



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

FIRST SECTION

CASE OF PROKOPENKO v. RUSSIA

(Application no. 8630/03)

JUDGMENT

STRASBOURG

3 May 2007

FINAL

03/08/2007

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 Prokopenko 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 N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr D. SPIELMANN,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 5 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 8630/03) 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 Larisa Grigoryevna Prokopenko (“the applicant”), on 25 February 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 30 September 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1949 and lives in the town of Elektrostal in the Moscow Region.

A. Labour dispute

5. On 27 April 2002 the applicant sued her former employer, a private company, for reinstatement, payment of wage arrears and compensation for non-pecuniary damage.

6. On 30 July 2002 the Elektrostal Town Court dismissed the action. On the same day the applicant lodged before the Moscow Regional Court her statement of appeal against the judgment.

7. The Moscow Regional Court accepted the statement of appeal and fixed a hearing for 12 September 2002. According to the Government, on 5 September 2002 the Town Court summonsed the parties for the appeal hearing. The Government provided the Court with a copy of the covering letter of 5 September 2002 sent by the Town Court to the Moscow Regional Court and the parties, including the applicant. The letter indicated that the Town Court had sent the case-file to the Regional Court and that the appeal hearing had been fixed for 12 September 2002, at 10.30 a.m. The Government also submitted copies of receipts issued by the local post office on 5 September 2002 showing that it had accepted for delivery eight registered letters from the Town Court.

8. On 12 September 2002 the Moscow Regional Court, in the presence of the defendant's representative, upheld the judgment of 30 July 2002. The applicant did not attend the hearing. According to her, in the evening of 12 September 2002 she discovered the letter with summonses to the hearing of 12 September 2002 in her post box.

B. Housing dispute

9. On 3 August 2000 the applicant sued her former employer for provision of free housing. On 21 December 2000 the Elektrostal Town Court dismissed the action. The judgment was upheld on appeal and became final on 6 February 2001.

10. In July 2004 the applicant again sued her former employer for provision of free housing. On 24 November 2004 the Moscow Regional Court, in the final instance, disallowed the action because the same dispute between the same parties had been already determined by the final judgment of 6 February 2001.

11. In 2004 the applicant requested the Elektrostal Town Court to quash the judgment of 21 December 2000, re-open the proceedings due to newly-discovered evidence and re-examine her action. On 26 April 2004 the Moscow Regional Court, in the final instance, dismissed request because there was no newly-discovered evidence in the case.

II. RELEVANT DOMESTIC LAW

12. The RSFSR Code of Civil Procedure of 11 June 1964 (in force at the material time):

Article 106. Court summonses

“Parties and their representatives are to be notified with court summonses of a date and place of a court hearing or certain procedural actions ...

A summons is to be served on parties and their representatives in such a way that they would have enough time to appear at a hearing and prepare their case...

Where necessary, parties and their representatives... may be summonsed by a phone call or a telegram.”

Article 108. Service of summonses

“Summonses are to be sent by mail or by courier. A time when a summons was served on an addressee is to be recorded on the summons and its copy which is to be returned to a court...”

Article 109. Receipt of summonses

“A summons is to be served on a person against his/her signature made on a copy of the summons which is to be returned to a court...”

Article 144. Court hearing

“A civil case is to be heard in a court session with mandatory notification to all parties to the case...”

Article 157. Consequences of a parties' or representatives' failure to attend a court hearing

“If a party to the case fails to appear and there is no evidence that the party was duly summonsed, the hearing is to be adjourned...”

THE LAW

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

13. The applicant complained that the examination of the appeal without giving her an effective opportunity to attend, had violated her right to a fair hearing under 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 ... by [a] ... tribunal...”

A. Admissibility

14. 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

15. The Government claimed that the applicant had been notified of the appeal hearing in good time. In any event, her presence was not necessary as the appeal court could decide on the basis of the case-file and the applicant's written submissions.

16. The applicant averred that the Moscow Regional Court had failed in its duty to inform her of the appeal hearing and the Government did not present any evidence to the contrary. She further claimed that summonses should have been served on her against her signature or in such a manner which could have allowed the Moscow Regional Court to conclude that she had, in fact, been summonsed but had waived her right to be present. She also noted that it would have taken her approximately two and a half hours to travel from her home town to Moscow.

17. The Court observes that the Moscow Regional Court fixed one appeal hearing, for 12 September 2002. The Government argued that the applicant had been notified of that hearing by a letter sent to her on 5 September 2002. They provided the Court with a copy of that letter and copies of the receipts issued by the local post office on 5 September 2002 (see paragraph 7 above).

18. The Court has no reason to doubt that the letter of 5 September 2002 was, in fact, dispatched. However, the Government did not present any evidence, such as an acknowledgment of receipt card, an envelope bearing postmarks, etc., showing that it had reached the applicant in good time. Having regard to the provisions of the Russian law on service of courts summonses (see paragraph 12 above), the Court considers that the Government should have been in possession of such evidence. The failure on the Government's part to submit evidence without a satisfactory explanation gives rise to the drawing of inferences as to the ill-foundedness of their allegations. The Court also does not lose sight of the fact that the summonses to the hearing of 12 September 2002 were sent to the applicant merely a week before that hearing. In these circumstances, the Court is not persuaded that the domestic authorities had notified the applicant of the appeal hearing in such a way as to provide her with an opportunity to attend it and prepare her case.

19. The Court reiterates that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Yakovlev v. Russia*, no. 72701/01, § 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, § 27 et seq., 20 October 2005, and *Mokrushina v. Russia*, no. 23377/02, § 20 et seq., 5 October 2006).

20. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court has established that owing to belated notification the applicant has been deprived of an opportunity to attend the appeal hearing. The Court also notes that there is nothing in the appeal judgment to suggest that the appeal

court examined the question whether the applicant had been duly summonsed and, if she had not, whether the examination of the appeal should have been adjourned.

21. It follows that there was a violation of the applicant's right to a fair hearing enshrined in Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The applicant complained under Articles 6, 10 and 17 of the Convention that the labour proceedings had been excessively long, that all sets of the proceedings to which she had been a party had been unfair in that the domestic courts had incorrectly assessed the evidence, applied the law and dismissed her arguments, that the text of the judgment of 21 December 2000 had been forged, and that she had not been provided with free legal aid.

23. Having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, the Court 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

24. 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

25. The applicant claimed 305,098.38 Russian roubles (RUR) and 37,000 euros (EUR) in respect of pecuniary damage, of which RUR 305,098.38 represented wage arrears for the period after April 2002 and EUR 37,000 represented the market value of the flat which she had expected to receive. The applicant also claimed EUR 9,000 in respect of non-pecuniary damage.

26. The Government argued that there was no causal link between the alleged violation and the pecuniary damage claimed. They further noted that the applicant had not substantiated her claims which were unreasonable and amounted to “illegitimate enrichment”.

27. 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 considers that the applicant must have suffered

frustration and a feeling of injustice as a consequence of the domestic authorities' failure to apprise her of the appeal hearing in good time. The Court finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. However, the amount claimed by the applicant appears to be excessive. Accordingly, making its assessment on an equitable basis, it awards the applicant EUR 1,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

28. The applicant also claimed RUR 2,481 for the costs and expenses incurred before the Court. The sum represented postal expenses and fees for translation services and preparation of documents.

29. The Government did not comment.

30. 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. 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 that amount.

C. Default interest

31. 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 domestic authorities' failure to apprise the applicant of the appeal hearing in good time 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, the following amounts:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement;

(ii) RUR 2,481 (two thousand four hundred and eighty-one Russian roubles) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President