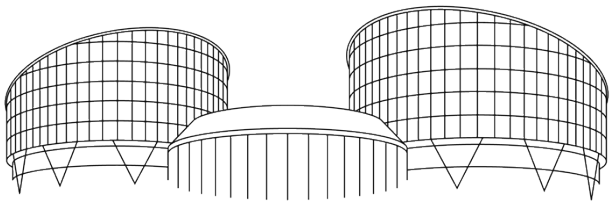

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TERESHKIN v. RUSSIA

(Application no. 13601/05)

JUDGMENT

STRASBOURG

19 February 2013

This judgment is final. It may be subject to editorial revision.

In the case of Tereshkin v. Russia,

Khanlar Hajiyev, President,
Julia Laffranque,
Dmitry Dedov, judges,
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 29 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 13601/05) 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 a Russian national, Mr Aleksey Nikolyaevich Tereshkin ("the applicant"), on 31 March 2005.

2. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 3 September 2007 the President of the First Section decided to give notice of the application to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and lives in Tula.

5. The applicant was a victim of the Chernobyl nuclear accident. He was subsequently granted category 2 disabled status and became entitled to various social benefits.

6. On 23 January 2001 he lodged an action with the Tsentralniy District Court of Tula ("the District Court") against the Department of the Interior of the Tula Region (his employer) for the adjustment of his monthly compensation payments for the damage to his health, and for the recovery of unpaid sums due to him.

7. The first hearing of the case was scheduled for 24 July 2001 but was cancelled because the judge was on leave.

8. On 23 October 2001 the applicant supplemented his claims. On the same date the District Court stayed the proceedings following a request by the Supreme Court filed with the Constitutional Court of the Russian

Federation for a review of the constitutionality of certain legal provisions determining the amount of compensation to be paid to Chernobyl victims.

9. The Constitutional Court ruled on the relevant issues on 19 June 2002.

10. On 28 August 2003 the proceedings were resumed.

11. On 6 October 2003 the hearing was adjourned at the respondent's request as its representative was ill.

12. On 28 October 2003 the hearing was adjourned following a request by the respondent for third parties to be permitted to join the proceedings.

13. On 17 December 2003 the hearing was adjourned because both parties failed to appear.

14. On 10 February 2004 the applicant supplemented his claims.

15. 12 February 2004 the hearing was adjourned because both parties failed to appear.

16. On 29 March 2004 the hearing was cancelled because the judge was ill.

17. The next hearings, scheduled for 19 May 2004 and 16 August 2004, were cancelled because the judge was involved in another unrelated set of proceedings.

18. On 18 October 2004 and 29 November 2004 the hearing was adjourned because the respondent failed to appear.

19. On 26 January 2005 and 18 March 2005 the hearing was postponed at the request of the respondent; the reasons have not been specified.

20. On 14 April 2005 the hearing was cancelled because the judge was on leave, and further postponed because the applicant was ill.

21. On 11 May 2005 and 24 May 2005 the applicant supplemented his claims.

22. The hearings of 8 June 2005 and 16 June 2005 were cancelled, respectively, in order for the judge to participate in a seminar and because he was ill.

23. The hearings of 21 September 2005 and 27 September 2005 were held as planned. The next hearing was scheduled for 30 September 2005.

24. By a decision of 30 September 2005 the District Court stayed the proceedings pending the outcome of another set of proceedings before the Constitutional Court of Russia in a case which was relevant to the determination of the applicant's case.

25. On 4 October 2005 the Constitutional Court of Russia resolved that matter. Meanwhile, on 23 May 2006 and 6 June 2006 the applicant supplemented his claims.

26. On 23 June 2006 the proceedings were resumed and the hearing was scheduled for 11 September 2006, but was further postponed because of the judge's involvement in other proceedings.

27. On 20 December 2006 the hearing was held as planned. The next hearing was scheduled for 17 January 2007.

28. On 17 January 2007 the hearing was held as planned.

29. On 18 January 2007 the District Court granted the applicant's claims in part.

30. On 23 August 2007 the Tula Regional Court ("the Regional Court"), acting on appeal, quashed that judgement and remitted the case for fresh consideration.

31. On 20 February 2008 the District Court granted the applicant's claims in full.

32. On 22 May 2008 the Regional Court overturned the judgement and ordered a new hearing.

33. On 4 August 2008 the District Court granted the applicant's claims in part. That decision was upheld on appeal on 13 November 2008.

II. RELEVANT DOMESTIC LAW

34. Federal Law No. 68-FZ of 30 April 2010, which entered into force on 4 May 2010, provides that in case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, Russian citizens are entitled to seek compensation for non-pecuniary damage. Federal Law No. 69-FZ, adopted on the same date, introduced the pertinent changes into Russian legislation.

35. Section 6.2 of Federal Law No. 68-FZ provides that everyone who has a pending application before the European Court of Human Rights concerning a complaint of the type described in that Law has six months to bring the complaint before the domestic courts.

THE LAW

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

36. The applicant complained that the length of the proceedings in his case had breached the "reasonable time" requirement of Article 6 § 1 of the Convention, the relevant part of 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 ..."

A. Admissibility

37. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The Government submitted that the length of the proceedings in the present case complied with the "reasonable time" requirement of Article 6. The proceedings had been of a certain complexity on account of the lack of a uniform position in Russian law, which had resulted in clarifications having to be made by the Constitutional Court of Russia. The length had been also justified by such factors as the court's insufficient staff numbers and heavy caseload. They also noted that the applicant had contributed to the delay in the proceedings by submitting additional claims on six occasions. The domestic authorities had not been responsible for any long delays in the examination of the case.

