



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

FIRST SECTION

CASE OF BAKIYEVETS v. RUSSIA

(Application no. 22892/03)

JUDGMENT

STRASBOURG

15 June 2006

FINAL

15/09/2006

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 Bakiyevets v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 22892/03) 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 Tatyana Sergeyevna Bakiyevets ("the applicant"), on 2 June 2003.

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****A. Proceedings concerning reimbursement of the value of a share**

4. The applicant was born in 1955 and lives in Belogorsk in the Amur Region. She was a shareholder of a private company

5. In August 1998 the company's board initiated bankruptcy proceedings in respect of the company and sold the company's property.

6. On 4 December 1998 the applicant lodged an action before the Belogorsk Town Court against the company's receiver seeking payment of the value of her share.

7. The first hearing was listed for 6 May 1999 because the courthouse of the Belogorsk Town Court was not heated.

8. On 22 March 1999 the bankruptcy proceedings in respect of the company were closed and the company wound up.

9. In May 1999 the Belogorsk Town Court adjourned the hearing because the parties did not attend.

10. The next hearing listed for 22 July 1999 was adjourned upon the applicant's request because she had to leave Belogorsk. She asked to schedule the hearing for 3 August 1999. The Town Court listed the hearing for 6 April 2000. However, it was also adjourned because the applicant was ill.

11. In November 2000 the applicant amended her claims and asked the court to annul the sale contract in respect of the company's property and the decision of 22 March 1999.

12. On 27 November 2001 the Belogorsk Town Court dismissed the applicant's claim.

13. The Amur Regional Court quashed that judgment on 30 January 2002. The case was remitted for a new examination.

14. Between February and October 2002, the Town Court listed three hearings of which two were adjourned because the defendant did not attend or the judge was involved in other proceedings.

15. On 28 October 2002 the Belogorsk Town Court transferred the applicant's case to the Commercial Court of the Amur Region.

16. On 10 December 2002 the Commercial Court of the Amur Region discontinued the proceedings because it did not have subject-matter jurisdiction over the applicant's claim.

17. The decision of 10 December 2002 was upheld on appeal on 23 March 2003 by the Appeals Division of the Commercial Court of the Amur Region.

18. On 28 July 2003 the Presidium of the Amur Regional Court, by way of supervisory-review proceedings, quashed the decision of 28 October 2002 and remitted the case for a new examination to the Belogorsk Town Court.

19. In November 2003 the applicant withdrew her claims, save for one concerning the annulment of the decision of 22 March 1999. She argued that the decision of 22 March 1999 should be quashed because the company still had assets to pay her the value of her share.

20. On 1 December 2003 the Belogorsk Town Court discontinued the proceedings in respect of the withdrawn claims and on 24 December 2003 it discontinued the proceedings in respect of the claim for annulment of the

decision of 22 March 1999. The court held that the claim should be examined by a commercial court.

21. On 9 April 2004 the Amur Regional Court quashed the decision of 24 December 2003 and referred the case for a new examination by the Town Court. The Regional Court also issued a “special finding” concerning the excessive length of the proceedings in the applicant’s case. It found that the case had not been dealt with diligently. In particular, it noted the delays between December 1998 and 27 November 2001, between 18 February and 28 October 2002 and after 19 August 2003. The appeal court also held that transfer of the case to the commercial court amounted to “unjustified delays and postponement of hearings on various pretexts, as well as to the [presiding] judge’s reluctance to examine the claims”.

22. The Belogorsk Town Court received the case-file on 26 April 2004 and listed a hearing for 9 June 2004.

23. All of the hearings listed in June 2004 were postponed upon the applicant’s request because she wanted to obtain additional evidence. The next hearing was scheduled for 17 August 2004.

24. Between 1 September and 9 November 2004 the proceedings were stayed because the judge was on leave.

25. On 2 December 2004 the Belogorsk Town Court dismissed the applicant’s claim.

26. On 25 January 2005 the Amur Regional Court upheld the judgment on appeal.

B. Labour dispute

27. In 1998-2003 the applicant was a party to a labour dispute. She sought reinstatement and payment of wage arrears.

28. On 30 December 2003 the Belogorsk Town Court dismissed the applicant’s claim because the employer company had been declared bankrupt and had wound up.

