



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

FIRST SECTION

CASE OF RYBAKOV v. RUSSIA

(Application no. 14983/04)

JUDGMENT

STRASBOURG

22 December 2005

FINAL

22/03/2006

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 Rybakov v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 14983/04) 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 Gennadiy Nikolayevich Rybakov (“the applicant”), on 27 March 2004.

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 13 December 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 1936 and lives in Saint Petersburg.

1. Civil proceedings in the housing dispute

5. On 12 August 1998 the applicant lodged a civil action before the Oktyabrskiy District Court of St. Petersburg against the Governor of St. Petersburg and St. Petersburg committee for housing policy (*Комитет по жилищной политике г. Санкт-Петербурга*), seeking to obtain a flat under

a city-funded programme. A copy of the applicant's statement of claim bears a signature of the registry indicating that the statement was received on 12 August 1998.

6. Of the three hearings fixed between 24 February and 21 October 1999, two hearings were adjourned due to the defendant's failure to appear and one hearing was postponed upon the defendant's request to join another party to the proceedings.

7. The next hearing, fixed for 16 March 2000, was adjourned to allow the applicant to amend his claims.

8. Of the four hearings listed between 5 April 2000 and 28 February 2001, three hearings were adjourned because the defendants did not attend and one hearing was adjourned because the judge was involved in other proceedings.

9. On 15 March 2001 the Oktyabrskiy District Court of St. Petersburg held a hearing. A representative of the Governor of St. Petersburg requested to adjourn the proceedings in order to enable the Governor to amend the existing regulation which affected the applicant's housing rights. The request was granted.

10. Between 22 May 2001 and 28 March 2002 the district court fixed four hearings. Three hearings were adjourned because the defendants did not attend and one hearing was adjourned to allow the applicant to amend his claims.

11. On 8 April 2002 the applicant filed the amended claims.

12. The hearing of 19 December 2002 was postponed until 1 April 2003 because the defendants did not attend. The Oktyabrskiy District Court of St. Petersburg sent a written warning to the defendants, informing them that they would be fined if they failed to attend the next hearing.

13. Three hearings fixed between 1 April and 17 June 2003 were adjourned because the defendants had not attended.

14. The hearing of 14 October 2003 was rescheduled because the presiding judge had been dismissed from her office.

15. The hearing fixed for 5 May 2004 was adjourned because the defendants did not appear.

16. The hearing of 5 July 2004 was adjourned because the applicant was ill.

17. On 29 September 2004 the Oktyabrskiy District Court of St. Petersburg gave the judgment.

18. On 8 December 2004 the St. Petersburg City Court upheld the judgment of 29 September 2004.

2. Applicant's complaints about the excessive length of the proceedings

19. On 21 December 2002, 5 January and 9 November 2003 the applicant complained to the President of the Oktyabrskiy District Court of

St. Petersburg, a deputy President of the St. Petersburg City Court and the President of the Supreme Court of the Russian Federation about delays.

20. On 30 December 2002 and 10 February 2003 a deputy President of the Oktyabrskiy District Court of St. Petersburg and on 25 March 2004 a deputy President of the St. Petersburg City Court informed the applicant that the excessive length of the proceedings in his case had been caused by a large number of pending civil cases.

THE LAW

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

21. 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

22. 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 submitted that the proceedings had begun on 12 August 1998 when the applicant had filed his statement of claim and ended on 8 December 2004 with the final judgment of the St. Petersburg City Court.

23. The applicant contested the Government’s submissions. He insisted that he had initiated the proceedings on 10 August 1998.

24. The Court agrees with the Government that the period to be taken into consideration began on 12 August 1998 when the St. Petersburg City Court received the applicant’s statement of claims and ended on 8 December 2004. The proceedings therefore lasted six years, three months and twenty-eight days and came before courts of two levels of jurisdiction.

25. 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

26. The Government argued that the length of the proceedings may still be considered “reasonable” and could be explained by the circumstances of the case. The presence of several defendants in the proceedings and the need to examine the case thoroughly rendered the proceedings extremely complex. The delays were caused by the defendants’ failure to attend the hearings and the applicant’s absence on 5 July 2004. The Government indicated, nevertheless, that the domestic law provided for the right to give a default judgment. Furthermore, on several occasions the applicant amended his claims and complained to various domestic officials about the excessive length of the proceedings. As regards the conduct of the domestic authorities, the Government submitted that there had been no periods of inactivity attributable to them.

