



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

FIRST SECTION

CASE OF MIKHAYLOVICH v. RUSSIA

(Application no. 30019/05)

JUDGMENT

STRASBOURG

12 February 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Mikhaylovich 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 22 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 30019/05) 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 Diana Ivanovna Mikhaylovich (“the applicant”), on 8 July 2005.

2. The applicant was represented by Mr A. Romanov, a lawyer practising in St Petersburg. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. On 26 November 2007 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 1927 and lives in St Petersburg.

5. She owned and occupied a 15 square metre room in a communal flat in St Petersburg. In 1999 she decided to change her room, which was located on the fifth floor, to a similar room on the ground floor which would better suit her deteriorated state of health. Mr B. offered his help in

improving her housing situation. Since it was impossible, according to the law, to pass over the owners of the remaining rooms in the same flat holding pre-empting rights, in order to sell the room to an individual found by Mr B., the applicant signed on 5 September 1999, following Mr B.'s advice and explanations by the notary, an agreement for the transfer of her room as a gift while in reality she sold it. Mr B. disappeared with the money after the deal. The applicant managed to occupy her room again. She learned that the room had meanwhile been sold to another individual K. who then died.

6. On 8 September 2000 the applicant requested the police to initiate criminal proceedings against Mr B. The police advised her to apply to a court.

7. On 14 September 2000 the applicant instituted proceedings against the buyer before the Frunzenskiy District Court of St Petersburg claiming that the agreement was null and void and requesting the restitution. As her application did not comply with formal requirements she was requested to correct the defects before 18 September 2000. It appears that she did so and on 21 September 2000 the judge issued a ruling on the preparation of the case for examination according to which the judge was to meet the parties on 16 November 2000.

8. On 3 March 2003 the case was assigned to another judge who scheduled a hearing for 16 May 2003. On that day the judge imposed an arrest on the disputed property and adjourned the examination of the case to 29 October 2003 due to the failure of the respondent and the notary to appear and the need to join to the proceedings K.'s heir as a third party. On 29 October 2003 the examination of the case was adjourned to 29 April 2004 for reasons related to the judge's workload.

9. On an unspecified date K.'s heir brought proceedings against the applicant seeking for her eviction from the room. On 29 April 2004 those proceedings were joined with the proceedings in the applicant's case and the hearing was scheduled for 10 November 2004. On that date the court heard the parties and K.'s heir, adjourned the hearing to 26 January 2005 and ordered that certain additional evidence should be collected.

10. On 26 January 2005 the applicant was represented by Mr Romanov who requested that the hearing be adjourned to enable him to examine the case file. The hearing was adjourned to 22 June 2005.

11. On 22 June 2005 the court heard the parties, K.'s heir and witnesses. The applicant's counsel Mr Romanov was ordered to leave the courtroom. According to him, the judge did so because, despite the judge's reluctance, he kept on requesting the court's order for obtaining certain documents as evidence. According to a letter of 24 May 2006 from the St Petersburg prosecutor's office to Mr Romanov, the judge did so in response to Mr Romanov's refusal to stand when addressing the court, as was required by the procedural rules. Mr Romanov unsuccessfully tried to bring criminal proceedings against the judge.

12. The examination of the case was adjourned to 23 November 2005 under K.'s heir's request. On the latter date the applicant and her counsel failed to appear and the hearing was postponed to 29 March 2006.

13. In a judgment of 29 March 2006 the District Court found that the applicant had not given her room as a gift but had sold it. Therefore she had lost her rights to the room including the right to occupy it. The court ordered her eviction. It noted that the applicant could have brought proceedings against Mr B. but had not done so.

14. The applicant did not appeal against the judgment within ten days of the delivery of the judgment on 4 April 2006 in its final form and the judgment became final on 14 April 2006 by virtue of Articles 209 § 1 and 338 of the Code of Civil Procedure.

15. On 30 May 2006 the applicant's counsel lodged an appeal against the judgment. On 5 June 2006 the District Court held that the appeal was time-barred. Mr Romanov appealed against that decision. On 23 August 2006 the St Petersburg City Court dismissed his appeal and upheld the decision of 5 June 2006. The applicant's further appeal by way of supervisory review was dismissed on 6 February 2007.

16. On 29 August 2007 the St Petersburg Bailiffs' Service initiated enforcement proceedings and ordered the applicant to vacate the room. According to the latest available information, the enforcement proceedings are pending.

THE LAW

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

17. 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 ..."

18. The Government contested that argument.

19. The period to be taken into consideration began in September 2000 and ended in April 2006 when the judgment in the applicant's case became final. It thus lasted for about five and a half years for one level of jurisdiction.

A. Admissibility

20. The Government submitted that the applicant had not exhausted domestic remedies as she had not complained of the delay in the examination of her case to the court's president or the Qualification Board of Judges. Nor had she requested that her case be transferred to another judge.

21. The Court notes that the Government did not indicate whether and, if so, how the applicant could obtain relief – either preventive or compensatory – by having recourse to the mentioned authorities. It was not suggested that these remedies could have expedited the determination of the applicant's case or provided her with adequate redress for delays that had already occurred. Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such a relief (see *Kormacheva v. Russia*, no. 53084/99, §§ 61-64, 29 January 2004, and *Olshannikova v. Russia*, no. 77089/01, § 44, 29 June 2006). The Court therefore dismisses the Government's non-exhaustion argument.

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

B. Merits

23. The Government argued that the case was complex and that the applicant's conduct, notably her request for adjournment on 26 January 2005 and her failure to appear on 23 November 2005, had delayed the proceedings for ten months, and that a further delay of about thirteen months had been caused by the conduct of the other participants to the proceedings. The Government acknowledged that the State was responsible for the delay of two years, nine months and 17 days during the periods from 16 November 2000 to 3 March 2003 and from 29 October 2003 to 29 April 2004.

24. The applicant disagreed, noting, in particular, that on 26 January 2005 her counsel had requested an adjournment of the examination of the case only for three days.

25. 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).

26. The Court does not consider that the present case was particularly complex. Nor is it convinced that the applicant can be blamed for delaying

the proceedings for ten months. The court adjourned the hearing at her request on 26 January 2005 and due to her failure to appear on 23 November 2005 for five and four months accordingly. It has not been shown that such long intervals between the hearings in these, as well as in other instances (between 16 May and 29 October 2003, 29 April and 10 November 2004 and between 22 June and 23 November 2005), were justified. The Court further notes with concern the period of total inactivity on the part of the judicial authorities for reasons purely attributable to them during two years and three months from 16 November 2000 to 3 March 2003 and during five months from 29 October 2003 to 29 April 2004.

27. 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).

28. 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 COMPLAINTS

29. The applicant complained that the delays in the examination of her case and the lack of respect on the part of the authorities had violated her rights under Articles 3 and 8 of the Convention. She further complained under Articles 6 § 1 and 10 of the Convention of her lawyer’s removal from the courtroom on 22 June 2005 and of the court’s alleged refusal to explain the reasons for adjourning the examination of the case. Relying on Articles 13 and 17 of the Convention, the applicant also complained about the alleged failure of the various authorities to grant her requests.

30. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court 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

31. 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

32. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

33. The Government contested the claim.

34. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,600 under that head.

B. Costs and expenses

35. The applicant also claimed 50,000 Russian roubles for the legal costs incurred before the domestic authorities and 25,000 Russian roubles for the legal costs incurred before the Court.

36. The Government contested the claim.

37. 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 claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 700 for the proceedings before the Court.

C. Default interest

38. 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 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 700 (seven hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, both amounts to be converted into Russian roubles at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 12 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President