



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

FIRST SECTION

CASE OF POPOVA v. RUSSIA

(Application no. 23697/02)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Popova 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,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 30 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 23697/02) 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 Lyudmila Nikolayevna Popova (“the applicant”), on 1 August 2001.

2. The applicant was represented by Mr I. Novikov, a lawyer practising in Novosibirsk. 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 27 April 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1953 and lives in the town of Barnaul in the Altay Region.

I. THE CIRCUMSTANCES OF THE CASE

5. After the dismissal from a position in the Tymovsk locomotive depot, in 1993 the applicant sued her former employer for reinstatement, payment of wage arrears and benefits. On 7 December 1993 the Tymovsk District Court of the Sakhalin Region pronounced the judgment in her favour. The judgment was not appealed against and became final.

6. The applicant was reinstated but on 5 January 1994 she was transferred to another position. She refused to perform the new duties and on 10 and 31 January 1994 the employer disciplined her. On 2 February 1994 the employer decided to transfer the applicant to another position.

7. On 6 May 1994 the applicant challenged the decisions of 5, 10 and 31 January and 2 February 1994 before a court. She also claimed wages for six work days.

8. On 24 June 1994 the Tymovsk District Court annulled the decisions of 10 and 31 January 1994 and dismissed the remainder of the claims. The judgment of 24 June 1994 was quashed on appeal and the case was remitted for re-examination.

9. The applicant was dismissed from her position on 5 June 1995. Thus, she amended her claims in the pending court proceedings, asking the court also to reinstate her and grant her wage arrears and compensation for non-pecuniary damage.

10. On 16 August 1996 the Tymovsk District Court partly accepted the action. It annulled the disciplinary decisions but dismissed the claims for reinstatement and wage arrears. The judgment was quashed on 24 September 1996 and the case was again returned for re-examination.

11. On 12 February 1997 the Tymovsk District Court ordered the applicant's reinstatement and payment of arrears. On 1 April 1997 the Sakhalin Regional Court quashed the judgment and remitted the case for a fresh examination.

12. In September 1997 the applicant moved from the village of Tymovsk to the town of Novoaltaysk in the Altay Region and notified the District Court of the change of her place of residence. In July 1998 the applicant moved to the village of Rebrikha in the same region. She maintained the Novoaltaysk address for her correspondence because her daughter continued living at that address. According to the Government, the applicant did not inform the Tymovsk District Court about the changes of her place of residence.

13. In November 1998 the applicant received at the Novoaltaysk address a letter of 5 November 1998 signed by a deputy President of the Sakhalin Regional Court. The deputy President informed the applicant that an application for supervisory review of the judgments of 24 September 1996 and 1 April 1997 had been lodged before the Presidium of the Sakhalin Regional Court. The Presidium had fixed a supervisory-review hearing for 13 November 1998. The applicant's presence was not required.

14. On 13 November 1998 the Presidium of the Sakhalin Regional Court amended the reasoning of the judgment of 24 September 1996 and ordered a fresh examination by the District Court of the claims concerning the applicant's reinstatement, payment of wage arrears and compensation for damage.

15. According to the Government, the Tymovsk District Court fixed hearings but adjourned them because the applicant could not be summonsed. The Government did not indicate any date of a hearing fixed by the District Court between November 1998 and April 2000.

16. In 2000 the applicant complained to the Prosecutor General of the Russian Federation and a member of Parliament about the excessive length of the proceedings in her case.

17. On 19 April 2000 the Tymovsk District Court inquired the Novoaltaysk Town and Tymovsk District police departments about the registered place of the applicant's residence. In May 2000 the Tymovsk District police department replied that the applicant had moved to Novoaltaysk in 1997. The District police department indicated her address in Novoaltaysk. The Novoaltaysk Town police department responded that the applicant had lived in Novoaltaysk and then moved to the village of Rebrikha. The letter of the town police department read as follows:

“To your inquiry of 19 April 2000 [we] inform you that Ms Popova Lyudmila Nikolayevna, born in 1953 in the Sakhalin Region, was registered at the following address: the town of Novoaltaysk, Ostrovskiy street, 76. Her registration was annulled on 17 July 1998 upon a request from the Rebrikha District to [the following address] the village of Rebrikha, Pervomayskaya street, house no. 64, flat no. 2.”

