



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

FIRST SECTION

CASE OF SAVENKO v. RUSSIA

(Application no. 28639/03)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

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 Savenko 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 K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 24 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 28639/03) 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 Luiza Georgiyevna Savenko (“the applicant”), on 11 August 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 10 April 2006 the Court decided to give notice of the application to the Government. 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

4. The applicant was born in 1937 and lives in Voronezh.

A. Proceedings in the commercial courts

5. In the 1990s the applicant was a co-owner and the head of a private enterprise “Ekolog” (hereafter – the “Ekolog” company).

6. From 1991 to 1994 the “Ekolog” company was a party to several disputes before the commercial courts. The disputes concerned office premises acquired by the “Ekolog” company from a municipal enterprise. On 1 November 1993, 23 May, 11 July and 26 August 1994 the Voronezh

Commercial Court, by final judgments, ruled in favour of the “Ekolog” company's adversaries.

7. On 20 December 1994 the Voronezh Town Council leased the office premises to Mr B. In February 1995 bailiffs forced the “Ekolog” company to vacate the premises and six months later Mr B. bought them.

B. Proceedings in the courts of general jurisdiction.

1. Action for invalidation of a lease

8. On 4 December 1997 the applicant and the “Ekolog” company lodged an action against the Voronezh Town Council seeking invalidation of the lease of 20 December 1994. The Leninskiy District Court of Voronezh received the statement of claim and judge I. was assigned to the case. The applicant subsequently submitted an amended statement of claim, asking the District Court to invite Mr B. to the proceedings in the capacity of a defendant. She sought compensation for pecuniary and non-pecuniary damage.

9. Following the applicant's complaint to the Voronezh Regional Court about the excessive length of the proceedings in the case, on 26 August 1999 the President of the Leninskiy District Court informed the applicant that the first hearing was listed for 28 September 1999. That hearing was adjourned until 6 October 1999 because the Council had not received a copy of the statement of claim.

10. The following two hearings fixed between 6 October 1999 and 2 June 2000 were postponed owing to the absence of the Council's representative.

2. Action for correction of registration logs in respect of the disputed property

11. On 23 July 1999 the applicant and the “Ekolog” company sued the Voronezh Town and Leninskiy District Councils for correction of registration logs in respect of the office premises. After the Leninskiy District Court had received the statement of claim, judge I. was assigned to the case.

12. The first hearing was fixed for 28 September 1999. As it appears from the list of events attached to the Government's memorandum, the next hearing was listed for 29 November 2000. On that date judge I. accepted amendments to the applicant's statement of claim.

3. Two actions for transfer of the lease rights and acknowledgment of the fact

13. On 6 December 1999 the “Ekolog” company lodged an action against the Voronezh Town Council seeking the transfer of the lease rights in respect of the office premises. On the same day the applicant asked the Leninskiy District Court to confirm that she had lived in the disputed premises. Both cases were received by the Leninskiy District Court and assigned to judge I.

4. Action for invalidation of legal acts in respect of the premises

14. On 5 January 2001 the applicant asked the Leninskiy District Court to invalidate certain legal acts issued by the Voronezh Town Council in respect of the office premises.

15. On 2 February 2001 judge I. accepted the case file and fixed the first hearing for 24 April 2001.

5. Joined proceedings

16. In 2001 judge I. resigned and judge Y. took over her cases. On 27 August 2001 judge Y. joined the five sets of the proceedings initiated by the applicant and the “Ekolog” company and listed the first hearing for 3 December 2001.

17. Of the three hearings fixed between 3 December 2001 and 24 June 2002, two were adjourned because the defendants had defaulted and one was postponed for the purpose of obtaining information from the commercial courts.

18. On 2 October 2002 the Leninskiy District Court discontinued the proceedings because the case was within the subject-matter jurisdiction of a commercial court. That decision was quashed on 27 February 2003 by the Voronezh Regional Court. The case was remitted to the Leninskiy District Court for a fresh examination on the merits.

19. On 19 March 2003 judge Y. received the case file and listed the first hearing for 24 April 2003. That hearing was adjourned because the defendants did not attend.

20. Of the ten hearings fixed between 18 August 2003 and 28 May 2004, four hearings were adjourned owing to the defendants' absence and six hearings were postponed upon the parties' requests for provision of additional evidence.

21. On 28 May 2004 the Leninskiy District Court of Voronezh dismissed the applicant's claims. The District Court held that in 1993 and 1994 the commercial courts had invalidated the sales-purchase agreement between the municipal enterprise and the “Ekolog” company in respect of the premises. Mr B. had lawfully acquired the title to the premises in 1994

and thus he was their legitimate owner. The District Court also noted that the applicant had never lived in the premises.

