



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

FIRST SECTION

CASE OF ZEMENTOVA v. RUSSIA

(Application no. 942/02)

JUDGMENT

STRASBOURG

27 September 2007

FINAL

27/12/2007

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 Zementova v. Russia,

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

Mr C.L. ROZAKIS, President,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, judges,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 6 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 942/02) 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, Mrs Tatyana Nikolayevna Zementova, on 7 June 2001. She was represented before the Court by Mr V. Yevdokimov, a lawyer practising in London.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 September 2005 the Court decided to communicate the complaint concerning the length of the proceedings. 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 1952 and lives in the village of Lopatinskiy in the Moscow Region.

A. Initial criminal investigation by the prosecutor's office

5. It appears that the applicant was a labour inspector in the Voskresensk supervisory district of the State labour inspectorate of the Moscow Region (*Государственная инспекция труда в Московской области*).

6. On 29 December 1999, acting upon a complaint from a third party that the applicant was exacting a bribe from him, the authorities carried out an operation in the course of which the applicant was arrested and remanded in custody.

7. In a decision of the same date an investigator of the Voskresensk Town Prosecutor's Office of the Moscow Region referred to the materials obtained from the police and brought criminal proceedings against the applicant and her colleague on suspicion of bribery.

8. On 31 December 1999 the applicant was released from custody. It does not appear that she challenged her arrest and detention before the domestic courts.

9. On 29 June 2000 the time-limits for preliminary investigation were extended until 29 September 2000.

10. By a decision of 14 September 2000 the investigator suspended the investigation because of the applicant's treatment at a hospital. On 25 October 2000 the investigation resumed. The applicant submits that she was unaware of the said decisions and was fully available.

11. On 31 October 2000 the investigator charged the applicant with bribery and several counts of abuse of power as a public servant and imposed on her an undertaking not to leave her place of residence.

12. It appears that on 27 April 2001 the bill of indictment was sent to the Voskresensk Town Court ("the Town Court") together with the case file.

B. First set of court proceedings

13. The Government submitted that the criminal case reached the court on 23 May 2001.

14. On 17 May 2001 the prosecutor seized the applicant's property. There is no indication that the applicant challenged this decision in a court.

15. In a decision (*постановление*) of 5 June 2001 the Town Court pointed out several shortcomings in the conduct of the investigation and remitted the case to the investigator.

16. On 25 July 2001 the Moscow Regional Court ("the Regional Court") quashed this decision upon the prosecutor's appeal and remitted the case to the first-instance court.

17. The case file reached the Town Court on 23 August 2001.

18. The court decided to hold the next hearing in the case on 24 October 2001. Since most of the witnesses failed to appear, the court

adjourned the hearing until 1 November 2001 and decided to secure attendance of the witnesses by force.

19. On 5 November 2001 the Town Court again remitted the case to the prosecutor for an additional investigation.

20. This decision was upheld on appeal on 19 February 2002.

21. On 5 June 2002 the applicant was apparently furnished with a new bill of indictment and from 10 June to 3 July 2002 she and her counsel had access to the case file.

22. On 22 June 2002 the case file was returned for examination on the merits to the trial court.

23. The case file reached the Town Court on 25 July 2002.

24. In a decision of 29 July 2002 the court decided to hold the first hearing in the case on 12 August 2002. Since the authorities failed to serve the bill of indictment on the applicant's co-defendant in a timely fashion, the hearing of 12 August 2002 was delayed until 2 September 2002.

25. In a decision of 2 September 2002 the court scheduled a hearing for 21 October 2002. Apparently the applicant failed to appear on that date and the hearing was adjourned.

26. On 26 October 2002 the hearing did not take place because of the need to carry out an expert examination. The case was postponed until 20 February 2003.

27. The hearings of 20 February and 27 March 2003 did not take place in view of the absence of a defendant, the victim and the need to summon some witnesses.

28. Between 17 and 28 April 2003 the court examined the applicant's criminal case and on the latter date it rendered a 50-page judgment, convicting the applicant on six counts of abuse of power and one count of bribery. The court sentenced her to three years and nine months' imprisonment and prohibited her from holding administrative and supervisory posts. By the same judgment the applicant's co-defendant was convicted on 19 counts of abuse of power. The court referred to oral evidence from some 45 witnesses and the victim, records of confrontations and a considerable bulk of other documentary evidence, such as money transfer orders, invoices, audit records, etc.

