



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

FIRST SECTION

CASE OF SKOROBOGATOVA v. RUSSIA

(Application no. 33914/02)

JUDGMENT

STRASBOURG

1 December 2005

FINAL

01/03/2006

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 Skorobogatova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 33914/02) 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, Ms Olga Leonidovna Skorobogatova (“the applicant”), on 16 August 2002.

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

3. On 2 September 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 1956 and lives in Luchegorsk.

5. In September 1995 the applicant lodged an action before the Severo-Evenkiyskiy District Court of the Magadan Region against the head of the local administration, a transport company and a private individual for compensation for damage.

6. The Severo-Evenkiyskiy District Court disallowed the action because it should have been lodged before the Magadan Town Court which had territorial jurisdiction over it.

7. On 1 November 1995 the applicant lodged the action before the Magadan Town Court. She asked the court to examine her claim in her absence, as she lived in Khabarovsk.

8. As the applicant's claim had not been examined from 1995 to 1998, she complained to various officials about the court's inactivity.

9. On 16 August 1998 the Deputy President of the Magadan Town Court informed the applicant that it was impossible to expedite the proceedings because the judges were overburdened with cases.

10. On 4 March 1999 the applicant increased her claim.

11. A hearing was fixed for 8 April 1999 and adjourned due to the defendants' absence.

12. On 28 July 1999 the Magadan Town Court dismissed the applicant's action.

13. On 24 August 1999 a copy of the judgment was sent to the applicant.

14. On 14 October 1999 the applicant appealed against the judgment of 28 July 1999.

15. On 1 November 1999 the Magadan Town Court stayed the appeal proceedings and requested the applicant to submit by 30 November 1999 three copies of her statement of appeal and to pay RUR 5 in a court fee.

16. On 30 November 1999 the judgment of 28 July 1999 became final because the applicant had not paid the fee.

17. On 16 December 1999 the Magadan Town Court returned the statement of appeal.

18. On 7 June 2000 the Presidium of the Magdan Regional Court, by way of supervisory review, quashed the judgment of 28 July 1999 and remitted the case for a new examination.

19. On 20 June 2000 the case-file was sent to the town court.

20. On 10 July 2000 the judge M. was assigned to the case.

21. On 13 September 2000 the case was transferred to the judge D.

22. Of six hearings listed between 19 October 2000 and 27 February 2001, four hearings were adjourned. Two hearings were adjourned due to the applicant's absence. The other hearings were adjourned because the parties did not attend, although the applicant repeatedly asked the court to hold hearings in her absence.

23. In February 2001 the applicant moved from Khabarovsk to the Primorye Region. She submits that promptly after the move she advised by post the Magadan Town Court of her new address.

24. On 10 April 2001 the Magadan Town Court requested the applicant to submit additional documents. It appears that the instructions were successfully fulfilled by the applicant.

25. On 14 June 2001 the Magadan Town Court, in the applicant's absence, dismissed her action.

26. On 17 July 2001 the registry of the Magadan Town Court sent a copy of the judgment to the applicant's old address in Khabarovsk.

27. On 14 March 2002 the applicant complained to the Magadan Regional Court about the town court's inactivity in her case.

28. On 2 April 2002 the President of the Magadan Regional Court replied by a letter that the case had been decided on 14 June 2001. The President also acknowledged that, although the applicant had advised the court of her new address, on 17 July 2001 a copy of the judgment had been mistakenly sent to the applicant's previous address.

29. On 1 April 2002 the registry of the town court sent a copy of the judgment of 14 June 2001 to the applicant's address in Khabarovsk.

30. On 11 September 2002 the President of the Magadan Regional Court informed the applicant that a copy of the 14 June 2001 judgment had been twice sent to the applicant's address in Khabarovsk and that the Magadan Town Court was told to send a copy of the judgment to her current address in Primorye.

31. On 12 September 2002 the Magadan Town Court sent a copy of the judgment of 14 June 2001 to the applicant's address in Primorye. She received it on 18 September 2002.

32. On 3 October 2002 the applicant requested the Magadan Regional Court to extend the time-limit for lodging an appeal against the judgment of 14 June 2001. The request enclosed a statement of appeal.

33. On 21 October 2001 the Magadan Town Court extended the time-limit and accepted the applicant's statement of appeal.

34. On 5 November 2002 the Magadan Regional Court, in the applicant's absence, upheld the judgment of 14 June 2001.

35. On 16 December 2002 a copy of the judgment of 5 November 2002 was sent to the applicant.

THE LAW

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

36. 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..."

A. Admissibility

37. The Government considered that the applicant's complaint about the length of the proceedings was inadmissible under Article 35 § 3 of the

Convention. As to the period to be taken into consideration, the Government argued that the proceedings had begun on 1 November 1995 and had been pending until 1 November 1999 when the Magadan Regional Court had stayed the appeal proceedings. On 7 June 2000 the proceedings were resumed and terminated on 5 November 2002 by the final judgment of the Magadan Regional Court.

38. The applicant contested the Government's submissions. She insisted that she had initiated the proceedings in September 1995 and that the proceedings from September 1995 to December 2002 should be regarded in their entirety.

39. The Court considers it 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 determination of the merits of the applicant's dispute and when the authorities were under an obligation to pass such a judgment. The periods during which the domestic courts decided whether or not to re-open the case should also be excluded since Article 6 does not apply to such proceedings (see, for example, *Rudan v. Croatia* (dec.), no. 45943/99, 13 September 2001; *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004).

