



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

FIRST SECTION

CASE OF GASANOVA v. RUSSIA

(Application no. 23310/04)

JUDGMENT

STRASBOURG

30 April 2009

FINAL

30/07/2009

This judgment may be subject to editorial revision.

In the case of Gasanova 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 7 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 23310/04) 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 Lyudmila Mikhaylovna Gasanova (“the applicant”), on 5 June 2004.

2. 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 Mr G. Matyushkin, their Representative.

3. On 7 March 2008 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 1935 and lives in Mendeleyevo, a town in the Moscow Region.

5. In 1995 the applicant brought a court action against a housing maintenance service. Throughout the proceedings she represented herself. She claimed compensation for damages sustained as a result of poor quality repairs carried out by the respondent in her flat and requested that the works

be done again. She also claimed penalties for the delays in the reparation of her flat. In course of the proceedings the applicant amended her claims.

A. First examination of the case

6. On 27 November 1995 the Solnechnogorskiy Town Court of the Moscow Region (“the Town Court”) dismissed her claim. On 6 February 1996 the Moscow Regional Court (“the Regional Court”) upheld that judgment.

B. Supervisory review and second examination of the case

7. On 28 May 1996 the Presidium of the Regional Court quashed the judgment of 27 November 1995 and remitted the case for a fresh examination to the first-instance court.

8. In the meantime the administration of the Solnechnogorskiy District transferred the municipal housing into the authority of a municipal enterprise, Mendeleyevo Service.

9. On 10 October 1997 the Town Court granted the applicant’s claim in part. On 18 February 1998 the Regional Court upheld that judgment.

C. Supervisory review and third examination of the case

10. On 13 January 1999 the Presidium of the Regional Court quashed the judgment of 10 October 1997 and remitted the case for a new examination to the Town Court. It held in particular that the lower courts had failed to establish the proper defendant in the case. It also indicated that in order to decide on the penalties the first-instance court had to establish whether the parties had previously set any deadlines for the repairs.

11. On 5 March 1999 the Town Court set the examination of the case for 9 April 1999. Between April and October 1999 six hearings were scheduled, however they were adjourned mainly because the respondent and the third party failed to appear.

12. On 26 October 1999 the Town Court established that the municipal enterprise Mendeleyevo Service was the proper respondent in the case and ordered it to repair the applicant’s flat. It awarded the applicant penalties for the delays in the repair of her flat and compensation for non-pecuniary damage. Furthermore, it held that the respondent had been in bad faith in opposing a correct and quick examination of the case and ordered it to pay the applicant compensation for the lost time.

13. On 2 February 2000 the Regional Court quashed the judgment of 26 October 1999 and remitted the case to the first-instance court for a fresh examination. It found that the Town Court had not indicated in its decision which repairs had to be done in the applicant’s flat, it had not followed the

Presidium's decision of 13 January 1999 and it had not given reasons for its conclusions as regards the respondent's bad faith in delaying the proceedings.

D. Fourth examination of the case

14. On 3 May 2000 the Town Court set the examination of the case for 29 June 2000. Between June and December 2000 nine hearings were scheduled. Three of them did not take place because the respondent failed to appear, one hearing was postponed because the applicant did not appear and three hearings were adjourned either because the applicant asked for additional time to amend her claims or because the respondent asked for additional time to submit evidence. One hearing was postponed in order to call an expert to trial.

15. On 19 December 2000 the Town Court held that since the maintenance service no longer existed it was impossible for it to repair the applicant's flat. Therefore, it awarded the applicant the money necessary for such repairs and compensation for non-pecuniary damage. It also ordered the respondent to replace some equipment in the applicant's flat. It further established that the parties had not concluded any written contract in respect of the repairs in the flat and had not set any time-limits; therefore there was no call to award the applicant any penalties in that respect. On the same date the Town Court decided to examine the applicant's claim for payment of penalties for the delayed replacement of sanitary equipment and for compensation for loss of time in separate proceedings.