29. By the same decision the court lifted the seizure of the applicant's property.

30. The applicant was detained in the court room.

31. Both the prosecution and the applicant appealed against the judgment.

32. On 1 July 2003 the Regional Court quashed the trial-court judgment and remitted the case to the court below. It also ordered the applicant's release pending trial.

33. The applicant was released on 4 July 2003.

C. Second set of court proceedings

34. Between September 2003 and November 2004 the examination of the case was delayed in the Town Court with reference to various reasons, such as the absence of witnesses, the applicant's illnesses, the failure of the accused and the defence to attend as well as the decision to grant a challenge by the defence directed against the prosecution.

35. On 8 November 2004 the court decided to hold the next hearing on 11 November 2004. The hearing did not take place as the prosecution failed to attend.

36. The hearing of 12 November 2004 was adjourned because of the court's failure properly to summon the prosecution.

37. According to the Government, between 15 November 2004 and 15 March 2005 the court examined the case.

38. On 15 March 2005 the court concluded that the bill of indictment contained deficiencies warranting the remittal of the case to the prosecutor for an additional investigation. It remitted the case to the prosecutor for rectification of the shortcomings within five days.

39. On 18 May 2005 the applicant's case was returned to the court.

40. The court decided to hold a preliminary hearing in the case on 13 June 2005.

41. It appears that the co-accused changed his lawyer. As a result, the hearing was postponed until 11 July 2005 and then until 29 August 2005. The hearing of 29 August 2005 did not take place because of the failure of counsel to appear. The hearing was adjourned until 7 September 2005.

42. In a decision of 9 September 2005 the Town Court discontinued the proceedings against the applicant in respect of some of the facts, with reference to the statutory time bar.

43. Thereafter the examination of the case was adjourned in order "to give the prosecution some time to study the case".

44. On 26 October 2005 the applicant was ill and failed to appear. As a result, it was decided to hold the next hearing on 5 December 2005.

45. In a judgment of 27 December 2005 the Town Court acquitted the applicant on all charges. The court also recognised the applicant's right to rehabilitation in connection with wrongful criminal prosecution under Article 134 of the Code of Criminal Procedure.

46. The judgment was upheld on appeal by the Moscow Regional Court on 9 March 2006. On the same date the Regional Court made a separate ruling in which it referred to the delays in the proceedings and acknowledged that the applicant's right to trial within a reasonable time had been breached. The ruling called on the President of the Regional Court to take appropriate measures in respect of the judges responsible.

47. In addition, on 4 April 2006 the President of the Moscow Regional Court applied to the Qualification Board of the Moscow Region for leave to

discipline the judge of the Town Court who had been responsible for delays in the proceedings.

D. Court proceedings for rehabilitation

48. On an unspecified date the applicant applied to the court for compensation in connection with her acquittal. She also requested the court to order the prosecutor's office to make apologies to her in this connection.

49. In a judgment of 24 July 2006 the Town Court examined and rejected the applicant's claims for compensation in connection with the wrongful prosecution. The court noted that the proceedings in respect of some of the charges against her had been discontinued on 9 September 2005 on account of time-limits. Since the statutory time bar was not a "rehabilitating" ground for discontinuance of the proceedings, it could not be said that the applicant had been fully acquitted on the entirety of the charges against her. The court noted that under the domestic law only those acquitted on the entirety of the charges against them could apply for compensation in connection with wrongful prosecution under Article 134 of the Code of Criminal Procedure and rejected the applicant's claims for compensation accordingly.

50. This judgment was upheld by the Moscow Regional Court on appeal on 4 October 2006.

51. In a decision of 21 August 2006 the Town Court granted the applicant's request for apologies and ordered the prosecutor to apologise to the applicant on behalf of the State in so far as her acquittal was concerned. The court noted that the apologies should be limited to the charges in respect of which the acquittal had been pronounced and that they would not concern the charges in respect of which the proceedings had been discontinued on account of the statutory time bar. This decision was not appealed against by the parties and entered into force on 1 September 2006.

