



Russia cautiously starts to pay for red-tapery at courts

Natalya Karetnaya, Dmitry Davydenko,
Institute of Private International and
Comparative Law (www.iurisprudentia.ru/eng),
Moscow, Russia

For the last ten years European Court of Human Rights (ECHR) has been overloaded with appeals alleging violation of Article 6-1 in Russia¹ (“Kormacheva v. Russia”, “Plaksin v. Russia”, “Panchenko v. Russia”, “Rokhlina v. Russia”, to name but a few). Finally, following the case Burdov versus Russia (No. 2) (appeal No. 33509/04) ECHR issued the judgment dated January 15, 2009, according to which the Russian state is particularly obligated to: bring the practice of Russian courts in compliance with provisions of the Convention; establish effective domestic methods to remedy in case of partial or complete non-execution of judgments in time; pass within six months means of legal defense which will guarantee adequate and sufficient remedy².

The Russian Federation ratified the European Convention on Human Rights on May 5, 1998. Since then Russian citizens are entitled both to enjoy the rights granted by the Convention and to resort to the ECHR for their protection.

In pursuance to the Regulation of ECHR and ruling of Constitutional Court of Russia No. 734-O-P, the Russian government adopted the Federal Law “On Compensations for the Breach of Right to Legal Proceedings Within a Reasonable Time or Right to Have the Judgment Implemented within a Reasonable Time”, which entered into effect on May 4, 2010. It seems very interesting, that monetary compensation is granted irrespective of the presence of fault on the part of the court, federal or local authorities³. Any specific features of organization of a court, in particular, a necessity to replace a judge is not an excuse to violate this law as well. Compensation is to be charged from the federal budget. There are already a number of positive opinions on this law. Thus, the renowned Russian law professor B. Ya. Polonsky even believes that “the importance of the law on compensation is hard to overestimate”⁴. In particular, the law is designed “to overcome nihilistic attitude towards the law”.

¹ “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing **within a reasonable time** by an independent and impartial tribunal established by law”.

² Russian chronicle of the European Court (*Rossiyskaya khronika Evropeyskogo Souda*). Addendum to the “Bulletin of the European Court of Human Rights” (*Bulleten’ Evropeyskogo Souda*) // Special edition, 2009, No. 4, pp. 79–106. The full text of the ECHR Regulation is available on the website <http://www.echr.coe.int/echr/en/hudoc/>.

³ Art. 1(3) of the Federal Law “On Compensations for the Breach of Right to Legal Proceedings Within a Reasonable Time or Right to Have the Judgment Implemented within a Reasonable Time”.

⁴ Polonsky, B. Ya., Reasonable law (*Razumnyi zakon*) // Zakonodatel’sтво (The Legislation) 2010, No. 8, p. 23.



The legislator has at the same time extended time limits of legal proceedings for some categories of cases and judges will be able to hear cases more thoroughly without being accused of red-tapery. The law provides for the right of a judge to prolong time limits for hearing a case till six months in commercial courts where it is necessary. Thus, the legislator allows courts to have more time to hear a case to be sure that the law will not be dishonored.

A compensation for delay shall be granted only provided that such delay is not caused by actions of the claimant himself.

Unfortunately, the new law does not set forth how the amount of indemnification shall be estimated. This is left to the discretion of the court.

On the basis of the new law the Federal Commercial Court of the Moscow region has already heard the claim of LLC “BigBoard” for compensation of 95,000 rubles (about 2,500 Euro) due to the omission of court bailiffs⁵. However, the court refused to grant the claim on the ground that the scope of the law does not extend to delays in recovery by court bailiffs of commercial debts, but, instead, the state and local authorities debts only.

Yet in another recent case the court granted the claim for compensation based on the said law, though only in part. The claimant (a commercial lawyer) obtained compensation for the court delay in considering his application for recovery of legal costs from a local authority within eight months without making clear the reasons of several postponings of the case. The claimant sought 60,000 rubles (some 1,500 Euro) as compensation for the delay plus 3,000 rubles (about 80 Euro) of transport expenses. The claimant referred to the practice of ECHR which awards not less than 3-4 thousand Euro of compensation in such cases. However, the court cautiously awarded only 10,000 rubles (some 250 Euro) of compensation.

The claimant found this amount insufficient and expressed his intent to challenge the judgment in all instances including, if necessary, ECHR.

The rationale of such limited approach of the judge may be partly understood while quoting the head of the Federal Commercial Court of the Moscow Circuit Valeria Adamova. In a recent interview she told with regard to the new law that “the compensation should not be regarded as an opportunity to enrich oneself at the expense of the state”⁶.

However, the amount of compensation should be significant to encourage people to seek it at court and thus to fight red-tapery. Red-tapery should be expensive for the budget to push the

⁵ Case No. KG-A40/6652-10.

⁶ Article “The compensation is not an opportunity to enrich oneself at the expense of the state”//”Kommersant” (*The merchant*). No. 104/B (4404) dated June 15, 2010.



state to strictly approach the red tapists judges. Also, the amount of compensation should comply with standards established by ECHR if the law is to reach its goal which consists in reducing the number of applications of citizens to ECHR. The latter tends to award 900 – 6,200 Euro for breach of reasonable time limits for hearing a case and 1,200 – 4,900 Euro for non-execution of judicial rulings⁷. The amount depends on the length of the period during which the rights were violated.

To compare the new Russian development in question with the EU practice, it should be noted that the length of the proceedings is a very complex problem which many European states experience with different degrees of gravity: for some of them it is an inherent problem, a “systemic” one, whereas for others it must rather be seen as an occasional dysfunction of an otherwise effective system of administration of justice⁸.

⁷ Article “Red-tapery will be expensive”//”Russian newspaper”, Federal issue # 4771 dated October 14, 2008.

⁸ Study No. 316/ 2004 “On the effectiveness of national remedies in respect of excessive length of proceedings” adopted by the European Commission Through Democracy of Law at its 69th Plenary Session, p. 4.