

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

FIRST SECTION

DECISION

Application no. 15884/04
by Petr Yakovlevich KOMARCHENKO
against Russia
lodged on 9 March 2004

The European Court of Human Rights (First Section), sitting on 23 August 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 9 March 2004,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of case in the part concerning the non-enforcement complaint and the applicant's reply to the declaration,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant as regards the remainder of the application,

Having deliberated, decides as follows:

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

THE FACTS

The applicant, Mr Petr Yakovlevich Komarchenko, is a Russian national who was born in 1943 and lives in Voronezh. The Russian Government ("the Government") were represented by Ms V. Milinchuk and subsequently by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

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

1. Proceedings concerning pension arrears

On 24 November 2000 the Levoberezhnyy District Court of Voronezh granted the applicant's civil action against the Social Security Committee of the Levoberezhnyy District of Voronezh and awarded him 1,077.28 Russian roubles (RUB) in pension arrears. The judgment was not appealed against and became enforceable on 4 December 2000.

On 27 December 2007 the judgment debt was paid to the applicant in full.

2. Proceedings concerning the applicant's patent

On 18 December 2003 the applicant brought civil proceedings against the Committee for the Military Cooperation with Foreign States claiming that the Committee should make a patent license agreement with him.

On 30 December 2003 the Zamoskvoretskiy District Court of Moscow ("the District Court") discontinued the proceedings because the applicant had not submitted documents in support of his claims.

On 22 January 2004 the applicant appealed against the decision.

On 24 March 2004 the Moscow City Court ordered the resumption of the proceedings.

On 2 April 2004 the District Court accepted the case for examination and on 19 April 2004 held a hearing.

On 31 May 2004 the court held another hearing, invited the parties to make additional submissions and scheduled a new examination of the case for 21 June 2004. The applicant could not be present at the hearing because of his poor health and asked the court to examine the case in his absence.

On 21 June 2004 the District Court examined the merits of the case and dismissed the applicant's claim.

As it follows from a copy of the dispatching note by the registry of the District Court, on 13 July 2004 the court sent a copy of the judgment to the applicant's home address and specified the time when the applicant could study the case file.

It appears that the applicant did not receive that letter.

On 27 December 2004 the applicant requested the Moscow City Court to update him on the state of proceedings in his patent case.

On 20 January 2005 the City Court forwarded the inquiry to the District Court for examination. No reply followed.

On 3 March 2005 and 16 August 2005 the applicant again asked the Moscow City Court about the state of proceedings. On 13 April 2005 and 28 September 2005 respectively the City Court forwarded the applicant's letters the District Court. It appears that the District Court did not reply.

On 26 September 2005 the applicant sent a new request for information about the status of the patent proceedings to the Moscow City Court. On 14 November 2005 the City Court informed the applicant that all inquiries concerning the case should be made to the first instance court.

On 3 April 2006 the applicant sent a letter to the regional Judiciary Qualification Panel requesting a copy of the judgment. The Panel forwarded the letter to the District Court.

On 17 April 2006 the District Court sent to the applicant a copy of the judgment and indicated that the judgment had previously been sent to him on 13 July 2004.

On 19 July 2006 the applicant received the copy of the judgment. At some point after that date he submitted his grounds of appeal to the District Court and requested that the time-limit for their submission be extended. He also asked the appeal court to examine the case in his absence.

On 29 September 2006 the District Court extended the time-limit for lodging the grounds of appeal and on 19 October 2006 the Moscow City Court admitted the applicant's grounds of appeal.

On 21 January 2007 the Moscow City Court upheld the judgment of 21 June 2004.

On 22 February 2007 the Zamoskvoretskiy District Court of Moscow sent a copy of the judgment to the applicant.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about the failure to enforce the judgment of 24 November 2000.

2. Under the same provision he complained about the excessive length of the patent proceedings. He further claimed that the judges in the patent proceedings were biased and that the judgments of 21 June 2004 and 25 January 2007 were not pronounced publicly.

THE LAW

1. The applicant complained under Article 6 § 1 of the Convention about the failure to enforce in a timely manner the judgment of 24 November 2000.

On 17 April 2009 the Government submitted to the Court a unilateral declaration aimed at resolving the issue raised by the applicant and requested the Court to strike out the application in accordance with Article 37 of the Convention. The declaration read as follows:

> "[T]he Russian authorities acknowledge the excessive duration of the enforcement of the judgment of the Levoberezhnyy District Court of Voronezh of 24 November 2000.
>
> The authorities are ready to pay the applicant *ex gratia* a sum of 3,100 euros as just satisfaction.
>
> The authorities therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> This payment will constitute the final resolution of the case.
>
> The authorities of the Russian Federation also guarantee to reimburse the sums of taxes that the applicant will pay when he will receive the mentioned sum, on conditions that he will submit corresponding confirmatory documents from the competent State tax authorities."

