CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF CHEVKIN v. RUSSIA

(Application no. 4171/03)

JUDGMENT

STRASBOURG

15 June 2006

FINAL

15/09/2006

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 Chevkin v. Russia,

The European Court of Human Rights (First Section), sitting 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 deliberated in private on 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 4171/03) 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 Leonid Yevgenyevich Chevkin ("the applicant"), on 24 December 2002.

2. The applicant was represented by Ms M. Voskobitova, 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. On 13 December 2004 the Court decided to communicate the application. 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1942 and lives in the Tula Region.

5. In 1986 the applicant took part in the clean-up of the Chernobyl nuclear accident site. As a consequence he suffered from extensive exposure to radioactive emissions.

6. On 19 March 1997 the applicant lodged an action against the Tula Regional military recruitment office (*Тульский областной военный комиссариат)* for compensation for health damage.

7. On 30 September 1997 the Tula Regional Court, in the final instance, dismissed the action.

8. On 24 April 1998 the applicant requested the Tsentralniy District Court to re-open the proceedings on account of newly-discovered evidence and to award him compensation.

9. The judge N. was assigned to the case and the first hearing was listed for 3 September 1998.

10. Of the seven hearings listed between 3 September 1998 and 6 July 1999, two hearings were adjourned because the defendant did not attend and five hearings were adjourned because the judge was involved in other proceedings.

11. On 28 July 1999 the Tsentralniy District Court awarded the applicant a certain amount in compensation for the health damage claimed.

12. On 18 January 2000 the Tula Regional Court quashed that judgment and remitted the matter for a fresh examination. The Regional Court held that the District Court had examined the merits of the applicant's action, without addressing the request for re-opening. Instead, it should have, first, examined the request for re-opening and then, if such a request was granted, it should have ruled on the merits of the action.

13. On 9 March 2000 the Tsentralniy District Court issued a formal decision ordering re-opening of the proceedings and on 15 May 2000 it awarded the applicant partial compensation.

14. The judgment of 15 May 2000 was quashed on appeal on 10 August 2000 and the case was remitted for a fresh examination.

15. The Tsentralniy District Court received the case-file from the Regional Court on 23 October 2000. Three days later the applicant lodged an amended statement of claims. He subsequently amended his claims on two occasions.

16. The hearing listed for 25 December 2000 was adjourned because the applicant could not attend.

17. On 2 April 2001 the Tsentralniy District Court granted the applicant's claim in part.

18. On 7 June 2001 the Tula Regional Court adjourned the appellate proceedings because the Constitutional Court of the Russian Federation was to examine the legal provisions on which the applicant's claims were based.

19. The applicant unsuccessfully complained to the Tula Regional Judicial Qualification Board, the Tula Regional Court and the Judicial Department of the Tula Region about the excessive length of the proceedings.

20. On 17 September 2002 the Tula Regional Court resumed the proceedings, quashed the judgment of 2 April 2001 and remitted the case for a new examination.

21. On 6 November 2002 the Tsentralniy District Court received the case-file from the Regional Court and listed a hearing for 3 February 2003.

22. Of the twenty hearings listed between 3 February 2003 and 18 April 2005, ten hearings were adjourned because the defendant could not attend and seven hearings were adjourned because the judge was ill or involved in other proceedings.

23. On 25 April 2005 the applicant amended his claims and requested the District Court to stay the proceedings until the end of May 2005 because he was ill. The applicant provided the District Court with a medical certificate.

24. On 19 August 2005 the Tsentralniy District Court granted the applicant's claims in part.

25. The applicant was provided with a copy of that judgment on 4 October 2005. A week later he lodged a statement of appeal.

26. The appeal proceedings are now pending.

THE LAW

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

27. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement 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

1. Government's objection that the complaint is premature

28. The Government submit that the proceedings are still pending before the domestic courts, and the applicant's complaints are inadmissible because they are premature.

29. The Court notes that according to the Convention organs' constant case-law complaints concerning length of procedure can be brought before it before the final termination of the proceedings in question (see *Plaksin v. Russia*, no. 14949/02, § 35, 30 April 2004). Accordingly, the Government's objection must be dismissed.

2. Period to be taken into consideration

30. The Court observes that on 19 March 1997 the applicant lodged an action. On 30 September 1997 the regional court issued the final judgment,

rejecting his claims. This period falls outside the Court's competence *ratione temporis*, as the Convention only entered into force in respect of Russian on 5 May 1998.

31. On 24 April 1998 the applicant asked for re-opening of the proceedings on account of newly-discovered evidence. It was not until 9 March 2000 that the district court issued a decision ordering the re-opening.

