



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

FIRST SECTION

CASE OF YAROSLAVTSEV v. RUSSIA

(Application no. 42138/02)

JUDGMENT

STRASBOURG

2 December 2004

FINAL

02/03/2005

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 Yaroslavtsev v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 42138/02) 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 Aleksandr Borisovich Yaroslavtsev, on 7 November 2002.

2. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 24 August 2003 the Court decided to communicate the complaint concerning the length of the proceedings. 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 1946 and lives in Moscow.

5. In 1996 the applicant purchased a foreign-made car at a car market in Belarus from an unidentified seller. On coming back to Moscow he applied for its registration. Registration was refused because the car had not been properly registered in Belarus and its previous owner was not known. A criminal investigation was opened.

6. On 19 March 1998 a police department of Moscow decided to discontinue the criminal proceedings. No indication of a criminal offence in the applicant’s actions was established as he was not aware that the car had been sold with forged documents and without registration with the

competent traffic police department. The engine and chassis numbers were not forged and the car was not in the search list. The applicant was advised to apply to a court to be recognised as a good faith purchaser and the legal owner of the car.

7. On 22 June 1998 the applicant applied to a court.

8. On 7 August 1998 the Butyrskiy District Court of Moscow delivered a judgment in the applicant's case. However, the applicant is not aware of the contents of the judgment. He explains that the judgment was not pronounced publicly, and the court's registry refused to give him a copy of the judgment because "[his] case, along with several others, had been taken up to the city court".

9. On 12 August 1998 the State Automobile Inspectorate refused to register the applicant's car because the applicant had no court judgment.

10. On 25 February 1999 the Presidium of the Moscow City Court, by way of supervisory review, quashed the judgment of 7 August 1998 and remitted the case for a new examination.

11. Between 2 August 1999 and 15 January 2001 nine hearings were scheduled. Of those, seven hearings did not take place because the representatives of the State Automobile Inspectorate and tax inspectorate no. 15 failed to appear. Two hearings did not take place because both parties did not appear. Three judges in succession dealt with the case. The applicant sent many complaints to the Moscow City Court, the Moscow Justice Department, the Moscow Courts' Administration Department and other authorities about unreasonable delays in the hearing of his case.

12. On 19 February 2001 the Butyrskiy District Court of Moscow dismissed the applicant's action. It found that, pursuant to the Regulations on registration of automobiles and motorcycles no. 624 of 26 November 1996, the vehicles previously registered by one department of the traffic police could not be registered by another department unless the former registration had been duly cancelled. As the applicant failed to produce documents showing that the registration of his car in Belarus had been duly cancelled or, for that matter, that it had been ever effected, the refusal of the Moscow traffic police to register the car had been lawful.

13. On 5 March 2001 the applicant filed his grounds of appeal. On 12 April 2001 the court invited the applicant to pay the appeal fee by 23 April 2001. The applicant did not pay the fee and his appeal was not considered.

14. Subsequently the time-limit for lodging the appeal was extended. On 18 July 2001 Judge G. of the Butyrskiy District Court of Moscow accepted the grounds of appeal and told the applicant to pay the court fee of RUR 4,110 (EUR 187). The applicant complained to the judges' qualification panel about the excessive and arbitrarily calculated amount. Upon examination of his complaint, the fee was substantially reduced and the judge was disciplined.

15. On 18 September 2001 the applicant applied to the Moscow City Court for an extension of the time-limit to submit his points of appeal. Having received no response for several months, the applicant complained to the Moscow Justice Department and the Moscow Courts' Administration Department. On 18 May 2002 the Butyrskiy District Court of Moscow ordered to extend the time-limit until 14 June 2002.

16. On 3 June 2002 the applicant submitted his points of appeal. On 29 July 2002 the applicant paid the court fee.

17. On 18 September 2002 the Moscow City Court upheld the judgment of 19 February 2001.

18. On 24 October 2002 the applicant complained to the Supreme Qualification Panel of Judges that the acting president of the Butyrskiy District Court of Moscow failed to provide him with a copy of the judgment of 18 September 2002. The copy was not made available to the applicant until December 2002 at the earliest.

THE LAW

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

19. 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..."

20. The Government contested that argument. They claimed that the delays were – to a significant extent – attributable to the applicant's conduct because he had not appeared at the scheduled hearings and because he had not paid the court fee for the examination of his appeal on time.