29. The applicant did not appeal against the judgment of 30 December 2003.

THE LAW

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

30. The applicant complained that the length of the proceedings concerning the reimbursement of the value of her share had been

incompatible with the “reasonable time” requirement 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...”

31. The Government contested that argument.

A. Admissibility

32. The Court notes that on 4 December 1998 the applicant lodged a claim for reimbursement of the value of her share. She subsequently amended her claim, also seeking annulment of the decision of 22 March 1999 by which the bankruptcy proceedings in respect of the company had been discontinued. In November 2003 the applicant withdrew her claims, save for one concerning annulment of the decision of 22 March 1999. The proceedings ended on 25 January 2005 with the final judgment of the Amur Regional Court.

33. Having regard to the evolving subject matter of the dispute in the applicant’s case, the Court considers that the proceedings can be usefully divided into two periods:

- (a) the period from 4 December 1998 to November 2003, during which the domestic courts examined several claims, including the claim for repayment of the value of the share; and
- (b) the period from November 2003 to 25 January 2005, when the courts only adjudicated on the claim for annulment of the decision of 22 March 1999.

The Court has to ascertain that Article 6 § 1 applied to both periods.

34. In this respect the Court reiterates that Article 6 § 1 of the Convention is applicable where an action is “pecuniary” in nature and is founded on an alleged infringement of rights which are likewise pecuniary rights, notwithstanding the origin of the dispute (see, for example, *Beaumartin v. France*, judgment of 24 November 1994, Series A no. 296-B, p. 60-61, § 28).

35. As to the period from 4 December 1998 to November 2003, the Court does not have any doubts that Article 6 § 1 applied to that period of the proceedings. The applicant’s right to repayment of the value of her share derived from her ownership of the share in the company concerned and is without doubt a “civil right” (cf. *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, § 192).

36. As to the period from November 2003 to 25 January 2005, the Court notes that during that period the applicant, a shareholder of the company, challenged the decision of 22 March 1999 by which the company had been declared bankrupt. According to the principles laid down in its case-law (see *Zander v. Sweden*, judgment of 25 November 1993, Series A no. 279-B, p.

38, § 22, and *Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333-A, § 46), in order to determine whether Article 6 § 1 applied to that period of the proceedings, the Court must ascertain whether there was a dispute over a “right” which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and manner of its exercise; and, finally, the outcome of the proceedings must be directly decisive for the right in question (see *Baraona v. Portugal*, judgment of 8 July 1987, Series A no. 122, p. 17-18, § 42; and *Procola v. Luxembourg*, judgment of 28 September 1995, Series A no. 326, § 39).

37. Turning to the facts of the present case, the Court observes that as a consequence of acquiring the share in the company the applicant received a proportional part of certain rights in the company during its existence, including the right to participate in the general management of the company and to share proportionately in its net profits or earnings or in the distribution of the company’s assets on the winding up of the company’s business. Decisions affecting the company’s fate, such as a decision to initiate bankruptcy proceedings, or to subject the company to rehabilitation and reorganisation, rather than liquidation, or to declare the company bankrupt and liquidate it, without any doubt, affected the applicant’s rights as a shareholder, including her right to claim a share in future earnings of the company or to receive a share in the net assets of the bankrupt company or to demand reimbursement of the value of her share.

38. On 22 March 1999 the applicant’s company was declared bankrupt and discharged from all obligations and debts, including those before the applicant. This decision also resulted in the company’s winding-up and its striking-out of the register of legal entities. However, the applicant argued before the domestic courts that the company’s receiver had incorrectly assessed the company’s assets and established its creditors, and that the decision of 22 March 1999 could not have been taken because the company still had assets to re-distribute among its shareholders. Bearing these circumstances in mind, the Court considers that the applicant could maintain, on arguable grounds, that the company should still continue to operate and should have still been able to repay her the value of her share, so that there was a genuine and serious dispute over the existence of that right (see, *mutatis mutandis*, *Pudas v. Sweden*, judgment of 27 October 1987, Series A no. 125-A, pp. 14-15, §§ 31-34; *Tre Traktörer AB v. Sweden*, judgment of 7 July 1989, Series A no. 159, pp. 17-18, §§ 37-40; *Capital Bank AD v. Bulgaria*, no. 49429/99, § 87, ECHR 2005).

