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. 28602/02
by Valentina Pavlovna MARUSEVA
against Russia

The European Court of Human Rights (First Section), sitting on 1 June 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 26 June 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Valentina Pavlovna Maruseva, is a Russian national who was born in 1962 and lives in Smolensk. The Russian Government ("the Government") are represented by Mr P. Laptev, the 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 applicant, may be summarised as follows.

The applicant's 6 year old son, Sergey, suffered from a serious congenital heart decease. On 8 February 1995 he died during a cardiac surgery operation in a State-owned clinic. The applicant requested the prosecution to investigate her son's death. On several occasions the case was opened and then closed by the Smolensk Town Prosecutor's Office on the ground that no fault of the doctors had been established. The applicant challenged the refusal to prosecute the doctors in court, but to no avail. On 12 February 1997 the Zadneprovskiy District Court of Smolensk confirmed the prosecution's decision to discontinue the criminal proceedings. This judgment was upheld by the Smolensk Regional Court on 11 March 1997.

On 23 August 1995 the applicant brought a civil action for negligence against doctor M who had performed the operation, and Hospital No. 1 of Smolensk in which the operation had been carried out ("the hospital"). She sought compensation for pecuniary and non-pecuniary damage.

On 23 December 1996 the Zadneprovskiy District Court of Smolensk rejected her claim, holding that her son had died of natural causes. On 11 February 1997 this judgment was upheld by the Smolensk Regional Court.

On an unspecified date the applicant requested the Supreme Court of the Russian Federation to examine her case by way of supervisory review (see the "Relevant Domestic Law" part below). On 23 February 1999 the Vice President of the Supreme Court brought an extraordinary appeal (*npomecm*), pointing at numerous errors of fact and law in the lower courts' decisions. On 18 March 1999 the Presidium of the Smolensk Regional Court examined the case accepting the extraordinary appeal and quashing the impugned judgments of 23 December 1996 and 11 February 1997. The case was remitted to the first instance court.

On 9 June 1999 the Zadneprovskiy District Court dismissed the applicant's action, holding that the defendants could not be held responsible for the death of Sergey Marusev. Upon the applicant's appeal, on 21 October 1999 the Smolensk Regional Court quashed this judgment, pointing out that the first instance court had failed to assess important medical aspects of this case. The Regional Court also recommended certain additional proceedings to be carried out. The case was remitted to the first instance court.

On 17 November 1999 the Zadneprovskiy District Court again dismissed the applicant's action. On 28 December 1999 the Smolensk Regional Court overruled the first instance court and remitted the case for a fresh examination to the first instance court. The Regional Court noted that the first instance court had failed to carry out certain procedural actions,

breached procedural rules and failed to establish and analyse all pertinent facts of the case.

On 21 December 2000 the Zadneprovskiy District Court sent a rogatory letter to the Zamoskvoretskiy District Court of Moscow, requesting the questioning of B and P, two leading specialists in the area of cardiac surgery. The rogatory letter was received by the Zamoskvoretskiy District Court on 12 March 2001. B and P were summoned to the court but they failed to appear. On several occasions the court bailiffs tried to reach them at their home and professional addresses, but to no avail. In 2002 the applicant complained about the court's inactivity to the Administration of the President of Russia and to the Federal Ombudsman's Office. Her complaints were forwarded to the Moscow City Court. Finally, on 11 February 2002 the judge of the Zamoskvoretskiy District Court of Moscow questioned B and P and sent the transcript of their testimonies to the Zadneprovskiy District Court of Smolensk.

On 17 May 2002 the Zadneprovskiy District Court of Smolensk dismissed the applicant's action against the hospital and doctor M. Upon the applicant's appeal, on 15 October 2002 the Smolensk Regional Court quashed the first instance judgment and remitted the case to the first instance court.

