



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

FIRST SECTION

CASE OF RYPAKOVA v. RUSSIA

(Application no. 16004/04)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Rypakova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *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. 16004/04) 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, Ms Tatyana Vasilyevna Rypakova (“the applicant”), on 9 April 2004.

2. The applicant was represented by Mr I. Ilyin, a lawyer practising in Arkhangelsk. 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 29 August 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 1956 and lives in Arkhangelsk.

5. In 1994 the applicant paid 10,000,000 Russian roubles (RUB) to a cooperative society whose main activity was the construction of garages (*гаражно-строительный кооператив*) in order to be provided with a garage as one of its members. Since she was not provided with one, on 30 January 1995 the applicant sued the society by lodging a claim with the

Lomonosovskiy District Court of Arkhangelsk. The applicant sought to be reinstated as a member of the society and to have her property rights in respect of the garage recognised.

6. The hearing was adjourned on six occasions: twice due to the need to collect evidence; twice due to the respondent's failure to appear, once due to the necessity to summon witnesses and once without any specified reason.

7. On 28 March 1996 the Lomonosovskiy District Court of Arkhangelsk dismissed the applicant's claim. The court found that she had never been accepted as a member of the cooperative society in accordance with the established procedure and, therefore, had not acquired the right to be provided with a garage. On 22 July 1996 the judgment was quashed on appeal and the case was remitted for fresh consideration.

8. The hearing was postponed five times: twice due to the need to collect evidence; twice due to the respondent's failure to appear and once due to the necessity to summon witnesses. The Government claimed that on one occasion, on 24 December 1997, the applicant failed to appear for the hearing. The applicant contested this statement, claiming that she had been present together with her lawyer.

9. On 31 March 1998 the Lomonosovskiy District Court of Arkhangelsk granted the part of the applicant's claim relating to her reinstatement as a member of the cooperative society and dismissed the parts relating to property rights over a garage and non-pecuniary damages. On 8 June 1998 the judgment was quashed on appeal by the Arkhangelsk Regional Court and the case was remitted for fresh examination.

10. On 23 February 1999 the applicant filed an additional claim against the society, requesting the court to declare the decision of its members concerning the annulment of her membership void and to acknowledge her title to the garage.

11. The hearing was postponed three times due to the respondent's failure to appear.

12. On 16 February 2000 the Lomonosovskiy District Court of Arkhangelsk granted the part of the applicant's claim relating to her reinstatement as a member of the cooperative society and awarded the applicant RUB 5,000 in non-pecuniary damages and RUB 2,000 for costs. The court dismissed the remainder of the claim.

13. On 17 April 2000 the judgment was quashed on appeal by the Arkhangelsk Regional Court due to the wrong assessment of evidence and the case was remitted for fresh examination.

14. The hearing was postponed nine times: six times due to the respondent's failure to appear, twice due to the need to collect additional evidence and once due to the expiration of terms of office of the presiding judge. The Government claimed that on one occasion, on 1 September 2000, the applicant failed to appear for the hearing. The applicant contested this statement, claiming that she had been present together with her lawyer.

15. From 13 December 2000 to 9 January 2001 the proceedings were suspended due to the appointment of an examination relating to the value of the garage.

16. On 15 February 2002 the Lomonosovskiy District Court of Arkhangelsk granted the applicant's claim and acknowledged her title to the garage.

17. On 9 April 2003 the judgment was quashed by way of supervisory review by the Presidium of the Arkhangelsk Regional Court due to procedural violations and the case was remitted for fresh examination.

18. On 20 May 2003 the applicant lodged another claim against the society. She requested the acknowledgement of her title to the garage and the invalidation of a sales contract which had been concluded between a third person and the society in respect of this garage.

19. On 27 May 2003 the two cases were joined and a hearing was listed for 26 June 2003.

20. On 26 June 2003 the hearing was adjourned due to the illness of the judge and on the same day the claim to be reinstated as a member of the cooperative society was severed so as to constitute separate proceedings. The proceedings concerning the applicant's title to the garage and the invalidation of the sales contract with a third person were suspended until the examination of the claim as regards her membership of the society.