39. The applicant maintained his complaint.

40. The Court observes that the proceedings in the applicant's case commenced on 23 January 2001 and ended on 13 November 2008. They thus lasted approximately seven years and ten months, during which period the domestic courts considered the claims three times and at two levels of jurisdiction.

41. 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 of 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). In addition, 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, § 24, Series A no. 66, and *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

42. As to the complexity of the case, the Court notes at the outset that the domestic court was required only to determine and calculate the amounts of benefit to which the applicant was entitled. The case as such was therefore of no particular complexity. As to the Government's arguments that the proceedings had needed to be stayed on two occasions while clarifications were made by the Constitutional Court of Russia, the Court finds that this procedural difficulty, taken on its own, did not render the case so complex as to justify the overall length of the proceedings. The court will therefore proceed to an examination of the conduct of the applicant and the relevant authorities.

43. In so far as the applicant's conduct is concerned, the Court observes that he may be held responsible for certain delays as he failed to attend

(together with the respondent) two hearings, on 17 December 2003 and 12 February 2004. As a result, the proceedings were delayed by three months. As to the applicant's supplementing of his claims on several occasions, it has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see *Skorobogatova v. Russia*, no. 33914/02, § 47, 1 December 2005). Accordingly, the Court finds that the delays attributable to the applicant appear quite insignificant in relation to the overall length of the proceedings.

44. As to the authorities' conduct, the Court observes, to the contrary, that they appear to have been responsible for numerous delays in the proceedings. It firstly notes that the Government failed to provide any explanation for the District Court's inactivity during the periods between the dates when the relevant decisions were adopted by the Constitutional Court and the dates when the proceedings in the case were resumed, namely from 19 June 2002 to 28 August 2003 and from 4 October 2005 to 23 June 2006. There is nothing in the facts of the case or the parties' submissions that could justify almost two years of inactivity.

45. Secondly, it is clear that at least four hearings were postponed owing to the judge's other commitments, and another four were cancelled owing to his absence due to illness and leave. In this regard, the Court reiterates that it is the States' duty to organise their judicial systems in such a way that their courts can meet the requirements of Article 6 § 1 (see *Muti v. Italy*, 23 March 1994, § 15, Series A no. 281-C). Accordingly, it does not find the court's insufficient staff numbers and heavy case load, as cited above by the Government, to be objective factors justifying the lengthy delays in the proceedings.

46. Lastly, the Court notes that during the period between 18 October 2004 and 14 April 2005 four hearings were cancelled owing to the unexplained absence of the respondent (which is a State authority), and the respondent's requests to adjourn hearings for unspecified reasons (see paragraphs 18-19 above). However, the trial court did not react in any way to that behaviour and did not use the measures available to them to discipline the participants in the proceedings and ensure that the case was heard within a reasonable time (see *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005).

47. With regard to what was at stake for the applicant, the Court bears in mind that the applicant was in a vulnerable position, especially given that the disability allowance at issue was his principal source of income. It thus considers that the authorities had an obligation to examine the applicant's claims with special diligence.

48. Regard being had to the substantial delays attributable to the authorities and to what was at stake for the applicant in the case, the Court

finds that there was a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicant complained under Article 13 that he did not have an effective remedy in respect of the length of the proceedings in his case. The relevant provision reads 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."

50. The Court takes cognisance of the existence of a new remedy introduced by Federal Laws Nos. 68-FZ and 69-FZ in the wake of the pilot judgment adopted in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009-...). These statutes, which entered into force on 4 May 2010, set up a new remedy enabling those concerned to seek compensation for damage sustained as a result of unreasonably lengthy proceedings or the delayed enforcement of court judgments (see paragraph 34 above).

51. The Court observes that in the present case the parties' observations in respect of Article 13 were received at the Court before 4 May 2010 and did not contain any references to the new legislative development. However, it accepts that since 4 May 2010 the applicant has had a right to use the new remedy (see paragraph 35 above).

52. The Court observes that in the pilot judgment cited above it stated that it would be unfair to request applicants whose cases had already been pending for many years in the domestic system and who had come to seek relief at the Court to bring their claims again before domestic tribunals (*Burdov (no. 2)*, cited above, § 144). In line with this principle, the Court decided to examine the present application on its merits and has found a violation of the substantive provision of the Convention.

53. Having regard to these special circumstances, the Court does not find it necessary to examine separately the applicant's complaint under Article 13 of the Convention (see *Utyuzhnikova v. Russia*, no. 25957/03, § 52, 7 October 2010).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government contested this amount as unsubstantiated and disproportionate to the damage allegedly incurred.

57. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the lengthy examination of his claims. Ruling on an equitable basis and having regard to the nature of the proceedings in the present case, the Court awards the applicant EUR 4,500.

B. Costs and expenses

58. Without indicating a specific amount, the applicant also claimed reimbursement of the costs and expenses incurred before the domestic courts and in the proceedings before the Court.

59. The Government disagreed with the claim as it was unsupported by any evidence.

60. The Court notes that the applicant failed to submit any evidence to support his claim. Regard being had to this fact, the Court rejects the claim for costs and expenses altogether.

C. Default interest

61. The Court considers it appropriate that the default interest rate 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 of the Convention;

3. *Holds* that there is no need for a separate examination of the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be

converted into the currency of the respondent State at the rate applicable at 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President