39. In order to satisfy itself that the dispute was decisive for the applicant’s civil right, the Court considers it necessary to look at the proceedings as a whole. In the proceedings before November 2003 the applicant sought repayment of the value of her share in the company. The defendants, referring to the decision of 22 March 1999, argued that the

company had no longer existed and no claims could have been lodged against it. It appears that in November 2003 the applicant withdrew her claim for reimbursement of a share precisely because her claim had no prospect of success while the decision of 22 March 1999 remained in force.

40. Admittedly, the court proceedings after November 2003 could only result in the annulment of the impugned decision of 22 March 1999, but its annulment could lead to re-opening of the liquidation proceedings, re-assessment of the company's assets and re-distribution of its net assets to its shareholders, including the applicant. Having regard to the fact that the decision of 22 March 1999 excluded claims against the company, its quashing would have enabled the applicant to resubmit her claim for reimbursement of the share which she considered to have been wrongly paid. That means that the applicant's personal financial situation was affected by the decision of 22 March 1999. Having regard to the close connection between the proceedings for annulment of the decision of 22 March 1999 and the consequences that their outcome might have had for the applicant's pecuniary right, the Court is of the opinion that Article 6 § 1 also applied to the period of the proceedings from November 2003 to 25 January 2005.

41. Therefore the Court considers that the period to be taken into consideration began on 4 December 1998 with the action to the Belogorsk Town Court and ended on 25 January 2005 with the final judgment of the Regional Court. The proceedings thus lasted almost six years and two 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 length of the proceedings was "reasonable". The case was complex because the applicant's action concerned a private company which had gone bankrupt. Delays occurred due to objective reasons, such as the applicant's procedural requests and amendments of the claim. There had been no periods of inactivity attributable to the domestic authorities.

44. The applicant averred that her case was not a complex one. She attended every hearing, save for one in July 1999 and one in April 2000. Delays in the proceedings were caused by the referral of the case from the town court to a commercial court and back to the town court.

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 agrees that the proceedings at issue were of some complexity as they required examination of voluminous bankruptcy materials, although the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings.

47. The Court notes that the parties disagreed on certain factual matters concerning the applicant's attendance and her requests for stay of the proceedings. The Court does not consider it necessary to examine the matter in detail because the delay incurred through the applicant's absence and her requests for adjournment was negligible. As to the Government's argument that the applicant contributed to the delay in the proceedings by amending her claims and filing motions, 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. 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 five months lapsed between the registration of the claim on 4 December 1998 and the first hearing of 6 May 1999. Between August 1999 and April 2000 no hearings appear to have been listed or held. The town court's decisions to refer the case to a commercial court caused delays of approximately thirteen months, between 28 October 2002 and 28 July 2003 and between 24 December 2003 and 26 April 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). The Court also notes that on 9 April 2004 the Amur Regional Court had acknowledged that the applicant's case had not been dealt with diligently.

49. Having regard to the overall length of the proceedings, 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 13 OF THE CONVENTION

50. The applicant further complained that her 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.”

51. The Government contested the applicant’s arguments. They submitted that the applicant had obtained a “special finding” of 9 April 2004 in which the Amur Regional Court had confirmed that there had been “unjustified delays” in the applicant’s case.

A. Admissibility

52. 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

53. 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 *Kudla 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). In particular, the Government did not explain how the “special finding” of 9 April 2004 could have expedited the proceedings or what kind of redress the applicant was afforded thereby.

54. 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 redress for a violation of her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant finally complained that she had not been paid the “true” value of her share. In her observations of August 2005 she also complained under Article 6 of the Convention that the proceedings in a labour dispute to which she had been a party had been unfair and excessively long. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court’s

competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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.”

57. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the excessive length of the proceedings concerning the reimbursement of the value of her share and the absence of effective remedy 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* that there has been a violation of Article 13 of the Convention;

Done in English, and notified in writing on 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President