



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

1959 · 50 · 2009

FIRST SECTION

CASE OF SVETLANA ORLOVA v. RUSSIA

(Application no. 4487/04)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Svetlana Orlova v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 4487/04) 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 Svetlana Yevgenyevna Orlova (“the applicant”), on 8 January 2004.

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 their Representative, Mr G. Matyushkin,.

3. On 29 May 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1975 and lives in Maykop, Republic of Adygeya.

5. The applicant worked in the Supreme Court of the Republic of Adygeya (“the Supreme Court of the RA”) as a consultant. While she was on maternity leave her position was converted to that of assistant to the President of the Supreme Court of the RA. On her return the applicant was

offered various posts, but not the newly created position of assistant to the President. She refused those offers and was dismissed.

6. On 17 July 2001 the applicant lodged a court action against the Supreme Court of the RA with the Maykop Town Court of the Republic of Adygeya (“the Town Court”). She requested the Town Court to reinstate her to her previous position, recover unpaid salary and award compensation for non-pecuniary damage. In the course of the proceedings the applicant amended her claims.

A. First examination of the case

7. On 2 August 2001 the court fixed the first hearing for 6 August 2001. However, on that date the proceedings were postponed until 20 August 2001 because the applicant and her child were sick.

8. On 20 August 2001 the applicant requested the Town Court to postpone the examination of the case until her request to have the case referred to a different court had been examined by a higher court. She also objected to one of the judges sitting in the case.

9. On 20 August 2001 the Town Court dismissed her request and the objection to the judge and rejected her claims as unsubstantiated.

10. On 18 September 2001 the Supreme Court of the RA upheld that judgment.

B. Supervisory review and second examination of the case

11. On 25 November 2002 the Supreme Court of the Russian Federation (“the Supreme Court”), following a request for supervisory review by the Deputy Prosecutor General of Russia, found that the lower courts had erroneously interpreted the substantive law. On those grounds it quashed the judgment of 20 August 2001, as upheld on 18 September 2001, and remitted the case to the Town Court for a fresh examination.

12. On 11 February 2003 the Town Court fixed the hearing for 17 February 2003. However, on that date the proceedings were postponed, at the applicant’s request, until the Supreme Court had examined her request to have the case referred to a different court.

13. On 4 March 2003 the Supreme Court replied to the applicant that there were no grounds to refer her case to a different court.

14. On 16 April 2003 the Town Court, after a fresh examination, found that the applicant’s dismissal had been unlawful, ordered the Supreme Court of the RA to reinstate the applicant to her position, pay her salary arrears and compensation for non-pecuniary damage. The Supreme Court of the RA appealed against the judgment of 16 April 2003.

15. On 5 May 2003 the applicant requested the Supreme Court to refer her case to a different appeal court on the ground that the judges of the

Supreme Court of the RA should not examine an appeal lodged by the Supreme Court of the RA. That would amount to a violation of her right to an independent and impartial tribunal. On the same date the applicant lodged an objection to all the judges of the Supreme Court of the RA and requested that the appeal not be examined until the Supreme Court had replied.

16. However, on 23 May 2003 the Supreme Court of the RA heard the case on appeal and found, in particular, that the Town Court had not properly established the facts of the case. It quashed the judgment of 16 April 2003 and remitted the case to the Town Court for a fresh examination.

17. On 25 June 2003 the Supreme Court informed the applicant that her request that the appeal be heard by a different appeal court could not be examined as the Supreme Court of the RA had already held an appeal hearing, on 23 May 2003.

C. Third examination of the case

18. On 2 July 2003 the Town Court, after a fresh examination, dismissed the applicant's claims as unsubstantiated. The applicant appealed.

19. On 14 July 2003 the applicant requested the Supreme Court of the Russian Federation to refer her appeal against the judgment of 2 July 2003 to a different appeal court in order to have her case heard by an impartial and independent tribunal. She requested the Supreme Court to order the Supreme Court of the RA to postpone the appeal proceedings until its decision on her request.

20. On 8 August 2003 the Supreme Court of the RA upheld the judgment of 2 July 2003.

21. On 19 September 2003 the Supreme Court informed the applicant that her request for her appeal to be referred to a different court could not be examined, as the Supreme Court of the RA had already examined her appeal, on 8 August 2003. It further noted that it was open for her to contest the decisions adopted in her case by lodging an application for supervisory review of those decisions.

22. In 2003 and 2004 the applicant attempted to obtain the re-opening of the proceedings by way of supervisory review. However, the Supreme Court of the RA and the Supreme Court of the Russian Federation either refused to refer the case to the supervisory review court for examination on the merits or refused to examine her applications on procedural grounds.

D. Supervisory review and fourth examination of the case

23. On 21 September 2004 the applicant again applied for the re-opening of the proceedings. On 7 September 2005 a judge of the Supreme Court of

the Russian Federation referred the case to the Civil Chamber of the Supreme Court of the Russian Federation for examination on the merits.

