CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SALAMATINA v. RUSSIA

(Application no. 38015/03)

JUDGMENT

STRASBOURG

1 March 2007

FINAL

01/06/2007

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 Salamatina 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 N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges,*
and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 8 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 38015/03) 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, Ms Nelli Ivanovna Salamatina ("the applicant"), on 11 November 2003.

2. 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 11 October 2005 the Court decided to give notice of 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

4. The applicant was born in 1937 and lives in Moscow. In January 1995 she was injured in a traffic accident.

5. On 3 July 1998 the applicant lodged an action before the Koptevskiy District Court of Moscow seeking compensation for damage from the owner of the car, a private company.

6. On 8 July 1998 the Koptevskiy District Court adjourned the examination of the action until 20 July 1998 to allow the applicant to indicate possible evidence and clarify her claims. After she had duly fulfilled the instructions, on 20 July 1998 the Koptevskiy District Court asked the Simonovskiy District Court of Moscow and certain hospitals to

submit documents related to the traffic accident and the state of the applicant's health. The documents were received on 3 August 1998. In November 1998, following unsuccessful attempts to summons the respondent, the Koptevskiy District Court inquired the tax authorities about the company's legal address.

7. In April 1999 the applicant successfully asked for adjournment of the proceedings until May 1999 because she was undergoing treatment in a hospital. On 24 September 1999 she amended her claims.

8. On 28 September 1999 the Koptevskiy District Court listed a preparatory hearing for 7 October 1999. That hearing was adjourned until 14 October 1999 because the respondent defaulted. At the following hearing of 9 November 1999 the District Court, upon the applicant's request, charged the respondent's property and inquired the tax authorities about the respondent's bank accounts. On 22 November 1999, in response to the applicant's request, the Koptevskiy District Court charged the respondent's bank accounts.

9. On 8, 10 and 15 December 1999 the applicant and her representative successfully asked the District Court to obtain additional evidence and invite a prosecutor to the proceedings. On 15 December 1999 the District Court also lifted the charging order in respect of certain property of the respondent. The decision was upheld on appeal on 10 January 2000.

10. The Koptevskiy District Court fixed a hearing for 19 January 2000. That hearing was adjourned because the applicant did not attend. At the following hearing of 22 February 2000 the applicant challenged the composition of the bench and petitioned the District Court for medical and technical expert opinions. The District Court adjourned the examination of the case until 23 March 2000 to allow the applicant to prepare questions to experts.

11. Of the three hearings fixed between 23 March and 14 June 2000 two were adjourned because the judge was ill or participated in unrelated proceedings.

12. On 14 June 2000 the applicant's representative successfully asked the District Court to stay the proceedings until 1 September 2000 because he could not attend hearings.

13. The hearing fixed for 1 September 2000 was adjourned because the judge was ill. At the following hearing of 19 September 2000 the applicant successfully asked the District Court to stay the proceedings until 24 October 2000 to allow her to amend the claims. However, she defaulted at the hearing of 24 October 2000 and the District Court again stayed the proceedings until 5 December 2000.

14. At the hearing of 5 December 2000 the applicant submitted the amended statement of claim and asked the court to perform a medical technical examination. The Koptevskiy District Court accepted the applicant's request, ordered the expert examination and appointed an expert

bureau to perform it. The examination was to be performed by the Russian Centre of Forensic Medical Examinations. On 21 May 2001 the expert bureau returned the case-file to the District Court because it had no competence to perform such an examination.

15. On 27 August 2001 the Koptevskiy District Court held that the medical examination should be performed by another expert bureau and stayed the proceedings. On 29 November 2001 the District Court received an expert report with answers to a part of the questions posed by the parties. The expert opinion responding to the parties' remaining questions was received in April 2002.

16. On 14 May 2002 the Koptevskiy District Court resumed the proceedings and listed a hearing for 4 June 2002. At the hearing on 4 June 2002 the applicant successfully asked the District Court to stay the proceedings until July 2002 because she wanted to study the case-file.

17. On 3 July 2002 the Koptevskiy District Court dismissed the applicant's request for another expert examination. On the same day the District Court held in the applicant's favour and awarded her RUR 17,229.94 as compensation for pecuniary and non-pecuniary damage.

18. A week later the applicant initiated the appeal proceedings and submitted a short version of her statement of appeal. On 30 July 2002 she lodged the full version of the statement and also asked to restore the time-limit for lodging amendments to the District Court's records.

19. On 12 May 2003 the Moscow City Court upheld the judgment of 3 July 2002.

THE LAW

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

20. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down 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..."