52. In a letter of 14 September 2006 the Prosecutor of the town of Voskresensk made the requested apologies to the applicant and thus complied with the decision of 21 August 2006.

53. In a decision of 16 October 2006 the Town Court rejected the applicant's claim in respect of pecuniary damage as unfounded. The court ruled that the applicant had failed to substantiate her demands.

54. The applicant appealed against this decision. The outcome of these proceedings is unclear.

E. The applicant's attempts to prosecute the police officers

55. On 9 June 2004 the applicant informed the Prosecutor's Office of Voskresensk that the police officers who took part in the investigation of

her criminal case had acted unlawfully and requested that they be prosecuted.

56. In a letter dated 4 June 2004 she was advised that the criminal proceedings in her case were pending and that the prosecutor's office was not entitled to intervene.

57. On 9 September 2004 the Moscow City Court confirmed that the prosecutor's office was not entitled to intervene.

THE LAW

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

58. The applicant complained that the length of the proceedings in her case had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

59. The Government conceded that the duration of the proceedings in the case had been excessive. They also argued that the domestic courts had acknowledged the violation of Article 6 on account of the excessive length of the proceedings, that the applicant had been acquitted and that she was entitled to receive compensation in connection with her wrongful prosecution which would eventually cover her length-of-proceedings complaint. They referred to the applicant's right to rehabilitation under the relevant provisions of the Code of Criminal Procedure. Finally, they argued that the matter would have been settled at the domestic level had the applicant applied to the domestic courts for such compensation.

60. The applicant maintained her complaints.

A. Admissibility

61. The Court notes that the Government seem to have raised the argument of non-exhaustion. In particular, they submitted that the domestic courts had acknowledged the unjustified delays in the criminal proceedings against the applicant and that since the applicant was acquitted, she should have applied to the domestic courts for compensation in connection with her wrongful prosecution. The Court finds that it need not decide whether on the facts the procedure referred to by the Government constituted a remedy for purposes of exhaustion within the meaning of Article 35 § 1 of the Convention, since from the case file it is clear that the applicant availed herself of that procedure and was ultimately unsuccessful (see

paragraphs 49-50 and 53-54). Accordingly, the Court rejects the Government's argument.

62. The Court further reiterates that an acquitted defendant can no longer claim to be a victim of alleged violations of the Convention during the proceedings (see *X. v. Austria*, no. 5575/72, Commission decision of 8 July 1975, Decisions and Reports (DR) 1, p. 44, and *X. v. the United Kingdom*, no. 8083/77, Commission decision of 13 March 1980, DR 19, p. 223). This conclusion, however, can only be drawn where the applicant is no longer affected at all, having been relieved of any effects to his or her disadvantage (see *Jón Kristinsson v. Iceland*, judgment of 1 March 1990, Series A no. 171-B, opinion of the Commission, p. 48, § 36, and *Correia de Matos v. Portugal* (dec.), no. 48188/99, 15 November 2001).

63. In the present case the domestic authorities and the courts, whilst acknowledging the delays in the proceedings (see paragraph 46 above) and making apologies for wrongful prosecution in respect of some of the charges (see paragraph 51), rejected her claims for damages in this connection partly for being unsubstantiated and partly because the applicant's acquittal did not concern the entirety of the charges. It cannot thus be said that the applicant has been relieved of all of the effects of the criminal proceedings to her disadvantage. The Court concludes accordingly that the applicant can still claim to be the victim of a breach of Article 6 of the Convention on account of the allegedly excessive length of the proceedings.

64. 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

65. The Court notes at the outset that the period to be taken into consideration began on 29 December 1999 when the investigator laid charges against the applicant (see, among many other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 124, ECHR 2002-VI) and ended on 9 March 2006 with the appeal decision of the Moscow Regional Court.

66. It follows that the period to be taken into consideration lasted for six years, two months and eleven days.

67. 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 conduct of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

68. The Court notes that the case was one of some complexity as it concerned charges of bribery and abuse of power allegedly committed by a group of people, including the applicant. However, in the Court's view, the complexity of the case does not suffice, in itself, to account for the length of the proceedings.

