



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

FIRST SECTION

CASE OF MARKOVA v. RUSSIA

(Application no. 13119/03)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Markova v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 13119/03) 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 Nadezhda Nikolayevna Markova (“the applicant”), on 8 April 2003.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their former Representative, Mrs V. Milinchuk.

3. On 14 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 1952 and lives in Moscow.

A. Compensation proceedings

5. In February 1996 the applicant's neighbour caused a flood in the applicant's flat. According to the applicant, she sent a statement of claims to the Basmanniy District Court of Moscow by regular mail in November 1996. She sought compensation for damage caused by her neighbour. It is unclear whether the applicant's statement was received by the District Court.

6. On 14 January 1997 the applicant resubmitted her tort action against her neighbour to the Basmanniy District Court of Moscow. On 10 October 1997 the proceedings were stayed pending an expert examination. They were subsequently resumed on 10 March 1998 with no examination having been performed.

7. From 28 April 1998 to 17 February 1999 several hearings were adjourned either because the defendant had not attended or because the judge was busy on another case.

8. On 17 February 1999 another expert examination was ordered. The parties refused to pay for it. The examination was not performed and on 13 May 1999 the experts returned the case file to the District Court. On 8 June 1999 and 10 April 2000 the court made an offer to the applicant to pay for the expert report. According to the Government, she did not reply to the offer.

9. On 3 August 2000 the Basmanniy District Court resumed the proceedings.

10. On 15 August 2000 the hearing was adjourned because the parties had not attended. On 24 August 2000 the Basmanniy District Court refused to examine the action because the parties had again failed to appear.

11. On 4 September 2000 the applicant complained to the Moscow City Court that she had not been properly notified of the hearing of 24 August 2000 and had been unable to attend.

12. On 8 September 2000 the Moscow City Court quashed the decision of 24 August 2000 and ordered the proceedings to be resumed. A hearing was listed for 6 December 2000.

13. From 6 December 2000 to 3 June 2002 several hearings were adjourned either because the defendant had not attended or had asked for an adjournment or because the judge was busy on another case.

14. On 3 June 2002 the Basmanniy District Court of Moscow granted the applicant's action in part and awarded her 10,000 Russian roubles as compensation for damage.

15. On 22 October 2002 the Moscow City Court upheld the judgment on appeal.

B. Complaints about the excessive length of the compensation proceedings

16. On many occasions in 2001-2002 the applicant complained to various domestic officials, including the Supreme Judicial Appointments Board, the Judicial Department of the Supreme Court of Russia, the Moscow City Court, and the Ministry of Justice, of the excessive length of the proceedings in her case.

17. It appears that her complaints were either left unanswered or redirected to the Basmanniy District Court of Moscow.

THE LAW

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

18. 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...”

19. The Government acknowledged that the proceedings in the applicant’s case had been unreasonably long.

20. The Court observes that the parties’ submissions differ as to whether the proceedings commenced in November 1996 or January 1997. However, the Court will consider only the period of the proceedings which began on 5 May 1998, when the Convention entered into force in respect of Russia. In assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the proceedings at the time. The period in question ended on 22 October 2002 with the decision of the Moscow City Court. Thus the Court has competence *ratione temporis* to examine the period of approximately four years and six months. During that period the case was examined at two levels of jurisdiction.

A. Admissibility

21. 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

22. 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). In addition, only delays attributable to the State may justify a finding of a failure to comply with the “reasonable time” requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

23. Turning to the facts of the present case, the Court observes that several delays in the proceedings were caused because the judge was busy on another case. In this connection the Court reiterates that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision within a reasonable time (see *Löffler v. Austria*, no. 30546/96, § 21, 3 October 2000). Therefore, the delays resulting from the judge’s absence are imputable to the State.

24. The Court also notes a prolonged period of inactivity relating to the pending expert examination. In particular, almost eighteen months elapsed from 17 February 1999, when the District Court ordered an expert examination and suspended the proceedings, to 3 August 2000, when the proceedings were resumed without any expert opinion having been prepared, since the parties refused to pay for it. The Court reiterates that the principal responsibility for delay due to expert opinions rests ultimately with the State (see *Capuano v. Italy*, 25 June 1987, § 32, Series A no. 119, and *Volovich v. Russia*, no. 10374/02, § 30, 5 October 2006).

25. 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).

26. 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. Indeed the Government acknowledged that the proceedings had been unreasonably long. Therefore, 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.

27. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

28. The applicant further complained that she had no effective remedies for her complaint concerning the excessive length of the proceedings. She relied on Article 13 of the Convention.

29. The Government did not comment on this issue.

30. The Court refers to its finding in paragraph 21 above and notes that this complaint is linked to the applicant's complaint under Article 6 § 1 and must therefore likewise be declared admissible.

31. 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 *Kudła 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 the delays that had already occurred (see *Kudła*, cited above, § 159; *Kormacheva v. Russia*, no. 53084/99, §§ 61-62, 29 January 2004; and *Kuzin v. Russia*, no. 22118/02, §§ 42-46, 9 June 2005).

32. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby she could enforce her right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant complained under Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1 that the domestic courts had only granted her action in part, that they had incorrectly assessed the facts and wrongly calculated the compensation, and that the defendant could have been assisted by a lawyer whereas she could not afford one.

34. 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

35. 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

36. The applicant claimed 150,000 Russian roubles (RUR) in respect of pecuniary damage. She also stressed that the sum of 1,500 euros (EUR), proposed by the Government to compensate for the non-pecuniary damage, was not sufficient.

37. The Government contested the claim for pecuniary damage.

38. 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 the 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 1,500 in respect of non-pecuniary damage, plus any tax that may be charged on the above amount.

B. Costs and expenses

39. The applicant submitted several receipts for postal expenses, translation, copying and legal aid in a total sum of RUR 31,865; she did not itemise her claim under this head.

40. The Government contested the claim.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 it reasonable to award EUR 100 covering all costs under this head, plus any tax that may be chargeable to the applicant.

C. Default interest

42. 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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable; and
 - (ii) EUR 100 (one hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President