21. On 11 December 2003 the Lomonosovskiy District Court of Arkhangelsk dismissed the applicant's claim to be reinstated as a member of the cooperative society. On 26 January 2004 the Arkhangelsk Regional Court upheld the judgment and it became final.

22. On 15 April 2004 the proceedings concerning the title to the garage were resumed.

23. On 16 April 2004 the Lomonosovskiy District Court of Arkhangelsk dismissed the applicant's claim. The judgment was not appealed against and became final on 6 May 2004.

THE LAW

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

24. The applicant complained that the length of the proceedings in respect of the title to the garage 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 ..."

25. The Government contested that argument.

26. The proceedings concerning the applicant's title to the garage lasted from 30 January 1995 to 16 April 2004, i.e. nine years, two months and eighteen 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 that time had been pending for over three years.

27. The Court observes that in the present case, at least five years, eleven months and thirteen days fall within the Court's competence *ratione temporis*.

28. Furthermore, the period of fourteen months between 15 February 2002, when a seemingly final domestic decision was delivered, and 9 April 2003, when it was quashed under supervisory review, had to be excluded (see *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004). The remaining period to be assessed is four years six months and twenty three days.

A. Admissibility

29. 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

30. The Court observes 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).

31. The Court considers that the case was not particularly difficult to determine.

32. As to the applicant's conduct, the Government argued that the applicant had contributed to the delay in the proceedings by submitting additional claims and by her occasional failure to appear for the hearings.

33. In respect of the argument concerning additional claims, the Court observes that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interest (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A). As to the applicant's absences, the Court notes that the parties

disagreed on factual matters concerning the applicant's attendance of the hearings on 24 December 1998 and on 1 September 2000. In the Court's opinion, even assuming that the applicant had failed to appear on these two occasions, her conduct could not have contributed notably to the length of the proceedings.

34. The Court observes, on the other hand, that substantial periods of inactivity, for which the Government have not submitted any satisfactory explanation, are attributable to the domestic authorities. After 8 June 1998, for instance, when the judgment was quashed on appeal, the hearings were adjourned three times due to the defendant's failure to appear. The next examination did not take place until 16 February 2000, i.e. one year, eight months and ten days after that date. After the next quashing of the judgment on appeal on 17 April 2000 the hearings were adjourned six times due to the defendant's failure to appear. The next examination did not take place until 15 February 2002. During this time the court adjourned the hearing on two occasions in order to obtain additional evidence.

35. The Court notes that the conduct of the defendant was one of the reasons for the prolongation of the proceedings. In the Court's opinion, the domestic authorities failed to take adequate steps in order to ensure its attendance. During the proceedings the defendant defaulted on at least ten occasions which resulted in considerable delays. There is no indication that the court reacted in any way to that behaviour. Accordingly, the Court considers that the domestic courts did not avail themselves of the measures available to them under national law to discipline the parties to the proceedings and to ensure that the case be heard within a reasonable time (see, *mutatis mutandis*, *Kuśmerek v. Poland*, no. 10675/02, § 65, 21 September 2004).

36. The Court also finds it peculiar that in a case which was of no particular complexity several hearings had to be adjourned in order for additional evidence to be produced (compare with *Di Pede v. Italy*, 26 September 1996, *Reports of Judgments and Decisions* 1996-IV).

37. 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).

38. 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

39. Lastly, the Court has examined the remainder of the applicant's complaints as submitted by her. 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

40. 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

41. The applicant claimed 15,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

42. The Government considered this claim to be excessive and unreasonable.

43. 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 exacerbated by the unreasonable length of the proceedings. Making its assessment on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

44. The applicant also claimed 15,193 Russian roubles for the costs and expenses incurred before the domestic courts.

45. The Government contested the claim.

46. 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 rejects the applicant's claim

because there is no causal link between the violation found and those expenses.

C. Default interest

47. 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 2,000 (two 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 that 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 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President