18. On 8 November 2000 the District Court sent a telegram to the applicant's address in the village of Rebrikha informing the applicant about the hearing on 22 November 2000. An acknowledgment of receipt shows that the telegram was not delivered to the applicant because the street name and the house number had not been indicated. According to the Government, the telegram was not delivered because the applicant had once again moved to the town of Barnaul and had failed to notify the court about that. According to the applicant, she notified the Tymovsk District Court of her move to Barnaul, however, she did not receive any correspondence from the District Court at the Barnaul address.

19. The District Court fixed another hearing for 25 December 2001 and sent summonses to the applicant. It appears that they were sent to her address in the village of Rebrikha.

20. On 25 December 2001 the Tymovsk District Court issued an interim decision under Article 221 § 6 of the RSFSR Code on Civil Procedure. It discontinued the proceedings because the applicant had defaulted on 22 November 2000 and 25 December 2001, she had not informed the court about the reasons for her absence and had appeared to have lost interest in her case.

21. According to the applicant, in the absence of a notification of any decision in her case she unsuccessfully complained to various domestic authorities, including the Supreme Court and the Prosecutor General of the Russian Federation, about the failure of the domestic courts to determine her case within a reasonable time. No response followed, save for the one on 8 August 2005 when the acting President of the Sakhalin Regional Court sent a copy of the decision of 25 December 2001 to the applicant's home address in the town of Barnaul, whereto she had moved on an unspecified date.

II. RELEVANT DOMESTIC LAW

22. The RSFSR Code on Civil Procedure 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 lodged with the court. Civil cases were to be examined no later than one month after the preparation for the hearing had been completed (Article 99)

23. Summonses were to be served on the parties and their representatives in such way so that they would have enough time to appear timely at the hearing and prepare their case. If necessary, the parties could be summoned by a phone call or a telegram (Article 106).

24. A party was to sign the second copy of a summons which was to be returned to a court. If a summons could not be served on a party, it was to be served on an adult family member who lived with the party. A family member who had received a summons was to indicate on its second copy his/her first name, patronymic and family name and his/her relation to a summonsed party. If a party was absent, a person who delivered a summons was to note on the second copy of the summons where the party had moved (Article 109).

25. Article 221 § 6 provided that a court could issue an interim decision on discontinuation of the proceedings (*определение об оставлении заявления без рассмотрения*), in particular, if the plaintiff had not waived his/her right to be present and had failed to appear for the second time, and the respondent had not insisted on continuation of the proceedings.

26. A copy of an interim decision on discontinuation of the proceedings was to be sent to the absent party no later than three days upon its delivery (Article 213).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

27. The applicant complained that the domestic courts' discontinuation of the case without any notification to her had deprived her of the right to obtain the determination of her claims within a “reasonable time”, 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 fair ... hearing within a reasonable time... by [a]... tribunal...”

A. Submissions by the parties

28. The Government argued that the Court did not have competence *ratione temporis* to examine the period of the proceedings before 5 May

1998. As to the remaining period, the Government pointed out that the complexity of the case, the geographical and meteorological characteristics of the Sakhalin Region and the applicant's behaviour had contributed to the length of the proceedings. The applicant had changed her place of residence four times in four years, failing each time to inform the courts of her new place of residence. In April 2000 the authorities had attempted to establish the place of the applicant's residence. However, she had moved again, and the summonses for the hearings of 22 November 2000 and 25 December 2001 had not been delivered. Thus, the domestic court had no choice but to discontinue the proceedings as the applicant apparently had lost interest in her case. The Government did not know whether any attempts had been made to serve the decision of 25 December 2001 on the applicant.

