



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

1959 · 50 · 2009

FIRST SECTION

CASE OF RYSEV v. RUSSIA

(Application no. 924/03)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

18/09/2009

This judgment may be subject to editorial revision.

In the case of Rysev 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 924/03) 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, Mr Nikolay Leonidovich Rysev (“the applicant”), on 15 December 2002.

2. The Russian Government (“the Government”) were initially represented by Mrs 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 1 July 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 1959 and lives in St Petersburg.

5. In 1987 the applicant inherited one half of a house in Leningrad (now St Petersburg) from his mother.

A. Construction work on the plot of land and the related proceedings

1. Background

6. In 1989 the City Council decided to build new apartment buildings in the area where the applicant's house was situated. It also decided that the houses affected by the construction plan would be demolished and their inhabitants resettled.

7. Between 1992 and 1996 construction work was carried out on the land by private companies commissioned by the City Council. Different underground pipelines were installed. During the construction work the applicant and his family continued to live in their house. The applicant alleges that as a result of the construction work his garden was destroyed and that the largest part of the plot became unfit for garden purposes.

8. On 26 January 1996 the applicant acquired the title to the plot of land surrounding his house.

2. First examination of the case

9. On 22 September 1997 the applicant brought a court action against the Administration of the Primorskiy District of St Petersburg and private companies which had carried out the construction work. He requested the court to declare that the construction work carried out on the plot of land had resulted in *de facto* expropriation of part of his land and to award him compensation for pecuniary and non-pecuniary damage. The case was assigned to judge S.

10. In 1998 and 1999 the case was adjourned several times. In particular, between 10 June and 24 November 1998 no hearings were scheduled because the judge was busy in unrelated proceedings. Several hearings were adjourned either because the defendants and third parties failed to appear or because the applicant amended his claims.

11. In 2000 and 2001 the case was adjourned several times. In particular, between 17 February and 26 April 2000 the proceedings were suspended pending an expert study. Between 24 August 2000 and 15 March 2001 and between 21 June and 10 August 2001 the case was adjourned because the judge was on sick leave. One hearing did not take place because the defendants failed to appear.

12. On 13 August 2001 the Primorskiy District Court of St Petersburg granted the applicant's claims for compensation of pecuniary and non-pecuniary damage in part and dismissed the remainder of his claims.

13. On 18 July 2002 the St Petersburg City Court ("the City Court") held that the first-instance court had failed to properly establish important circumstances of the case and to duly assess the evidence. It quashed the judgment of 13 August 2001 in so far as it awarded the applicant compensation for non-pecuniary damage and remitted the matter to the first-

instance court for a fresh examination. It upheld the remaining part of the judgment.

3. Second examination of the case

14. On 16 August 2002 the case was reassigned to judge K., who set the examination of the case down for 16 January 2003. On that date the case was adjourned until 20 March 2003, because the applicant intended to submit additional evidence to the court.

15. On 4 March 2003 the case was reassigned to judge A. and was scheduled for 22 May 2003. On that date the hearing was postponed until 29 September 2003, at the applicant's request, so that he could undergo a medical examination.

16. Between September 2003 and November 2004 the case was adjourned several times because the applicant amended his claims and the defendants had to study his new claims, the court requested additional evidence from the parties and the applicant needed time to prepare questions to experts. Between 29 April and 8 October 2004 the case was adjourned because the applicant's representative failed to appear. The applicant submitted that he did not ask for those adjournments and requested the District Court to continue the examination of the case.

17. Between 15 February 2005 and 14 March 2006 the proceedings were suspended pending another expert study which had to establish the impact of the construction work on the state of health of the applicant and his daughters.

18. Between March and September 2006 several hearings were adjourned in order to call experts and the applicant's daughter to the hearing. Some hearings were postponed to give the applicant's daughter time to prepare her claims, but also because the applicant amended his claims and the defendant needed time to study them. One hearing did not take place because the defendants did not appear.

19. On 21 September 2006 the Primorskiy District Court, after a fresh examination, dismissed the applicant's claim for compensation for non-pecuniary damage. On 7 December 2006 the City Court upheld that judgment.

B. Alleged prohibitions on the repair of the house and on the sale of the plot of land

20. According to the applicant, on several occasions he intended to repair his house. At his request the authorities replied that his house was still subject to demolition in the near future and that his family would be provided with a flat. The applicant had to abandon his plan to repair the house. The applicant also submitted that he had to decline an offer for the purchase of his house, because it was scheduled for demolition. Also,

prospective buyers of his plot of land withdrew after consulting the city authorities. The applicant did not bring any court proceedings in respect of the alleged prohibitions on the repair of the house and on the sale of the plot of land.

C. Further proceedings

21. In 1999 the Governor of St Petersburg annulled the decision to resettle the inhabitants of the houses affected by the construction plan. It was by then considered unlikely that the City would need to acquire these properties in order to implement its new town plan. The applicant sued the Governor and claimed compensation for non-pecuniary damage. By a final decision of 3 July 2001 the City Court dismissed his claims.

22. The applicant also sued the City and District administrations for their failure to provide him with a flat. By a final decision of 18 October 2001 the City Court dismissed his claims.

THE LAW

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

23. The applicant complained that the length of the proceedings which ended on 7 December 2006 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 ...”

24. The proceedings commenced in 1997, when the applicant lodged his claim with the Primorskiy District Court of St Petersburg. However, the Court will only consider the period of the proceedings which took place 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 the proceedings at the time. The period in question ended on 7 December 2006. Thus, the Court has competence *ratione temporis* to examine a period of approximately eight years and seven months. During that period the case was examined at two levels of jurisdiction.