27. The applicant contested the Government’s submissions. He argued that the case was not complex. He had attended all hearings save for one. He could not be blamed for amending his claims because he had been compelled to do so by the presiding judge. His complaints to various domestic officials did not cause any delay because the proceedings were never stayed at his request. The applicant claimed that the excessive length of the proceedings had been caused by the transfer of the case from one judge to another, by the defendants’ absence and by the fact that the courts had been overburdened.

28. 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).

29. The Court agrees with the Government that the proceedings at issue were of some complexity as they required examination of voluminous housing regulations enacted in St. Petersburg and concerned a complex factual background. The applicant changed, amended and supplemented his claims on several occasions. The Court considers that the task of the courts was rendered more difficult by these factors, although it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings.

30. As to the applicant’s conduct, both parties agreed that the applicant had not attended one hearing on 5 July 2004. Irrespective of the reasons for his absence, the delay incurred therefrom was negligible. As to the Government’s argument that the applicant contributed to the delay in the proceedings by amending his claims and complaining to various officials, the Court reiterates that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his

interest (see, *mutatis mutandis*, *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66). The Court cannot conclude that the applicant contributed to the prolongation of the proceedings.

31. 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. It took the district court several months to fix hearings. For example, a period of six months lapsed between the registration of the claim on 12 August 1998 and the first hearing of 24 February 1999. Between 28 March and 19 December 2002 no hearings appear to have been listed or held. Another delay of approximately seven months was caused by the transfer of the case from one judge to another, between 14 October 2003 and 5 May 2004. In this respect, the Court recalls that 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). In addition, there were several shorter periods during which there was no apparent progress in the case.

32. The Court furthermore notes that the conduct of the defendants was one of the reasons for the prolongation of the proceedings. In the Court's opinion, the domestic authorities failed to take adequate steps in order to ensure their attendance. The defendants defaulted on at least thirteen occasions which resulted in a delay of approximately two years and three months. There is no indication that the court reacted in any way to that behaviour, save for sending warnings. In any case, the Court finds it peculiar that after the defendants had received the courts' warning they did not attend three subsequent hearings and the district court did not take any measures. Accordingly, the Court considers that, the domestic courts did not avail themselves of the measures available to them under national law to discipline the participants to the proceedings and to ensure that the case be heard within a reasonable time (see, *mutatis mutandis*, *Kuśmirek v. Poland*, no. 10675/02, § 65, 21 September 2004). The Court also notes the Government's submission that the domestic courts could have given a default judgment.

33. Having regard to the overall length of the proceedings, and the circumstances of the case, in particular, that the proceedings were pending for approximately six years and one month before the first-instance court, the Court concludes that the applicant's case was not examined within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

34. The applicant, invoking Article 1 of the Convention, further complained that all his complaints about the excessive length of the proceedings had been futile. The Court considers that this complaint falls to be examined under Article 13 of the Convention which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

35. The Government contested the applicant’s arguments.

A. Admissibility

36. 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

37. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the Government did not indicate any remedy that could have expedited the determination of the applicant’s case or provided him with adequate redress for delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, 29 January 2004, § 64).

38. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 29,912 US dollars (USD) in respect of pecuniary damage, namely for the loss of opportunity to acquire a flat at the price of 1998, and 7,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government submitted that no casual link had been shown between the facts of the case and the damage allegedly suffered by the applicant.

42. The Court considers that the applicant has failed to demonstrate that the pecuniary damage claimed was actually caused by the violation of the Convention in his case. Consequently, there is no cause to make an award under that head. On the other hand, the Court accepts that the applicant suffered distress, anxiety and frustration because of an unreasonable length of the proceedings and the lack of an effective remedy for a breach of the requirement to hear his case within a reasonable time. Making its assessment on an equitable basis, it awards the applicant EUR 3,300 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

43. The applicant also claimed EUR 129 for the costs and expenses incurred before the domestic courts and the Court.

44. The Government agreed that the claim should be granted because it was substantiated.

45. 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 that the sum claimed should be awarded in full, plus any tax that may be chargeable on the above amount.

C. Default interest

46. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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 3,300 (three thousand three hundred euros) in respect of non-pecuniary damage and EUR 129 (one hundred twenty-nine euros) in respect of 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;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President