24. On 7 October 2005 the Supreme Court of the Russian Federation, acting by way of supervisory review, found that there had been serious procedural breaches in the examination of the applicant's case. In particular, it found that the Supreme Court of the RA, who was a defendant in the case, had been directly interested in the outcome of the proceedings and thus there were doubts as to its objectiveness and impartiality. The Supreme Court of the RA was also a superior court to the Town Court and could therefore give instructions to the Town Court. In such circumstances, the case should have been referred to a different court. The Supreme Court pointed out that on numerous occasions the applicant had lodged objections to judges of the Town Court and of the Supreme Court of the RA and had requested to have her case referred to a different court. All her requests had been dismissed.

The Supreme Court concluded that the judgment of 2 July 2003, as upheld on 8 August 2003, was unlawful and had to be quashed. It further held that the case had to be examined anew by a court situated in a different region and referred the case to the Sovetskiy District Court of Krasnodar ("the District Court").

25. The District Court fixed the first hearing on 25 January 2006. However, on that date the proceedings were adjourned because the defendant did not attend the hearing.

26. In February 2006 the defendant made several requests to the applicant's new employers concerning the periods of her employment with them and positions occupied.

27. On 1 March 2006 the District Court examined the applicant's claim and found that she had abused her rights when she had refused to accept the positions offered to her in the Supreme Court of RA, and dismissed her claims.

28. On 4 April 2006 the Krasnodar Regional Court ("the Regional Court") upheld that judgment.

E. Supervisory review and fifth examination of the case

29. On 17 October 2007 the Presidium of the Regional Court examined an application by the Deputy Prosecutor General of the Russian Federation for supervisory review of the decisions adopted in the applicant's case. The Presidium held that it was the applicant's right to refuse positions with a lower salary and that it could not be considered an abuse of rights. It also pointed out that the dismissal on an employer's initiative of women with children under three years old was forbidden by Article 170 of the Labour Code (see "Relevant Domestic Law" below, § 34), unless the enterprise had been fully liquidated. Since the Supreme Court of the RA had not been

liquidated, the dismissal of the applicant, who had a small child, had been unlawful and unacceptable.

The Presidium quashed the judgment of 1 March 2006, as upheld on 4 April 2006, and remitted the case to the District Court for a fresh examination.

30. On 7 December 2007, after a fresh examination, the District Court dismissed the applicant's claim in the part concerning her reinstatement. It granted her claim in the part relating to compensation for pecuniary and non-pecuniary damage.

31. On 12 February 2008 the Regional Court examined appeals by the applicant and the prosecutor against the judgment of 7 December 2007, found that the judgment was unlawful and quashed it. The court held that since the applicant's claims for compensation for pecuniary and non-pecuniary damage were closely linked with her claim for reinstatement, the relevant circumstances could not be established by the appeal court and it was necessary to refer the case to the District Court for a fresh examination.

F. Sixth examination of the case

32. On 6 May 2008 the District Court examined the case anew and found that the applicant's dismissal had been unlawful. It ordered that the applicant be reinstated to her position and recovered in her favour 1,101,000 Russian roubles (RUB) in respect of unpaid salary. It dismissed her claims for compensation for non-pecuniary damage. The judgment acquired legal force on 19 May 2008.

33. By a decision of 13 May 2008 the District Court corrected an error in the judgment of 6 May 2008 and held that the defendant had to pay the applicant RUB 791,028 in salary arrears. That decision became final on 26 May 2008.

II. RELEVANT DOMESTIC LAW

34. Russian Labour Code, which was in force until 1 February 2002, provided in Article 170 that the dismissal on an employer's initiative of women with children under three years old was forbidden, unless the enterprise had been fully liquidated.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

35. The applicant complained under Article 6 that the Supreme Court of the RA, which heard her appeals against the judgments of 20 August 2001, 16 April and 2 July 2003, was not impartial and independent because it was a defendant in the case. She further complained under Articles 6 and 13 that she had been deprived of access to a court because on 1 March 2006 the District Court dismissed her claim on the ground of abuse of her rights. She also complained under Article 6 that the domestic courts did not examine her claim within a reasonable time.

The relevant part of Article 6 of the Convention provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

Article 13 of the Convention provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

36. Regarding the applicant's complaint about the lack impartiality of the Supreme Court of the RA, the Court observes that on 7 October 2005 the Supreme Court of the Russian Federation found that there were doubts as to the impartiality of the Supreme Court of the RA, which was a defendant in the case, but also of the Town Court, which was subordinated to the Supreme Court of the RA. It held that in such circumstances the case should have been referred to a different court. The Supreme Court quashed the judgment of 2 July 2003, as upheld on 8 August 2003, and referred the case to the Sovetskiy District Court of Krasnodar. The final decision in the case was adopted on 6 May 2008.