29. The applicant averred that the delays in the proceedings had not been caused by complexity of the case or changes of her place of residence. She insisted that despite her move to Novosibirsk in 1997 and then to the village of Rebrikha in July 1998, she had maintained correspondence with the courts. The fact that the letter of the deputy President of the Sakhalin Regional Court of 5 November 1998 had been delivered to the address in Novosibirsk confirmed that she had informed the domestic courts of her move to Novosibirsk and that she continued to receive correspondence at the Novosibirsk address even after she had moved to the village of Rebrikha. The applicant further noted that she had also informed the Tymovsk District Court about her move to Barnaul, but no summonses had been sent there. In August 2005 she had received a copy of the decision of 25 December 2001 at the Barnaul address.

B. The Court's assessment

1. Right of access to a court

(a) Admissibility

30. The Court notes that the applicant's 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

31. The Court considers that the applicant's complaint raises an issue as to the right of access to a court. In this respect, the Court reiterates that the procedural guarantees laid down in Article 6 secure to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36).

32. The Court observes that on 6 May 1994 the applicant brought a civil action against her employer. The parties did not dispute the fact that on the date when the Convention entered into force in respect of Russia the applicant's claim was pending before the Tymovsk District Court.

33. The Court recalls that the institution of proceedings does not, in itself, satisfy all the requirements of Article 6 § 1. The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. The right of access to a court includes not only the right to institute proceedings but also the right to obtain a “determination” of the dispute by a court. It would be illusory if a Contracting State's domestic legal system allowed an individual to bring a civil action before a court without ensuring that the case would be determined by a final decision in the judicial proceedings. It would be inconceivable for Article 6 § 1 to describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without guaranteeing the parties that their civil disputes will be finally determined (see *Multiplex v. Croatia*, no. 58112/00, § 45, 10 July 2003; *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II).

34. The Court observes that on 25 December 2001 the Tymovsk District Court, applying Article 221 of the RSFSR Code on Civil Procedure, issued an interim decision discontinuing the proceedings in the applicant's case because she had defaulted at two hearings of 22 November 2000 and 25 December 2001 and appeared to have lost interest in the case.

35. Without losing sight of the general context of the case, the Court would reiterate that, in proceedings originating in an individual application, it has to confine its attention, as far as possible, to the concrete case before it (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, § 59). Accordingly, the Court's task in assessing the permissibility of the limitation imposed is not to review Article 221 of the RSFSR Code on Civil Procedure as such but the circumstances and manner in which that provision was actually applied to the applicant's situation.

36. According to the Government, the decision of 25 December 2001 resulted from the applicant's failure to inform the courts about the changes of her place of residence, and it had been preceded by the District Court's attempts to locate the applicant and its attempts to summons her to the hearings. In particular, the Government cited the applicant's failure to appear at the hearings of 22 November 2000 and 25 December 2001 as the reason for the discontinuation of the proceedings. According to the Government, the summonses for those two hearings were sent to the applicant's address in the village of Rebrikha, whereto she had moved from Novosaltaysk (see paragraph 12 above).

37. The Court, however, is not satisfied with the accuracy and reliability of the Government's factual submissions. Firstly, as to the Government's argument that the District Court could not summons the applicant to the hearings listed between November 1998 and November 2000 because it was unaware of the changes of her place of residence, the Court observes that, as it appears from a copy of the letter of the Presidium (see paragraph 14

above), the domestic courts knew the applicant's address in Novoaltaysk and could effectively maintain correspondence with her at that address, even after she had moved to the village of Rebrikha. The Court finds it anomalous that having been informed about the applicant's move to Novoaltaysk, the District Court continued sending summonses to the hearings fixed before 22 November 2000 to her former place of residence in the village of Tymovsk.