21. The period under consideration began on 3 July 1998 when the Koptevskiy District Court of Moscow received the applicant's statement of claim. The period in question came to an end on 12 May 2003 when the final judgment was taken. Therefore, the proceedings lasted approximately four years and ten months before the courts of two levels of jurisdiction.

A. Admissibility

22. 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

23. The Government argued that the applicant had caused delays in the proceedings by amending her claims, petitioning for expert studies, requesting adjournment of the proceedings for various reasons and defaulting at several hearings. The case had been complex as it had required taking of expert evidence. The task of the domestic courts had been made even more difficult because the applicant had lodged her action more than three years after the traffic accident. The District Court had been very active in seeking and obtaining the necessary evidence, issuing interim decisions and accepting the applicant's numerous requests.

24. The applicant claimed that the case had not been particularly complex. The domestic authorities had been responsible for delays. The District Court had not taken any actions between 3 July 1998 and 9 November 1999. It had not acted diligently after 23 March 2000. A delay from 5 December 2000 to 21 May 2001 was caused by the District Court's failure to choose the competent expert bureau.

25. 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).

26. The Court observes that the proceedings at issue were complex, as they required expert opinions and studying of the applicant's medical records. The applicant amended her claims on several occasions. The task of the District Court was rendered more difficult by these factors. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings. Moreover, the Court considers that special diligence is necessary in disputes concerning compensation for damage caused to the person's health.

27. Insofar as the behaviour of the applicant is concerned, the Court notes the Government's argument that the applicant attributed to the delay in the proceedings by defaulting and petitioning for adjournment of hearings. The aggregated delay incurred therefrom amounted to approximately ten months.

28. As regards the conduct of the authorities, the Court considers that the overall period less the period attributable to the applicant's conduct leaves the authorities accountable for approximately four years. The Court observes the substantial periods of inactivity for which the Government have not submitted any satisfactory explanation, are attributable to the domestic courts. The Court notes a delay of approximately seventeen months caused by the stay in the proceedings awaiting the expert opinion (see paragraphs 14 and 16 above). The Court is not called upon to determine the reasons for the delay in preparation of the expert report (difficulties in identifying the competent expert bureau, etc.), because 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). The Court observes that the principle responsibility for a delay caused by the expert examinations rests ultimately with the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32). The Court further notes that the case was pending for approximately eleven months before the Moscow City Court (see paragraphs 17 and 19 above). It appears that during that period the City Court only held one hearing, on 12 May 2003, when it took the final judgment. The Court also observes that certain delays attributable to the domestic authorities occurred in 1998 and 1999.

29. Finally, the Court reiterates that the dispute in the present case concerned compensation for health damage. The Court is of the opinion that the nature of the dispute called for particular diligence on the part of the domestic courts (see *Marchenko v. Russia*, no. 29510/04, § 40, 5 October 2006).

30. Having examined all the material submitted to it and taking into account what was at stake for the applicant, 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 6 § 1 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF THE PROCEEDINGS

31. The applicant further complained under Article 6 of the Convention that the domestic courts failed to give a correct interpretation of the domestic law and erroneously assessed the facts.

32. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court

unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, *e.g.*, *Čekić and Others v. Croatia* (dec.), no. 15085/02, 9 October 2003). Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

33. Turning to the facts of the present case, the Court finds that there is nothing to indicate that the domestic courts' evaluation of the facts and evidence presented in the applicant's case was contrary to Article 6 of the Convention. The applicant was provided with ample opportunities to present her arguments and to challenge the submissions of the adversary in the proceedings and the judicial authorities gave them due consideration. In the light of the foregoing consideration, the Court finds that the reasons on which the national courts based their conclusions are sufficient to exclude any doubt that the way in which they established and assessed the evidence in the applicant's case was unfair or arbitrary.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicant complained under Articles 6 and 14 of the Convention that that the interim orders had been unfair, that she had been unable to afford an advocate and an independent expert examination, and that she had been discriminated against on the ground of her social status.

36. Having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence *ratione materiae*, it 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

37. 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

38. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government argued that the applicant's claims were excessive and unreasonable.

40. The Court accepts that the applicant suffered distress, anxiety and frustration because of an unreasonable length of the proceedings in her case. However, the amount claimed is excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be charged on the above amount.

B. Costs and expenses

41. The applicant did not make any claims for the costs and expenses incurred before the domestic court and before the Court.

42. Accordingly, the Court does not award anything under this head.

C. Default interest

43. 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 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;

3. *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, EUR 1,500 (one thousand and five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 1 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President