16. On 18 April 2001 the Regional Court quashed the judgment of 19 December 2000 and referred the case to the first-instance court for a new examination on the ground that the first-instance court had failed to follow its decision of 2 February 2000.

E. Fifth examination of the case

17. On 6 August 2001 the case was adjourned until 26 September 2001 because the parties failed to appear.

18. According to the Government, on 26 September 2001 the proceedings were discontinued at the applicant's request, however on 16 January 2002 the Presidium of the Regional Court quashed that decision in supervisory review on the prosecutor's application. The Government did not provide the Court with copies of those decisions.

19. On 15 February 2002 the Town Court set the examination of the case for 13 March 2002. On that date the case was adjourned until 11 April 2002 because the parties failed to appear.

20. On 11 April 2002 the Town Court left the applicant's claim unexamined on the ground that she had failed to appear at two hearings.

21. On 16 January 2003 the applicant requested the Town Court to reinstate the time-limit for lodging an appeal against the decision of 11 April 2002. In her appeal she claimed that she had failed to appear at two hearings because she had not been duly notified of them and that she had not received a copy of the decision of 11 April 2002. On 21 January 2003 the Town Court granted her appeal, quashed the decision of 11 April 2002 and scheduled the examination of the case for 12 March 2003. On that date the case was again adjourned because the parties failed to appear.

22. On 29 May 2003 the case was adjourned until 23 July 2003 because the judge was on sick leave. On that date the applicant amended her claims. She submitted that since the examination of the case was very lengthy, she had repaired her flat at her own expense and she requested the court to reimburse her those expenses. On the same date the case was adjourned until 25 August 2003. The next three hearings were adjourned either because the respondent company did not appear or because it asked for additional time to submit evidence and comments on the applicant's claims.

23. On 24 November 2003 the Town Court ordered the municipal enterprise Mendeleyevo Service to reimburse the applicant for the repair expenses and pay her non-pecuniary damage sustained as a result of poor-quality repair works. Furthermore, it ordered the defendant to replace the sanitary installations in the applicant's flat. It dismissed the remainder of the applicant's claims.

24. On 16 March 2004 the Regional Court upheld the judgment of 24 November 2003.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

25. 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 as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

26. The proceedings commenced in 1995, when the applicant lodged her claim with the Town Court. However, the Court has competence *ratione temporis* to examine only the period after 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 proceedings at the time. Furthermore, only those periods when the case was actually pending before the domestic courts, that is the periods when there was no effective judgment in the determination of the merits of the applicant's dispute and when the authorities were under an obligation to pass such a judgment, should be taken into account (see, for example, *Skorobogatova v. Russia*, no. 33914/02, § 39, 1 December 2005 with further references). In the present case the proceedings were pending from 13 January 1999, when the Presidium of the Regional Court quashed the judgment of 10 October 1997, until 16 March 2004, when the Regional Court adopted a final decision in the case. Taking into account the above, the period to be considered is approximately five years and two months. During that period the case was examined three times at two levels of jurisdiction.

A. Admissibility

27. 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

28. The Government firstly argued that the case was particularly complex. The proceedings were adjourned several times in order to call experts and third parties to the hearing, three times at the applicant's request to give her time to amend her claims and gather evidence, and three times at the respondent's request. Moreover, the respondent had been reorganised in the course of the proceedings and the courts had had to establish its legal successor. The Government further claimed that the case was adjourned five times because of the applicant's failure to appear, which resulted in four months' delay. On 11 April 2002 the claim was left unexamined because the applicant failed to appear at two hearings. The applicant did not appeal against that decision, but requested that the proceedings be resumed only on 16 January 2003. As a result, the proceedings were delayed by nine months. The domestic courts conducted the proceedings properly. The hearings were scheduled at regular intervals. Only on two occasions was the case adjourned because the judge was on sick leave and was busy in unrelated proceedings. The case was examined several times. The decisions of lower

courts were quashed because the case involved complex legal issues and facts, but not because of serious mistakes committed by judges.