38. As to the alleged inability to summons the applicant for the last two hearings on 22 November 2000 and 25 December 2001, the Court does not overlook the fact that the applicant experienced certain difficulties in communicating with the domestic courts and notifying them of the frequent changes of her residence. It considers that she should have displayed more diligence in the defence of her interests. However, the Court finds it peculiar that the District Court, when trying to summons the applicant for the hearing of 22 November 2000, sent a telegram to the village of Rebrikha, omitting the street name and the house number (see paragraph 18 above), although it apparently was aware of the full address. It is even more striking that after the District Court had been informed that the telegram had not been delivered because of an incomplete address, it still considered that the applicant had been properly summonsed for the hearing of 22 November 2000.

39. As to the hearing of 25 December 2001, the Government did not provide the Court with any evidence showing whether and when the summons for that hearing had been served on the applicant. There is also no indication in the decision of 25 December 2001 that the District Court examined the issue whether the applicant had been duly summonsed for the hearing of 25 December 2001.

40. The Court considers that in the circumstances of the present case, in particular, the obvious failure to inform the applicant about the hearing of 22 November 2000 and the absence of indication that she had been summonsed for the hearing of 25 December 2001, the authorities' assumption that the applicant had lost interest in pursuing her claim did not have a sufficient factual basis and the decision on discontinuation of the proceedings appears to be issued in breach of the express requirement of Article 221 § 6 of the RSFSR Code on Civil Procedure (see paragraph 25 above).

41. The Court further observes that the Government did not know whether the decision of 25 December 2001 had been served on the applicant. Moreover, they did not produce any evidence showing that the decision of 25 December 2001 had indeed been dispatched within the time-limit established by the domestic law (see paragraph 26 above). According to the applicant, she complained to various domestic authorities about the courts' failure to determine her claim. The Government did not dispute that fact. The Court notes that the nature and persistency of the applicant's complaints could have made it sufficiently clear to the domestic authorities that she was unaware of the existence or contents of the decision of

25 December 2001. However, the authorities did not take any steps to provide the applicant with information on the status of her claim.

42. It, thus, appears that for the first time the applicant received a copy of the decision of 25 December 2001 in August 2005. In this respect the Court reiterates that a litigant's right of access to a court would be illusory if he or she were to be kept in the dark about the developments in the proceedings and the court's decisions on the claim, especially when such decisions are of the nature to bar further examination (see *Sukhorubchenko v. Russia*, no. 69315/01, § 53, 10 February 2005).

43. Taking into account the circumstances of the present case, in particular, that the decision on the discontinuation of the proceedings was issued without appropriate notification of the assumptions on which it had been founded and that it was not served on the applicant in a prompt manner, the Court therefore finds that the failure of the domestic authorities to determine the applicant's claim deprived her of the right of access to a court. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Length of proceedings

44. The Court notes that all the delays in the proceedings during the period under consideration were due to the failure of the District Court to update the applicant about the status of the proceedings she had initiated. The Court has already taken this aspect into account in its examination of the applicant's right of access to a court above. Having regard to its findings on that point, it considers that the issue of the length of the proceedings must be regarded as having been absorbed by the issue of access to a court (see *Sukhorubchenko*, cited above, § 55).

45. The Court therefore finds that it is not necessary to examine separately the issue of the length of the proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. Lastly, the applicant complained under Articles 6 and 14 of the Convention that the judicial proceedings had been unfair as the courts had misinterpreted domestic law and incorrectly assessed the facts, and that the judgment of 7 December 1993 had not been enforced. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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.”

48. 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 complaint concerning the domestic courts' failure to examine the applicant's civil claim admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the domestic authorities' failure to examine the applicant's civil claim;
3. *Holds* that no separate examination of the issue of the length of the proceedings is required;
4. *Holds* that there is no call to award the applicant just satisfaction

Done in English, and notified in writing on 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President