21. The applicant submitted that he had refused to pay the court fee only once when the unlawful amount had been exacted from him. Furthermore, all of his 19 complaints, except for one concerning the amount of the court fee, had contained requests for expedition of the proceedings.

22. The period to be taken into consideration began on 22 June 1998 when the applicant lodged his action. It ended on an unspecified date in December 2002 when a copy of the final judgment was made available to the applicant, which is not contested by the Government. However, it is appropriate to take into account only the periods when the case was actually pending before the courts, i.e. the periods when there was no effective judgment in the applicant's case and when the authorities were under an obligation to determine his rights and obligations within a "reasonable

time”. Accordingly, the period between 17 August 1998 when the first judgment of the district court entered into legal force and 26 February 1999 when that judgment was quashed is not taken into account.

23. It follows that the period under consideration thus lasted approximately three years and eleven months.

A. Admissibility

24. 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

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 considers that the case was not complex as the purchase of the car by the applicant was not disputed. The domestic courts were called upon to determine whether the applicant could be considered *bona fide* purchaser for the purposes of State registration. This was a straightforward claim, familiar to the Moscow courts.

27. The Court finds that the applicant did cause certain delays in the proceedings. In particular, he did not attend two hearings and omitted to pay the court fee in April 2001. The duration of these delays cannot be determined precisely, but, in any event, it was less than six months in total.

28. As regards the conduct of domestic authorities, the Court observes that between 2 August 1999 and 15 January 2001 the court fixed nine hearings, none of which was attended by representatives of State bodies. Further delays were due to two re-assignments of the case to new judges and to Judge G.’s incorrect calculation of the court fee which required the intervention of the judges’ qualifications panel acting on the applicant’s complaint. Moreover, the Government did not explain why it took the Butyrskiy District Court eight months to examine the applicant’s request for an extension of the time-limit for lodging the appeal (from 18 September 2001 to 18 May 2002). This delay is also attributable to the domestic authorities because the incorrect calculation of the court fee had lain at its origin. In sum, the domestic authorities are responsible for approximately two and a half years of delays.

29. Having examined all the material submitted to it, 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 1 OF PROTOCOL NO. 1

30. The applicant complained under Article 1 of Protocol No. 1 that the domestic courts’ decisions deprived him of his property because in the absence of State registration the commercial value of his car is greatly diminished. Article 1 of Protocol No. 1 provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

31. The Court recalls that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of possessions. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.

32. In the present case the applicant has been prevented from using his car in Russia because he could not show that it had been lawfully registered and un-registered in Belarus where he purchased it. The Court considers that the refusal of registration of the applicant’s car amounted to an interference with his rights under Article 1 of Protocol No. 1. It also notes that the applicant’s right to possess the car was not disputed. Accordingly, the alleged interference falls to be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Svidranova v. the Czech Republic*, no. 35268/97, Commission decision of 1 July 1998; *Sildedzis v. Poland* (dec.), no. 45214/99, 13 November 2003).

33. It remains to be determined whether the obligation imposed on the applicant was proportionate and necessary to control the use of his property in accordance with the general interest.

34. The Court notes that the contested provisions of the Regulations on registration of automobiles and motorcycles pursued the legitimate aim of preventing registration of vehicles in respect of which the lawfulness of

their acquisition could not be shown. The obligation imposed on the applicant by the aforesaid provisions was therefore in the general interest within the meaning of the second paragraph of Article 1 of Protocol No. 1.

35. As regards the proportionality of the interference, the Court observes that at the moment of acquisition the applicant should have been aware of the regulations preventing registration of vehicles of unknown origin. Nevertheless, he proceeded with the purchase of the car from an unidentified vendor, relying on the latter's oral representations, without verifying their accuracy. In these circumstances the applicant should have reasonably foreseen possible problems with the registration of the vehicle. As matters transpired, the representations were untrue and the car registration papers were a forgery. The Court considers, bearing in mind the general importance of a system ensuring traceability of the legal owner of a vehicle for the purposes of the regulation of road traffic and the wide margin of appreciation afforded to States in this respect, that, in the circumstances of the present case, the control of the use of the applicant's property was proportionate to the legitimate aim pursued.

36. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. 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 6,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government contested the claim.

40. The Court considers that the applicant must have sustained non-pecuniary damage due to the excessive length of the proceedings on his claim. Ruling on an equitable basis, it awards him EUR 1,600 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The applicant did not make any claims for costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

42. 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 according to Article 44 § 2 of the Convention, EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of 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 2 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President