no effective remedy was available to pursue this. She invokes Articles 2 and 13 of the Convention.

Article 2 of the Convention provides in so far as relevant as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court notes that the applicant's husband was killed on 26 May 1994, and the last decision in the related criminal proceedings was taken on 9 September 1996. This part of the application thus relates to a period prior to 5 May 1998, which is the date of the entry into force of the Convention with respect to Russia.

It follows that this part of the application is outside the competence *ratione temporis* of the Court and therefore incompatible with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

As for Article 13, it has been consistently interpreted by the Court as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, the *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, § 54). Given that the events underlying the applicant's civil proceedings are outside the Court's competence *ratione temporis*, the applicant had no arguable claim for the purposes of Article 13 of the Convention.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

2. The applicant complains about the length of civil proceedings which she brought against the State and Mr G. to claim damages related to her husband's death. She invokes Article 6 of the Convention which provides in so far as relevant as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time ..."

The Government submit that there were no significant periods during which the courts examining the applicant's case were inactive. They provide the following information as regards the applicant's case: from 1 November 1996 to 23 August 2001 the courts of first instance pronounced five judgments, the appeal courts took four decisions and a supervisory review was conducted once. The Government also submit that out of the five first instance judgments three were quashed on the applicant's own appeal.

Finally, the Government submit that in August 2001 the applicant requested a stay of proceedings, which was granted. In the absence of a request to resume proceedings they remained suspended until July 2003, when they were resumed on the court's motion. Once resumed, the proceedings were conducted expediently, and the last decision was taken on 10 September 2003 by the Kemerovo Regional Court. The Government maintain that the proceedings in question have not been excessively long and even less so given the applicant's request for a stay.

The applicant does not deny that she had requested a stay in the proceedings. She also contends that in 2003 the proceedings were resumed by the domestic court against her will. It appears from her submissions that she no longer trusts the domestic courts to deal with her claims and expects the Court to assume jurisdiction over her case.

A. Period to be considered

The proceedings commenced on an unspecified date between 9 September 1996 and 3 December 1996 and terminated on 10 September 2003, when the Kemerovo Regional Court took the final decision.

The proceedings therefore lasted a total of nearly 8 years. However, the Court observes that, when examining the length of the proceedings, the period to be considered only began on 5 May 1998, when the Convention entered into force in respect of Russia. Thus, in this case, 5 years, 4 months and 5 days fall within the Court's competence *ratione temporis*.

The Court considers that this period should be regarded as a whole, although 7 months elapsed between the first set of proceedings and the second one, conducted upon supervisory review. However, during that period it was incumbent on the State to enforce the initial proceedings. Therefore this period must be regarded as an integral part of the "trial" for the purposes of Article 6 and should be included in the overall length (see the *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1383-1384, §§ 20-24, and pp. 1410-1411, §§ 16-20 respectively).

B. Reasonableness of the length of proceedings

The Court recalls that in cases where it can, by reasons of its competence *ratione temporis*, only examine part of the proceedings, it may take into account, in order to assess their length, the stage reached in the proceedings at the beginning of the period under consideration (see, among other authorities, *Wojnowicz v. Poland*, no. 33082/96, 21 September 2000, § 46). The Court notes that in the present case as of 5 May 1998 the civil proceedings had been entertained in the first instance and the appeal proceedings were pending. It follows that the proceedings were at an advanced stage.

The Court further reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the authorities before which the case was brought (cf. *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II, § 67).

Complexity of the case

The civil proceedings did not deal with questions of fact or assessment of guilt, which had previously been determined in the criminal proceedings. The courts in the civil proceedings had to apply the rules of civil liability and calculate the award, if any. The Court therefore concludes that the case was of no particular complexity.

Conduct of the applicant

The stay of proceedings was granted from 23 August 2001 on the applicant's request, which extended them by almost 2 years. The reason given by the applicant for stay was that she was no longer interested in having her case examined by the domestic courts for “lack of trust”. The Court attributes this delay to the applicant.

The Court furthermore notes that the domestic courts took the initiative in 2003 to resume the proceedings and that the applicant resisted the resumption, still for the lack of interest.

Conduct of the relevant authorities

The overall period reduced by the period attributable to the applicant leaves the authorities accountable for 3 years 4 months and 5 days before the stay of proceedings and 2 months after their resumption.

During that time the Court observes no substantial periods of the courts' inactivity. On the contrary, the hearings were held and the decisions were taken at regular intervals by the first instance and on appeal. The Court observes that the case has been remitted several times to the first instance

for fresh examination and recalls that in principle the involvement of numerous instances does not absolve the judicial authorities of complying with the reasonable time requirement of Article 6 § 1 (see, most recently, *Litoselitis v. Greece*, no 62771/00, § 32, 5 February 2004). However, the period of about three years when the judicial authorities were constantly dealing with the case does not as such offend the guarantees of Article 6 § 1. Assessing further the overall length, the Court gives a particular significance to the applicant's request for a stay in proceedings and to the fact that it was the domestic court that eventually decided to resume and bring the case to an end, the applicant's resistance notwithstanding.

Having regard to the above, the Court concludes that the length of the civil proceedings in the present case did not exceed the "reasonable time" set out in Article 6 § 1 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President