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

FIRST SECTION

**CASE OF MARCHENKO v. RUSSIA**

*(Application no. 29510/04)*

JUDGMENT

STRASBOURG

5 October 2006

**FINAL**

*05/01/2007*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Marchenko v. Russia,**

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

Mr C.L. ROZAKIS, *President,*
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*
and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 14 September 2006,

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

## PROCEDURE

1. The case originated in an application (no. 29510/04) 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 Vladimir Aleksandrovich Marchenko ("the applicant"), on 9 August 2004.

2. The applicant was represented by Ms O. Mikhaylova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that the length of the proceedings in his case was excessive and that the proceedings were unfair.

4. On 4 March 2005 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

## THE FACTS

5. The applicant was born in 1951 and lives in the village of Timiryazevskoye in the Tomsk Region.

6. On 3 December 1997 the applicant sued the Tomsk central district hospital for damages caused by medical malpractice.

7. On 1 March 1998 judge F. of the Tomsk District Court was assigned to the case. Between March 1998 and 22 April 1999 the Tomsk District Court held four hearings.

8. At the hearing of 22 April 1999 the applicant notified the District Court that his medical papers could have been forged and asked for an investigation into this issue. His request was granted.

9. The investigation was completed on 11 August 1999 and on 7 September 1999 the District Court received the expert report and held a hearing.

10. The following hearing was held on 8 December 1999. The applicant successfully asked the District Court to order a medical expert examination. The proceedings were stayed until 8 February 2000.

11. Of three hearings listed between 8 February and 22 March 2000, one hearing was adjourned because the applicant defaulted and one was adjourned upon the defendant's request.

12. Between July and September 2000 no hearings were listed because judge F. had resigned. Judge A. was assigned to the case. The examination of the case re-commenced.

13. On 19 September 2000 the District Court held a hearing. The court again ordered a medical examination and stayed the proceedings. After the proceedings had been resumed, a hearing was listed for 4 July 2001. It was, however, adjourned because the applicant wanted to amend his claims.

14. The following hearing, listed for 4 August 2001, was adjourned due to dismissal of judge A. On 9 August 2001 the case was re-assigned to judge I.

15. From 9 August to 6 November 2001 no hearings were held because judge I. was on leave or the defendant did not attend on the day fixed.

16. The hearings listed for 6 and 12 November 2001 were postponed upon the applicant's request.

17. At the following hearing of 29 November 2001 the applicant successfully challenged judge I. The case was re-assigned to judge K.

18. Of fourteen hearings listed between December 2001 and January 2003, one hearing was adjourned because the defendant did not attend, one was postponed due to the judge's illness, three hearings were adjourned because witnesses defaulted and seven were postponed due to the applicant's illness.

19. From 3 February to 7 April 2003 six hearings were held. It appears that each hearing lasted approximately three hours because the applicant did not feel well.

20. Of fourteen hearings fixed between 8 and 28 April 2003 five hearings were adjourned because the applicant was ill or wanted to call additional witnesses and study the case-file.

21. From May to 22 July 2003 no hearings were held because the judge was on leave.

22. Between 22 July and 8 August 2003 the District Court held thirteen hearings. The hearings lasted approximately three hours because the applicant provided the District Court with a medical report according to

which he could not effectively participate in a hearing if it lasted more than three hours.

23. From 8 August 2003 to 20 January 2004 the Tomsk District Court did not fix hearings due to the defendant's requests and the judge's absence.

24. Eighteen hearings were held between 20 January and 19 March 2004. Each hearing lasted approximately three hours because the applicant felt ill and could not effectively participate.

25. On 19 March 2004 the Tomsk District Court of the Tomsk Region dismissed the applicant's action against the hospital as unsubstantiated. The applicant and his representative left the courtroom at the beginning of the hearing.

26. On 6 July 2004 the Tomsk Regional Court upheld the judgment on appeal.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE PROCEEDINGS

27. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, 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

28. The Court recalls that the proceedings commenced on 3 December 1997. However, the Court will only consider the period of the proceedings which began on 5 May 1998 when the Convention entered into force in respect of Russia. In assessing the reasonableness of the time that elapsed after that date, account must, nevertheless, be taken of the state of proceedings at the time. The period in question ended on 6 July 2004 with the final judgment of the Tomsk Regional Court. Thus the proceedings lasted approximately six years and seven months, of which six years and two months fall within the Court's jurisdiction *ratione temporis,* before two court levels.

29. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

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

## B. Merits

### *1. Submissions by the parties*

30. The Government argued that the length of the proceedings had been a product of the applicant's conduct. The applicant and his representative had successfully asked for the adjournment of sixteen hearings. Thirty-three hearings, listed between 7 and 28 April 2003, 22 July and 7 August 2003 and between 22 February and 19 March 2004, had been interrupted upon his request. The proceedings had also been stayed three times because the applicant had asked for expert examinations. The applicant had challenged the composition of the bench at least seven times. As regards the conduct of the domestic authorities, the Government submitted that there had been no periods of inactivity attributable to them.