69. Nor does it appear that the applicant's conduct contributed substantially to the length of the proceedings or that throughout the proceedings she went beyond the limits of legitimate defence or lodged any frivolous petitions or unsubstantiated requests with the investigator or the courts. In any event, the Court reiterates that Article 6 does not require a person charged with a criminal offence to cooperate actively with the judicial authorities. In particular, applicants cannot be blamed for taking full advantage of the resources afforded by national law in their defence (see *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

70. The Court finds, on the other hand, that many of the delays in the proceedings were occasioned by acts of the domestic authorities or rather by their failure to act. In this connection it notes that the considerable delay of one year and almost two months between 27 April 2001 and 22 June 2002 resulted from the mistakes and deficiencies of the investigating authority at the initial stage of the investigation. Furthermore, it is clear that during three weeks from 12 August 2002 to 2 September 2002 the examination of the case could not continue because of the authority's failure to serve a copy of the bill of indictment on the applicant's co-defendant. The Court also notes that the conduct of the defence and witnesses was a principal reason for the delay of one year and two months between September 2003 and November 2004. In this respect, the Court finds nothing in the case file or in the Government's submissions to suggest that the domestic courts availed 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*, *Kuśmierek v. Poland*, no. 10675/02, § 65, 21 September 2004). It therefore finds this delay attributable to the authorities. Further delays in the proceedings were caused by the deficiencies in the prosecution file which required the trial court to adjourn the proceedings for two months between 15 March and 18 May 2005 and the need "to give the prosecution some time to study the case file" which led to the adjournment of the hearings for another month and two weeks from 9 September to 26 October 2005. Finally, the Court notes that the failure to comply with domestic time-limits was acknowledged by a special ruling of the Moscow Regional Court of 9 March 2006.

71. Regard being had to the foregoing and in view of the Government's admission that the duration of the case had been excessive, the Court considers that the length of the proceedings did not satisfy the "reasonable

time” requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

72. The applicant also complained that the criminal proceedings against her had been unfair. In addition, she complained about the poor conditions of her detention from 29 to 31 December 1999 and from 28 April to 4 July 2003 (the complaints about the second period were lodged with the Court on 27 April 2004), that the detention itself had been incompatible with Article 5 and that the seizure of her property in connection with the criminal proceedings against her had been unjustified.

73. In so far as the applicant is dissatisfied with the criminal proceedings against her and even assuming that despite her acquittal the applicant has victim status to complain in this connection, the Court is not called upon to examine alleged errors of fact and law committed by the domestic judicial authorities, provided that there is no indication of unfairness in the proceedings. On the basis of the material submitted by the applicant, the Court notes that she was able to present her arguments as she wished and that the judicial authorities gave them due consideration. Having regard to the facts, as submitted by the parties, the Court has not found any reason to believe that the proceedings did not comply with the fairness requirement of Article 6 of the Convention. This part of the application is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

74. As regards the conditions of her detention and the complaint concerning the lawfulness of that detention, the Court recalls that the applicant's two periods of detention ended on 31 December 1999 and 4 July 2003 respectively, whilst the complaints about them were lodged on the respective dates of 7 June 2001 and 27 April 2004, that is more than six months later. It follows that these complaints were introduced out of time.

75. Finally, as to the prosecutor's decision of 17 May 2000 concerning the seizure of the applicant's property, the Court notes that she never attempted to challenge this decision in the courts. Thus, she did not exhaust domestic remedies in this respect.

76. Having regard to the conclusions reached in paragraphs 73-75 above, it follows that this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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.”

78. The applicant claimed 5,000,000 Russian roubles (equivalent to 143,334 euros (EUR)) in respect of pecuniary and non-pecuniary damage.

79. The Government did not comment on these claims.

80. The Court does not discern any causal link between the violation found and the amount of pecuniary damage alleged; it therefore rejects this aspect of the claim. However, on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

81. The applicant did not claim reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court need not make any award under this head.

C. Default interest

82. 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 excessive length of the proceedings 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, 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 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;

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

Done in English, and notified in writing on 27 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President