32. The Court reiterates that Article 6 of the Convention does not apply to proceedings concerning the re-opening of a civil case (see, for example, *Rudan v. Croatia* (dec.), no. 45943/99, 13 September 2001). Having regard to the fact that between 24 April 1998 and 9 March 2000 the domestic courts dealt with the applicant's request for re-opening of the proceedings, Article 6 did not apply to that period.

33. Thus the Court will only consider the period of the proceedings which began on 9 March 2000, when the district court re-opened the proceedings and initiated re-examination of the merits of the applicant's claim. The period in question has not yet ended. It has thus lasted more than six years and two months.

34. The Court further observes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

35. The Government argued that the length of the proceedings is "reasonable" and could be accounted for by the circumstances of the case. The case was a complex one and the courts had to examine voluminous materials submitted by the parties. Delays were caused by the defendant's failure to attend the hearings and to submit additional evidence. The applicant contributed to the delays in the proceedings by amending his claims, failing to appear at the hearing of 25 December 2000 and asking for a stay of the proceedings in April and May 2005. There were no periods of inactivity attributable to domestic authorities.

36. The applicant contested the Government's submissions. The case was not complex. He could not be blamed for amending his claims because he was compelled to do so due to frequent legislative changes.

2. The Court's assessment

37. 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).

38. The Court considers that the case was not particularly difficult to determine. Consequently, it takes the view that an overall period of more than six years and two months could not, in itself, be deemed to satisfy the "reasonable time" requirement in Article 6 § 1 of the Convention.

39. As to the applicant's conduct, the parties agreed that the applicant had not attended one hearing on 25 December 2000 and had asked the court to adjourn the hearings between 25 April 2005 and the end of May 2005. Irrespective of the reasons, the delay incurred therefrom was negligible. As to the Government's argument that the applicant contributed to the delay in the proceedings by amending his claims, 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 interest (see, *mutatis mutandis, Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66). The Court cannot conclude that the applicant contributed to prolongation of the proceedings.

40. The Court observes, however, that substantial periods of inactivity, for which the Government have not submitted any satisfactory explanation, are attributable to the domestic authorities. It took the district court several months to fix hearings. For example, between 3 June and 2 September 2004 no hearings were held. Further delays of approximately five months were caused by transfer of the case-file from the regional to the district court, in 2000 and 2002 (see paragraphs 14-15 and 20-21 above). The aggregated length of the delays occasioned by the judge's absence and his participation in unrelated proceedings amounted to approximately one year.

41. The Court observes that the case has been remitted several times to the first-instance court 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 *Litoselitis v. Greece*, no 62771/00, § 32, 5 February 2004).

42. The Court furthermore notes that the conduct of the defendant, a State agency, was the main reason for prolongation of the proceedings. The domestic authorities failed to take adequate steps in order to ensure its attendance. The defendant defaulted on at least ten occasions which resulted in a delay of approximately one year and two months. There is no indication that the court reacted in any way to that behaviour.

43. Having regard to the overall length of the proceedings, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

44. The applicant further complained that his complaints about the excessive length of the proceedings had been futile. The Court considers that this complaint falls to be examined under Article 13 of the Convention which 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."

45. The Government contested the applicant's arguments.

A. Admissibility

46. The Court notes that this 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

47. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, 29 January 2004, § 64).

48. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained redress for a violation of his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The applicant also complained under Article 14 of the Convention and Article 1 of Protocol No. 1 that he was unable to obtain a favourable judgment in his case and that other clean-up workers of the Chernobyl nuclear accident site were paid disability pensions. However, having regard to all the material in its possession, and in so far as these complaints fall 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed compensation for health damage and monthly pension payments of 49,610.60 Russian roubles in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

52. The Government considered the claim to be excessive, unreasonable and premature.

53. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant suffered distress, anxiety and frustration because of an unreasonable length of the proceedings and the lack of an effective remedy for a breach of the requirement to hear his case within a reasonable time. Making its assessment on an equitable basis and taking into account that the proceedings in the applicant's case concerned compensation for health damage, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

54. Relying on documentary evidence and the representative's time-sheet, the applicant also claimed EUR 480 for the costs and expenses incurred before the Court.

55. The Government considered the claim unreasonable.

56. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the amount claimed, plus any tax that may be chargeable on the above amount.

C. Default interest

57. The Court considers it appropriate that the default interest 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 complaints concerning the excessive length of the proceedings and the absence of effective remedy admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of the settlement:
      (i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 480 (four hundred and eighty euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos Rozakis
President