40. The Court considers that the period to be taken into consideration began on 1 November 1995 when the action was submitted to the court having jurisdiction to hear it. The proceedings were pending during two periods. The first period commenced on 1 November 1995 and ended in December 1999 when the applicant learnt that her appeal had been rejected. The second period began on 7 June 2000 with the supervisory-review decision and ended on 16 December 2002 when a copy of the final judgment was made available to the applicant (see *Rash v. Russia*, no. 28954/02, § 21, 13 January 2005).

41. The proceedings thus lasted for approximately six years and eight months. The Court observes that the period to be taken into consideration began on 5 May 1998, when the Convention came into force in respect of Russia. Therefore, at least four years and three months are in the Court's competence *ratione temporis*. During this period the case was determined by the courts of three instances. The Court reiterates that in assessing the reasonableness of the length of the proceedings account must be taken of the state of the proceedings on the date of entry of the Convention into force in respect of the Contracting State (see, among other authorities, *Billi v. Italy*, judgment of 26 February 1993, Series A no. 257-G, § 16). In this respect the Court observes that by 5 May 1998 the proceedings had been pending for approximately two years and six months.

42. The Court notes that the application 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

43. The Government argued that the delays in the adjudication of the applicant's action had been caused by the applicant's change of a place of residence on three occasions and her failure to attend the hearings. Furthermore, she amended her claims on several occasions and communicated with the domestic courts by mail. The Government mentioned that the delays could have been caused by malfunctioning of the post service and by financial difficulties experienced by the courts in sending mail to the Far North of Russia, where the applicant lived.

44. The applicant averred that she had repeatedly asked the courts to adjudicate her action in her absence because it was extremely expensive for her to travel from Khabarovsk or Primorye to Magadan where the case was being heard. Considerable delays in the proceedings were caused by the courts' inactivity in 1995-1999 and then by their failure to duly serve copies of the judgments on her. The domestic courts were aware of her new place of residence but twice sent the judgment to her old address. She only amended her claims once because the length of the proceedings and inflation had depreciated the amount she had initially claimed.

45. 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).

46. The Court considers that the case was not particularly difficult to determine. It did not involve the taking of expert opinions and did not require scientific research or examination of voluminous documentation. The courts in the present case had to apply the rules of civil liability and calculate the award, if any.

47. As concerns the applicant's conduct, the Court notes the Government's submission that she had contributed to the delays by amending her claims and submitting additional arguments. As it appears from the list of the procedural events in the applicant's case enclosed with the Government's memorandum, the applicant amended her claim only once, on 4 March 1999. The Government did not indicate any other instance when the applicant had amended her claim. Irrespective of the reasons for the applicant's decision, the Court reiterates that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of her interest (see, *mutatis mutandis*, *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

48. As to the Government's argument that the applicant failed to attend the hearings, the Court recalls that the applicant repeatedly asked the domestic courts to adjudicate the action in her absence. There is no

indication in the file that the domestic courts considered the applicant's presence mandatory. Moreover, the courts' requests for additional information were promptly complied with by the applicant. The Court does not lose sight of the fact that all judgments in the case were given in the applicant's absence. Thus, although the applicant's conduct may have contributed to prolongation of the proceedings, it is not in itself sufficient to explain their extensive duration.

49. 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. For example, the Government failed to provide any explanation why the town court scheduled only one hearing in one year and two months, between 5 May 1998 and 28 July 1999. The aggregated length of delays occasioned by the courts' failure to make the text of their judgments or decisions available to the applicant amounted to approximately one year and five months (for example, the applicant only received a copy of the judgment of 14 June 2001 on 18 September 2002). The Government did not dispute that the domestic courts had been fully aware of the applicant's correct address at all times.

50. Another delay of approximately four months was caused by a change of the judge dealing with the case and by transfer of the case-file from one court to another. The Court does not find convincing the Government's argument that the delays were objectively justified by post service malfunctioning and financial difficulties experienced by the courts. 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 with a reasonable time (see, among other authorities, *Löffler v. Austria* (no. 2), no. 72159/01, § 57, 4 March 2004). In addition, there were several shorter periods during which there was no apparent progress in the case.

51. 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. Having regard to the overall length of the proceedings and taking into account the period preceding the entry into force of the Convention, 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

52. The applicant also complained under Articles 6 § 1 of the Convention that the courts had wrongly interpreted and applied law and incorrectly assessed evidence in her case.

53. In this respect the Court recalls that 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 her interests, and the judicial authorities gave them due consideration. Her claims were examined on three 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.

54. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 111,500 Russian roubles (RUR) in respect of pecuniary and RUR 500,000 in respect of non-pecuniary damage.

57. The Government considered the claim to be excessive and unreasonable.

58. 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 in her case. Making its assessment on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be charged on the above amount.

B. Costs and expenses

59. The applicant also claimed RUR 10,000 for the postal expenses incurred before the domestic courts.

60. The Government contested the claim indicating that the applicant did not produce any evidence to substantiate her claims.

61. According to the Court's case-law, an applicant is entitled to reimbursement of her 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. The applicant did not submit any receipts or other vouchers on the basis of which such amount could be established. Accordingly, the Court does not make any award under this head.

C. Default interest

62. 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 2,000 (two thousand 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 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President