A. Admissibility

25. 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

26. The Government firstly argued that the length of proceedings in the present case was due to the particular complexity of the case. They further submitted that the applicant had also contributed to the length of the proceedings by amending his claims on several occasions, and by lodging different motions; he had requested an expert study and appealed against the first-instance court decisions. Moreover, the parties had failed to appear at several hearings. The domestic courts had conducted the proceedings properly. They had examined the case twice at two levels of jurisdiction. Some insignificant delays had occurred when the judge was on sick leave or was involved in unrelated proceedings.

27. In the applicant's view, the most significant delays in the proceedings were caused by repeated reassignment of the case to different judges and the poor quality of the first-instance court decisions.

28. 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).

29. The Court agrees with the Government that the proceedings at issue were of a certain complexity as they required examination of a complex factual background, involved several parties and required experts' reports. It also notes that the applicant amended his claims on several occasions. While the Court considers that these factors rendered more difficult the task of the domestic courts, it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of proceedings.

30. As to the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be held responsible for amending his claims, lodging motions, requesting expert opinions and lodging appeals. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by the national law in the defence of his interests (see, *mutatis mutandis*, *Yağcı and*

Sargin v. Turkey, 8 June 1995, § 66, Series A no. 319-A). Furthermore, the Government claimed that the parties had failed to appear at some hearings. The Court considers that the domestic courts should have taken measures to discipline the defendants for their repeated failure to appear. In so far as the applicant is concerned, the Government did not indicate any dates on which the applicant had failed to appear. It is true that between 29 April and 8 October 2004 the case was adjourned because the applicant's representative did not appear. However, even if the applicant may be held responsible for the delay due to the failure of his counsel to appear, the Court considers that the applicant cannot be held accountable for any other substantial delays in the proceedings.

31. 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 twice at two levels. The Court observes in this respect that the need for the second round of proceedings was attributable to the District Court's failure to properly establish important circumstances of the case and to duly assess the evidence. In any event, 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).

32. The Court further observes that from 10 June until 24 November 1998 no hearings were scheduled because the judge was involved in unrelated proceedings. Furthermore, between 24 August 2000 and 15 March 2001 and between 21 June and 10 August 2001 no proceedings took place because the judge was on sick leave. The accumulated delay amounted to more than a year. The Court further notes that a considerable delay occurred when the case was reassigned to judge K., who took the case over on 16 August 2002 and scheduled the case only for 16 January 2003. 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, for instance, *Löffler v. Austria*, no. 30546/96, § 21, 3 October 2000). The manner in which a State provides for mechanisms to comply with this requirement – whether by increasing the numbers of judges, or by automatic time-limits and directions, or by some other method – is for the State to decide. If a State lets proceedings continue beyond the “reasonable time” prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003). The Court finds that in the present case the authorities did not take due measures to speed up the proceedings and, therefore, the delays resulting from the judge's absence from the hearings and reassignment of the case to different judges are imputable to the State.

33. The Court further notes that the proceedings were suspended for more than a year pending the expert examination ordered on 15 February 2005. That expert study had to establish the impact of the construction work on the state of health of the applicant and his daughters. However, such a term of examination appears quite long. In this respect, the Court reiterates that the principle responsibility for the delay due to the expert opinions rests ultimately with the State. It was incumbent on the domestic court to ensure that the expert examination was performed without delay (see, for example, *Rolgezer and Others v. Russia*, no. 9941/03, § 30, 29 April 2008; *Volovich v. Russia*, no. 10374/02, § 30, 5 October 2006; and *Capuano v. Italy*, 25 June 1987, § 32, Series A no. 119). However, the Government did not provide any information to show that the first-instance court had inquired into the progress of the expert report.

34. In sum, the Court considers that the most significant delays in the proceedings are attributable to 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 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

36. The applicant made several complaints under Article 1 of Protocol No. 1 to the Convention. He firstly complained that the construction work carried out on his plot of land had resulted in *de facto* expropriation of part of the land for which he had not received any compensation. The Court reiterates that, in accordance with the general rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-...). Furthermore, the Court’s temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court’s temporal jurisdiction (see *Blečić*, cited above, § 77). In the present case the alleged interference (construction work) with the applicant’s house and land took place between 1989 and 1996, i.e. before the ratification of the Convention by Russia. The proceedings by which the applicant challenged the interference and which ended on 7 December 2006, i.e. after the ratification, did not constitute a new or independent interference with the applicant’s property rights, but were aimed at providing him with redress for the interference that had occurred between

1989 and 1996. It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

37. The applicant further complained about the authorities' failure to resettle him in a different place. The Court observes that the applicant challenged the authorities' failure to provide him with accommodation in two separate actions and the final decisions were taken on 3 July and 18 October 2001 respectively, whereas the application was lodged on 15 December 2002. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

38. Lastly, the applicant complained that he could not repair his house because the authorities intended to demolish it and that he could not sell his house and land either because of the authorities' refusal to authorise the prospective buyers' projects for use of the land or because of the underground pipelines installed there. The Court notes that the applicant did not lodge any complaints in that respect with the competent state authorities. It follows that this complaint must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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."

40. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be submitted in writing within the time-limit fixed for the submission of the applicant's observations on the merits, "failing which the Chamber may reject the claim in whole or in part".

41. In the instant case, on 4 November 2008 the applicant was invited to submit his claims for just satisfaction. He failed to submit any such claims within the required time-limit. Therefore, the Court makes no award under Article 41 of the Convention.

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. *Decides* to make no award under Article 41.

Done in English, and notified in writing on 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President