



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

FIRST SECTION

CASE OF GUBER v. RUSSIA

(Application no. 34171/04)

JUDGMENT

STRASBOURG

23 October 2008

FINAL

23/01/2009

This judgment may be subject to editorial revision.

In the case of Guber v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Registrar*,

Having deliberated in private on 2 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 34171/04) 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, Mr Georgiy Edmundovich Guber (“the applicant”), on 18 July 2003.

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

3. On 24 March 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1946 and currently lives in New Portland, the United States.

5. In March 1996 a third person on the applicant’s behalf sold his car to another third person. The sale was carried out on the basis of a power of attorney issued by the applicant to the third person in 1993.

6. On 11 November 1996 the applicant asked the Syktyvkar Town Court to declare null and void the sale of his car claiming that it had been

performed contrary to his will and on the basis of a revoked and thus invalid power of attorney.

7. On 14 May 1998 the Town Court held the first hearing of the case. It appears that the proceedings were adjourned at least on five occasions: on 18 September 1998, 12 July and 2 November 1999, on 27 June 2001 and on 26 August 2002, when on the latter date, the case was, according to the Government, adjourned as the judge was busy in unrelated proceedings.

8. On 30 January 2003 the Town Court examined and dismissed the applicant's claim *in absentia*. The applicant received a copy of the reasoned version of the judgment on 12 February 2003 and introduced a notice of appeal. Since the applicant failed to pay the court fee and to make the relevant number of copies of his statement of appeal, the court twice refused to examine his appeal and set new time-limits for lodging it. The applicant was requested to comply with the procedural requirements.

9. On 25 March 2003 the applicant's appeal was disallowed due to his failure to comply with the procedural requirements and to pay the court fee.

10. The applicant unsuccessfully attempted to contest this decision. His further appeals were disallowed as they were introduced outside the time-limit. The requests to extend the time-limit were rejected as unsubstantiated.

THE LAW

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

11. 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 ..."

12. The Government contested that argument.

13. The proceedings lasted from 11 November 1996, when the applicant introduced his claim, to 25 March 2003 when the applicant's appeal was dismissed, i.e. six years, four months and thirteen days. The Court observes that the period to be taken into consideration began on 5 May 1998, when the Convention came 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, which by then had been pending for approximately one year and six months.

14. The Court observes that in the present case four years, ten months and twenty days fall within the Court's competence *ratione temporis*.

A. Admissibility

15. 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

16. 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).

17. The Court considers that the case at hand was not difficult to determine. Consequently, it takes the view that an overall period of over six years for one level of jurisdiction could not, in itself, be deemed to satisfy the “reasonable time” requirement in Article 6 § 1 of the Convention.

18. As to the applicant’s conduct, the Government did not claim that the applicant had contributed to any delays in the proceedings. The Court concludes, therefore, that no delays in the present case were attributable to the applicant.

19. The Court observes, on the other side, that substantial periods of inactivity, for which the Government have not submitted any plausible explanation, are attributable to the domestic authorities. First, the Court notes that the Government did not provide the Court with any reasons as to why the applicant’s case had not been examined until 30 January 2003. The only explanation offered by the Government concerned the hearing on 26 August 2002 when it was adjourned because the judge was busy in unrelated proceedings. Second, the Court notes that the Government’s explanations submitted to the Court primarily concerned the proceedings in respect of the applicant’s appeal and his requests to extend the time-limits for lodging it. However, these proceedings concerned only a very limited period of time which cannot, in the Court’s view, justify the overall length of the proceedings in which the applicant’s claim was determined.

20. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

21. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The Court has examined the remainder of the applicant’s complaints as submitted by him. However, having regard to all the material in its possession, it finds that these complaints 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

23. 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

24. The applicant claimed 1,000 euros (EUR) in respect of pecuniary damage and EUR 1,000 in respect of non-pecuniary damage.

25. The Government considered the claim for non-pecuniary damage to be reasonable. In respect of pecuniary damage the Government did not see any causal link between the claim and the violation found and suggested rejecting it.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim for pecuniary damage. On the other hand, the Court accepts that the applicant suffered distress, anxiety and frustration exacerbated by the unreasonable length of the proceedings. In this respect it awards the applicant EUR 1,000 as non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

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

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

C. Default interest

29. 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 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 settlement, plus any tax that may be chargeable on this amount;
 - (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 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President