CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF RASH v. RUSSIA

(Application no. 28954/02)

JUDGMENT

STRASBOURG

13 January 2005

FINAL

13/04/2005

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 Rash v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 28954/02) 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 Alexandr Bagirovich Rash, on 6 August 2001.

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 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1940.

5. In 1991 the applicant moved from Georgia to Saint-Petersburg where his sister lived. In 1997 the Migration Service of St. Petersburg (*Миграционная служба г. Санкт-Петербурга*) granted the applicant's family the right to use two rooms in a three-room communal flat.

A. Defamation action

6. On 5 August 1999 the *Novyy Peterburg* ("*New Petersburg*") newspaper ran an article by Mr Usov under the headline "A Kurd from Novosibirsk? Claim your housing!" ("*Курд из Новосибирска? Получи жилплощадь!*"). The article alleged that the applicant and his wife, both of Kurdish origin, obtained the housing unlawfully, for a bribe. It was also said that they tortured and humiliated their neighbour (who lived in the third room of the flat) in order to "lay their hands on" the entire flat. The article implied that "compatriots of Öcalan" were given preference to the detriment of ethnic Russians.

7. The applicant complained to a prosecutor's office, and the Tsentralniy prosecutor's office of St. Petersburg opened a criminal case for libel. A preliminary investigation established that Mr Usov based his conclusions on statements by the applicant's neighbour who had been diagnosed with a mental disorder of paranoid nature.

8. On 30 August 1999 (on 6 September 1999, according to the Government) the applicant lodged a civil action for defamation against the "New Petersburg" newspaper and Mr Usov. He claimed both publication of a refutation and compensation for non-pecuniary damage in the amount to be determined by the court.

9. The first hearing was fixed for 19 April 2000. Between 20 June 2000 and 25 November 2002 at least eight hearings were adjourned. According to the Government, the adjournments took place because the applicant failed to appear. According to the applicant, he came to every hearing, but the defendant never showed up.

10. On 17 January and 21 May 2002 the applicant moved to hear the case in his absence, explaining that it was difficult for him to come to every hearing because of his limited mobility. He also filed several complaints with the Dzerzhinskiy District Court of St. Petersburg about unreasonable delays in the examination of his claim, requesting the court to expedite the proceedings.

11. On 31 May 2002 the Dzerzhinsky District Court of St. Petersburg inquired in writing whether the applicant would agree to the substitution of the "New Petersburg" newspaper, the original defendant, by the publishing house "New Petersburg", the original defendant's legal successor. On 18 July 2002 the applicant responded in the affirmative. On 30 July 2002 the court sent him again the same inquiry.

12. The hearing in the defamation action before the Dzerzhinsky District Court of St. Petersburg finally took place on 10 February 2003, and the court rendered a judgment in the applicant's favour. The defendant was ordered to pay 3,000 Russian roubles ("RUR") for non-pecuniary damage and publish a refutation.

13. In October 2003 the applicant complained to the President's Office about the district court's failure to make the text of the judgment available to him. On an unspecified date in December 2003 the applicant received the judgment.

14. On 5 March 2004 the judgment was enforced in the part concerning the pecuniary award and the enforcement proceedings were closed. The applicant submits that the judgment has remained unenforced in the part concerning publication of a refutation.

B. Housing dispute

15. In early 2000 the applicant's neighbour moved out and the applicant applied to the Migration Service for permission to use the third room in the flat. His application was refused. The applicant challenged the refusal in court.

16. On 1 December 2000 the Kuybyshevskiy District Court of St. Petersburg dismissed the applicant's claim. On the applicant's appeal, the judgment was upheld on 15 February 2001 by the St. Petersburg City Court.

17. The applicant's application for supervisory review was refused by the Presidium of the St. Petersburg City Court.

II. RELEVANT DOMESTIC LAW

18. Article 99 of the Russian Civil Procedure Code of 11 June 1964 (in force at the material time) provided that civil cases were to be prepared for a hearing no later than seven days after the action had been submitted to the court. In exceptional cases, this period could be extended for up to twenty days. The civil cases were to be examined no later than one month after the preparation for the hearing had been completed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE DEFAMATION ACTION

19. The applicant complained that the length of the proceedings in the defamation action 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 this claim, claiming that the delays in the proceedings were, to a significant extent, due to the applicant's conduct.

21. The period to be taken into consideration began on 30 August 1999 when the defamation action was lodged and ended on an unspecified date in December 2003 when a copy of the judgment was made available to the applicant. It thus lasted at least four years and three months.

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 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).

24. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

25. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, they have not explained why the district court scheduled only eight hearings in two and a half years and why it took the same court eleven months to make the text of the judgment available to the applicant. Having regard to its case-law on the subject, 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. Lastly, the applicant complained under Articles 6 § 1 and 13 of the Convention that the courts had wrongly interpreted and applied law in the housing dispute which had rendered the proceedings unfair and that the

Presidium of the St. Petersburg City Court had refused to initiate supervisory-review proceedings in respect of the judgments in the housing dispute. The applicant also complained under Article 14 of the Convention that he had been discriminated against in both sets of domestic proceedings on account of his Kurdish ethnicity.

27. As to the allegedly incorrect interpretation and application of the domestic law in the housing dispute, the Court recalls it is not a court of appeal from the decisions of 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 on two levels of jurisdiction and dismissed as having no grounds in the domestic law. The decisions of the domestic courts do not appear unreasonable or arbitrary. In the absence of an arguable claim under Article 6 of the Convention, there is accordingly no issue under Article 13 of the Convention.

As to the alleged discrimination against the applicant on account of his ethnic origin, the Court finds that there is nothing in his submissions to corroborate the discrimination complaint.

It follows that the remainder 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

28. 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

29. The applicant did not claim any pecuniary damage arising from the alleged violations. He requested the Court to determine the amount of non-pecuniary damage on an equitable basis.

30. The Government contested the claim.

31. The Court considers that the applicant must have sustained non-pecuniary damage due to an excessive length of the proceedings in the defamation action. Ruling on an equitable basis, it awards award him

EUR 1,600 under that head, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

32. The applicant also claimed RUR 655.06 for the postal expenses incurred before the Court. He indicated that he had incurred other postal expenses in connection with his application to the Court for which he had not kept the receipts.

33. The Government did not express an opinion on the matter.

34. 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 considers it reasonable to award the sum of EUR 50 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable on the above amount.

C. Default interest

35. 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 in the defamation action 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 1,650 (one thousand six hundred fifty euros) in respect of non-pecuniary damage and costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amount;
   (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.

Done in English, and notified in writing on 13 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President