On 26 December 2002 the Zadneprovskiy District Court delivered a new judgment. This time the court found that there had been certain counter-indications to perform the surgery and that the hospital had not obtained the relevant medical information before the operation. The court concluded that in the circumstances the surgical team and the hospital had been responsible for the death of the applicant's son due to negligence and therefore satisfied the applicant's claims in part, awarding her 15,000 RUR (~ 457 euros) in compensation for non-pecuniary damage and 16,430 RUR (~ 500 euros) for pecuniary damage. The court held that the above sum should be paid by the hospital, discharging doctor M from any liability. The rest of the applicant's claims (248,569 RUR in compensation of non-pecuniary damage) was rejected.

On 4 January 2003 the applicant appealed. By judgment of 11 March 2003 the Smolensk Regional Court increased the amount of non-pecuniary damage awarded to 100,000 RUR. As regards the pecuniary damage, the judgment of 26 December 2002 was quashed and the case remitted to the first instance court.

On 25 April 2003 the Zadneprovskiy District Court awarded the applicant 6,304 RUR in respect of pecuniary damage sustained by her. On 24 June 2003 this judgment was quashed by the Smolensk Regional Court.

On 22 August 2003 the Zadneprovskiy District Court examined the case again. It partly satisfied the applicant's claims, awarding her 43,984 RUR in compensation of pecuniary damage. On 21 October 2003 this judgment was upheld by the Smolensk Regional Court.

B. Relevant domestic law and practice

Article 11 of the Code of Civil Procedure of 1964 (CCP) then in force provided that regional and higher courts may conduct "supervisory review" of the decisions of the lower courts. This means, according to Articles 319, 320 and 327, that certain senior judicial officers may, at any time, on the request by the person concerned or on their own motion, lodge with a higher court an "application for supervisory review" (*npomecm*) against a final decision of a lower court on all questions of fact and law. If an "application for supervisory review" is lodged, the proceedings recommence. For further details on supervisory review proceedings, see *Ryabykh v. Russia*, (no. 52854/99, §§ 31-42, ECHR 2003-X).

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about the excessive length of the proceedings in her case.

2. The applicant also complained that the doctor's negligence caused the death of her son. She did not invoke any Convention provision in this respect.

THE LAW

1. The applicant complained of the excessive length of the proceedings, which, in her view, began on 23 August 1995 and ended on 21 October 2003 with the judgment of the Smolensk Regional Court. According to the applicant, the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. Article 6, insofar as relevant, 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..."

The Government did not submit their observations within the time-limit fixed for that purpose.

The Court notes that the proceedings which were pending before 5 May 1998, that is the date of the Convention's entry into force with respect to Russia, fall outside of the Court's competence *ratione temporis*. Moreover, no proceedings were pending between 11 February 1997, when the Smolensk Regional Court dismissed the applicant's claims, and 23 February 1999, when the Vice-President of the Supreme Court instituted the supervisory review of that judgment upon the applicant's request. Thus, for

the purposes of this application, the Court finds that the proceedings commenced on 23 February 1999, that is the date of the initiation of the supervisory review, and came to an end on 21 October 2003 with the final judgment of the Smolensk Regional Court. The overall duration of the proceedings was therefore four years, seven months and 28 days.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

2. The applicant further complained that the death of her son in February 1995 had been caused by the doctor's negligence. The Court deems appropriate to examine this complaint under Article 2 of the Convention, which reads, insofar as relevant, as follows:

> "1. Everyone's right to life shall be protected by law. [...]"

The Court notes that the applicant's son passed away in 1995 that was before the Convention's entry into force with respect of Russia, i.e. 5 May 1998. Therefore, the event complained of fall outside of the Court's competence *ratione temporis.*

As to a possible positive obligation of the State which might arise in connection with a death caused by a gross medical negligence (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I), the Court notes that the authorities recognised that the death of the applicant's son had been provoked, at least partly, by the surgeon's negligence and awarded compensation in this respect, which does not seem negligible. The Court is not persuaded that this remedy, in the particular circumstances of the case, was insufficient to meet the positive obligation of the State under Article 2 (see the *Calvelli and Ciglio v. Italy* judgment cited above, §52 et seq.). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint relating to the excessive length of the proceedings;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President