29. The applicant's main argument was that the domestic courts had not conducted the proceedings properly. On 13 January 1999 the Presidium of the Regional Court should have decided her case, instead of sending the case for a fresh examination.

30. 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).

31. The Court is ready to agree with the Government that the proceedings at issue were of a certain complexity. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of proceedings.

32. As regards the applicant's conduct, the Court notes that she did not contest the Government's submissions regarding the delays which occurred because of her failure to appear at hearings. Therefore, the Court may conclude she may be deemed responsible for four months' delay. However, the Court cannot agree that the applicant should be held responsible for the delays occurred as a result of the decision of 11 April 2002. It observes that on 21 January 2003 the Regional Court quashed that decision on the applicant's appeal, having found that she had failed to appear at two hearings for valid reasons. In sum, the Court considers that the applicant was not responsible for any substantial delays in the proceedings.

33. As regards the conduct of the judicial authorities, the Court notes the Government's argument that during the period under consideration the domestic authorities examined the case in several rounds of proceedings. However, the Court does not share the Government's view that the quashing of the lower courts' decisions was not the result of mistakes committed by the judges. The Court observes that on 13 January 1999 the supervisory court quashed the decisions of lower courts on the ground of serious shortcomings and it gave them detailed indications as to how to proceed with the case. However, the Town Court had failed to implement those instructions and the appeal court quashed its decision of 26 October 1999 on those grounds. It had also pointed out other shortcomings in the reasoning of the Town Court's judgment. In the next round of proceedings the Town Court had not followed the appeal court's indications, which led to a new round of proceedings. The Court considers that the shifting of the case between several levels of jurisdictions several times was the main reason for the lengthy examination of the case. Those delays are entirely attributable to the domestic authorities and their failure to examine the case properly. The fact that the domestic courts heard the case several times did not absolve

them from complying with the reasonable time requirement of Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

34. Finally, the Court observes that the applicant was already very elderly when she brought her action and her claim concerned her flat. The Court is of the opinion that the nature of the dispute and the applicant's advanced age called for particular diligence on the part of the domestic courts.

35. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, 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 VIOLATION OF ARTICLE 6 OF THE CONVENTION

36. The applicant lastly complained that the proceedings against the housing maintenance service had been unfair because the domestic courts had not granted her claims in full. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does 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

37. 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

38. The applicant claimed 242,393 Russian roubles (RUB) in respect of pecuniary damage which included the compensation for the repairs which she had carried out in her flat together with indexation in accordance with the refinancing rate of the Russian Central Bank. She also claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government contested her claims. They submitted that the applicant had failed to prove a causal relationship between the length of proceedings in her case and her claims.

40. 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 considers that the applicant must have sustained non-pecuniary damage resulting from the lengthy examination of her case. Ruling on an equitable basis, it awards her EUR 2,400 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The applicant also claimed RUB 74,466 for expenses related to legal representation in the domestic proceedings. In support of her claim she submitted a contract concluded between her and a certain A. Under that contract A. was to provide the applicant with legal support for any claims the applicant would bring before the courts. The applicant also claimed RUB 428 for postal expenses incurred before the Court.

42. The Government contested these claims.

43. 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 are reasonable as to quantum. In the present case, the Court notes that throughout the proceedings the applicant represented herself. The contract concluded with A. indicated that the latter would provide the applicant with legal advice for any claims brought by the applicant before courts. The Court considers that from that document it is not clear that the applicant has paid for legal advice related to the proceedings examined 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. On the other hand the Court considers it reasonable to award the applicant EUR 10 in respect of postal expenses occurred before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

44. 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 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage and EUR 10 (ten euros) in respect of costs and expenses, plus any tax that may be chargeable on those 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 30 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President