22. On 23 November 2004 the Voronezh Regional Court upheld the judgment.

THE LAW

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

23. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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...”

24. The period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 23 November 2004 when the Voronezh Regional Court issued the final judgment. The proceedings accordingly lasted approximately six years and seven months before two levels of jurisdiction.

A. Admissibility

The applicant's status as a “victim” of the alleged violations

25. The Court reiterates that the term “victim” in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue. As regards the complaint under Article 6 § 1, the Court reiterates that a person cannot complain about a violation of his or her rights in the proceedings, to which he or she was not a party, despite the fact that she or he was a shareholder and/or executive director of the company which was the party to the proceedings (see, e.g., *F. Santos Lda. and Fachadas v. Portugal* (dec.), no. 49020/99, 19 September 2000; *Pires da Silva and Pereira v. Portugal*, no. 19157/91, Commission decision of 5 July 1993).

26. Turning to the facts of the present case, the Court observes that the applicant was a party to the proceedings in her personal capacity. She acted in the capacity of a co-plaintiff, lodging separate claims and seeking protection of her pecuniary rights. The domestic courts examined both the

applicant's and her company's claims and dismissed them. It follows that the applicant can claim to be a “victim” of the alleged violation of Article 6 (see, by contrast, *Nosov v. Russia* (dec.), no.0877/02, 20 October 2005).

27. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The Government argued that the proceedings were complex. Delays had been caused by the applicant's frequent amendments to the claims and her petitions for adjournment of the proceedings in order to obtain additional evidence.

29. The applicant maintained her claims.

30. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

31. The Court accepts that the proceedings at issue were complex as they required examination of several joined claims and voluminous documents. However, 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.

32. As concerns the applicant's conduct, the Court notes the Government's argument that she should be held responsible for amending her claims and seeking to obtain additional evidence. The Court has already considered that the task of the domestic courts was made more difficult by the fact that the applicant and her company had submitted several actions which were subsequently joined. At the same time the Government only indicated two instances when the applicant had amended her claims. The delay incurred therefrom was negligible. The Court further observes that five hearings were adjourned upon the applicant's request for provision of additional evidence. The aggregated delay incurred therefrom amounted to approximately five months. Although the applicant's efforts to ensure the best representation of her interests are understandable, the manner in which she exercised her procedural rights undoubtedly contributed to the prolongation of the proceedings.

33. As regards the conduct of the authorities, the Court considers that the overall period less the period attributable to the applicant's conduct leaves the authorities accountable for six years and two months. The Court observes that substantial periods of inactivity, for which the Government

have not submitted any satisfactory explanation, are attributable to the domestic courts. In particular, delays of up to twenty months occurred between the registration of the suits and the first hearings (see, for example, paragraphs 8 and 9 above). It also took the District Court up to fourteen months to fix hearings (see paragraph 12 above). Furthermore, the Court finds it striking that almost five years after the registration of the first suit the District Court decided that it had no jurisdiction over the case and transferred it to a commercial court (see paragraph 18 above).

34. Having regard to this as well as all the material submitted to it and 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

35. The applicant further complained that the domestic legal system had failed to afford her an effective remedy against the excessive length of proceedings. 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.”

36. The Government contested the applicant's arguments.

A. Admissibility

37. 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

38. 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 her with adequate redress for delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, 29 January 2004, § 64).

39. 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 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

40. Invoking Articles 1, 6, 8, 13, 14, 17, 18, 53 and 55 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 7, the applicant further complained that the proceedings before the commercial courts had been unfair and excessively long, that the commercial courts had unlawfully invalidated her company's title to the disputed premises, that she and her company had been forced to vacate the premises in 1995, and that the proceedings against Mr B. and the Voronezh town administration had been unfair as the domestic courts had incorrectly assessed the facts and applied the law.

41. 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

42. 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

43. The applicant claimed 205,000 euros (EUR) in respect of pecuniary damage, representing cumulative loss incurred due to the invalidation of the “Ekolog” company's title to the disputed premises. She further claimed EUR 20,000 in respect of non-pecuniary damage.

44. The Government submitted that there was no causal link between the alleged violations and the pecuniary damage claimed. In any event, the claims were excessive and unreasonable.

45. 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 and the lack of an effective remedy for a breach of the requirement to hear her case within a reasonable time. Making its assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be charged on the above amount.

B. Costs and expenses

46. The applicant did not make any claims for the costs and expenses incurred before the domestic court and before the Court.

47. Accordingly, the Court does not award anything under this head.

C. Default interest

48. 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 complaints concerning the excessive length of the proceedings and 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
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 3,000 (three 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President