31. The applicant contested the Government's submissions. He argued that it had taken the domestic courts more than six years and seven months to examine his claims. Of that period, for more than six years and three months the proceedings had been pending before the District Court without any progress. It had often taken the District Court up to six months to fix hearings. The composition of the District Court had changed four times. Only once it had changed upon the applicant's request. Each time the District Court had had to re-commence the examination of the case. The applicant averred that expert examinations had been necessary. However, they had taken too much time and the District Court had not taken any steps to discipline the experts.

### *2. The Court's assessment*

32. 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).

33. The parties did not argue that the case was particularly difficult to determine. The Court has no reason to conclude otherwise. In any event, it takes the view that an overall period of more than six years and two months could not, in itself, be explained by the complexity of the case.

34. As to the applicant's conduct, the Court notes that the parties agreed that the applicant had only defaulted once, on 16 February 2000. Irrespective of the reasons for his absence, the delay incurred therefrom was negligible. The Court observes that five hearings were postponed because

the applicant wanted to amend his claims, to call additional witnesses or to study the case-file. The Court reiterates that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see *Sokolov v. Russia*, no. 3734/02, § 38, 22 September 2005).

35. The Court observes that a delay of approximately ten months was caused by the postponement of at least eight hearings and the fact that the hearings in March, April, July and August 2003 and February and March 2004 lasted approximately three hours due to the applicant's poor health. In this respect, the Court notes that the applicant was represented in the course of the proceedings. Thus, although his efforts to ensure his own presence at the hearings for the best representation of his interests are understandable, the manner in which he exercised his procedural rights undoubtedly contributed to prolonging the proceedings.

36. The Government also indicated that on seven occasions the applicant had challenged the composition of the bench. The Court notes that in six cases the challenges were not successful and the delay resulting from one successful challenge on 29 November 2001 (see paragraph 17 above) only amounted to approximately three months.

37. As regards the conduct of authorities, the Court considers that the overall period less the period attributable to the applicant's conduct leaves the authorities accountable for approximately five years. In this respect the Court reiterates that only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Des Fours Walderode v. the Czech Republic* (dec.), no. 40057/98, ECHR 2004–V).

38. The Court observes that the proceedings were stayed three times for preparation of expert opinions. The aggregated delay of approximately fourteen months resulted therefrom. The Court reiterates that the principal responsibility for a delay caused by expert examinations rests ultimately with the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32, and *Antonov v. Russia* (dec.), no. 38020/03, 3 November 2005). However, no steps were taken to avoid delays and the District Court did not inquire into the progress of the experts' work. Accordingly, this period is imputable to the State.

39. Furthermore, the Court observes that a delay of approximately two years was caused by the two dismissals of the judges. Each time the dismissal took place, the proceedings re-commenced, which involved fixing of new hearings, re-hearing of the parties and re-examination of evidence. In this respect, the Court notes that Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria*, no. 30546/96, § 57, 3 October 2000). Another aggregated delay of approximately four months was caused by the judge's absence.

40. Finally, the Court reiterates that the dispute in the present case concerned compensation for health damage allegedly resulting from medical malpractice. The Court is of the opinion that the nature of the dispute called for particular diligence on the part of the domestic courts.

41. Having regard to the overall length of the proceedings, what was at stake for the applicant and the fact the proceedings were pending for approximately six years and three months before the court of first instance, the Court concludes that the applicant's case was not examined within a "reasonable time". There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF THE PROCEEDINGS

42. The applicant also complained under Articles 6 § 1 that the courts wrongly interpreted and applied the law and incorrectly assessed evidence in his case.

43. The Court reiterates that it is not a court of appeal from the domestic courts and that, as a general rule, it is for those courts to assess the evidence before them. The Court's task under the Convention is to ascertain whether the proceedings as a whole were fair (see, among many authorities, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I). On the basis of the materials submitted by the applicant, the Court notes that within the framework of the civil proceedings the applicant was able to introduce all necessary arguments in defence of his interests, and the judicial authorities gave them due consideration. His claims were examined at two levels of jurisdiction and dismissed as unsubstantiated. The decisions of the domestic courts do not appear unreasonable or arbitrary.

44. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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."

46. The Court observes that on 1 July 2005 the applicant's representative was invited to submit by 9 September 2005 quantified claims for just satisfaction. No claims were received within the time allowed. Accordingly, the Court considers that there is no call to award the applicant any sum on that account.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings in the applicant's case;

3. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 5 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President