The applicant objected to this declaration. In particular, he disagreed with the amount offered and pointed out that the Government acknowledged a violation of the Convention in respect of the non-enforcement complaint only, having disregarded the grievance concerning the length of the patent proceedings.

The Court reiterates that under Article 37 of the Convention it may at any stage of the proceedings strike an application out of its list of cases where the circumstances lead to the conclusions specified under (a), (b), or (c) of that Article.

Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application."

Article 37 § 1 *in fine* states:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires."

Having regard to the acknowledgement contained in the declaration together with the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the present application in the part concerning the non-enforcement of the judgment of 24 November 2000. Moreover, the Court is satisfied that respect for human rights as defined in the Convention and the protocols thereto does not require it to continue the examination of this part of the application.

Accordingly, this part of the application should be struck out of the list.

2. The applicant further complained under Article 6 § 1 of the Convention about the excessive length of the patent proceedings. This Article, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

The Government submitted that the applicant had failed to exhaust the available domestic remedies in respect of his complaint. In particular, they pointed out that it had been open to him to complain to the Judicial Qualifications Board or claim compensation for non-pecuniary damage. In the alternative they submitted that the applicant himself had contributed to the aggregate length of the proceedings by failing to lodge an inquiry about the case progress with the District Court. The applicant argued in reply that he had exhausted the available remedies since he had sent inquiries to the Judicial Qualification Board and the Moscow City Court. He submitted that he had not sent his inquiries directly to the District Court because of his lack of trust in the first instance court's judges.

The Court does not deem it necessary to examine the non-exhaustion objection, because the complaint is in any event inadmissible for the following reasons.

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 a failure to comply with the "reasonable time" requirement (see, among other authorities, *Zimmermann and Steiner v. Switzerland*, 13 July 1983, p. 11, § 24, Series A no. 66; see also *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

The patent proceedings lasted from 18 December 2003 until 21 January 2007, during which period the domestic courts considered the applicant's claims at two levels of jurisdiction. The aggregate length of the proceedings thus amounts approximately to three years and one month.

The Court considers that the proceedings were not characterised by particular complexity.

Turning to the conduct of the judicial authorities, the Court observes that the courts did not display any lack of diligence in scheduling the hearings and resolving the case. At the same time, the Court notes one major period of the authorities' inaction that occurred between 13 July 2004, the date of dispatch of the letter containing a copy of the judgment, and 29 September 2006, when the applicant's request to set a new time-limit for lodging an appeal was accepted by the District Court. Thus, the proceedings were interrupted for a total of two years and three months.

The Court observes that the delay was initially caused by the fact that the applicant had not received the letter enclosing a copy of the judgment and inviting him to study the case file. Although the fact that the letter may have disappeared is, in itself, regrettable, it transpires from the file that it was sent to a correct address, and there is nothing to suggest that the notification was in any way defective. In these circumstances, the authorities cannot be blamed for a failure to take any further procedural steps at that stage. However, as from 20 January 2005 the District Court was aware, or ought to have been aware, of the applicant's inquiry about the outcome of the patent proceedings. The first instance court remained inactive until 19 April 2006, when a new copy of the judgment was sent to the applicant. The Court considers that this delay, which totalled one year and three months, is attributable to the authorities.

On the other hand, as regards the applicant's conduct, the Court observes that the applicant was aware of the fact that an examination of his case was scheduled for 21 June 2004. The Court reiterates in this respect that it is incumbent on the interested party to display special diligence in the defence of his interests (see *Shatunov and Shatunova v. Russia* (dec.), no. 31271/02, 30 June 2005). However, the applicant did not raise any concerns about the outcome of the hearing until 27 December 2004, the date of his first request for an update on the progress of the proceedings. Furthermore, the applicant never petitioned the District Court about the outcome of the proceedings. Instead, for more than a year he kept sending the requests for information to the Moscow City Court, an appeal instance, which was unable to inform the applicant about the progress of his application in the absence of any appeal pending against the judgment of 21 June 2004. The Court cannot accept the applicant's general allegations of mistrust to the first instance court as a valid reason for a failure to introduce an inquiry with a due domestic authority. In these circumstances, the Court considers that the applicant himself contributed to the overall length of the patent proceedings.

The Court further observes that, once the proceedings resumed, the courts examined the case with reasonable expedition. In these circumstances, regard being had to the overall length of the proceedings and the levels of jurisdiction involved, as well as the applicant's own responsibility for certain delays, the Court concludes that the "reasonable time" requirement was not breached in the present case.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

3. Lastly, the applicant complained that the judges in the patent proceedings were biased, that the outcome of the proceedings was unfair and that the judgments of 21 June 2004 and 25 January 2007 were not pronounced publicly.

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any 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 is likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in so far as it concerns the complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment of 24 November 2000 in the applicant's favour;

Declares inadmissible the remainder of the application.

Søren Nielsen
Registrar

Nina Vajić
President