37. The Court reiterates that “a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a ‘victim’ unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention” (see *Dalban v. Romania* [GC], no. 28114/95, § 4, ECHR 1999-VI). In the instant case, the Supreme Court of the Russian Federation explicitly acknowledged that the applicant's right to have her case heard by an impartial court had been infringed, quashed the decisions taken in the case

and referred the case to a court situated in a different region. Furthermore, it was not disputed that the subsequent proceedings fully complied with the guarantees of a fair trial. Therefore, having regard to the contents of the Supreme Court's decision of 7 October 2005, the Court finds that the national authorities have acknowledged, and then afforded redress for, the alleged breach of the Convention (see, for similar reasoning, *Davidchuk v. Russia* (dec.), no. 37041/03, 1 April 2008, with further references). It follows that the applicant can no longer claim to be a "victim" of the alleged violation of her right to have her case heard by an impartial tribunal within the meaning of Article 34 of the Convention and that this complaint must be rejected pursuant to Articles 34 and 35 §§ 3 and 4 of the Convention.

38. As regards the applicant's complaint about the alleged lack of access to a court, the Court observes that the judgment of 1 March 2006 was quashed by way of supervisory review on 17 October 2007. The domestic courts continued the examination of the applicant's claims on the merits and on 6 May 2008 they adopted the final decision in her case. Therefore, it cannot be said that the applicant was deprived of access to a court. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

39. Regarding the applicant's complaint about the excessive length of the proceedings, the Court considers that it raises serious issues of fact and law and requires an examination on the merits. The Court finds 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

1. Period to be considered

40. The Court notes that the proceedings began on 17 July 2001, when the applicant lodged her action before the Town Court, and ended on 6 May 2008, when the District Court adopted the final decision in her case. However, the Court reiterates that 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). Therefore, the proceedings were pending during the following periods:

- (a) between 17 July and 18 September 2001 (2 months and 2 days);
- (b) between 25 November 2002 and 8 August 2003 (8 months and 12 days);
- (c) between 7 October 2005 and 4 April 2006 (5 months and 27 days);
- (d) and between 17 October 2007 and 6 May 2008 (6 months and 19 days).

41. Taking into account the above, the Court considers that the period to be considered is approximately one year and eleven months. During that period the domestic court examined the case in six rounds at two levels of jurisdiction.

2. Reasonableness of the length of proceedings

42. The Government considered that the domestic courts examined the applicant's claim within a reasonable time. The applicant had contributed to the length of the proceedings by amending her claims and lodging motions. On one occasion the case was adjourned because the applicant and her child were sick. The proceedings were also adjourned several times at the defendant's requests. The courts examined the case several times. The proceedings were delayed by the referral of the case to a different court; however, that had been at the applicant's request.

43. The applicant considered that the proceedings were not conducted promptly. Firstly, for a long period of time her claim was examined by courts which were not impartial and independent, despite her requests to refer her case to different courts. It was not until 7 October 2005 that the Supreme Court acknowledged that the courts which had dealt with her case could not be considered impartial and independent and referred the case to a court in a different region. Secondly, significant delays in the proceedings were caused by the poor quality of the court decisions. The domestic courts had repeatedly adopted unlawful decisions in her case and had not followed the instructions given by the higher courts.

44. 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). Furthermore, special diligence is necessary in employment disputes (*Ruotolo v. Italy*, 27 February 1992, Series A no. 230-D, p. 39, § 17).

45. The Court considers that the applicant's case was not complex.

46. 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 her claims and lodging motions. 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 Sargın v. Turkey*, 8 June 1995, Series A no. 319-A, § 66). It is not disputed that the applicant asked to adjourn the proceedings on some occasions. However, the resulting delay was insignificant. Therefore, she cannot be held responsible for any substantial delays in the proceedings.

47. Regarding the conduct of domestic authorities, the Court observes that the domestic courts examined the case in six rounds of proceedings. It is true that when the case was pending before the courts, it was examined without any major delays. However, the proceedings were delayed by the repeated referrals of the case for fresh examination to the first-instance court either by the appeal or the supervisory-review courts. Thus, the proceedings were split into several parts which were spread over almost seven years. In this respect the Court reiterates that the Convention and its Protocols must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory. The right to have one's claim examined within a reasonable time would be devoid of all sense if domestic courts examined a case numerous times, by shifting it from one court to another, even if at the end the accumulated length of proceedings did not appear particularly excessive. Therefore, the fact that in the present case the aggregated length of the proceedings does not appear very long at first glance does not absolve the domestic authorities of their responsibility to account for the reasonableness of the length of proceedings. The Court recalls that it is incumbent on respondent States to organise their legal systems in such a way that their courts can meet the requirements of Article 6 of the Convention, including the obligation to hear cases within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006).

48. The Court observes that there were two major deficiencies in the proceedings at hand. Firstly, in the first three rounds of proceedings the case was examined by courts which could not be considered impartial and independent. That fact was acknowledged by the Supreme Court of the Russian Federation, which on 7 October 2005 quashed the decisions adopted in the applicant's case and referred the case to a court situated in a different region. In that respect the Court notes that since the beginning of the proceedings the applicant had lodged several requests with the Supreme Court of the Russian Federation in which she asked for her case to be referred to a different court to guarantee her right to have her case examined by an independent and impartial tribunal. However, on 4 March 2003 the Supreme Court replied that there were no grounds for referral, and on 25 June and 19 September 2003 the Supreme Court refused to deal with her requests since her appeal had been already examined.

49. Furthermore, after the case was referred to the Sovetskiy District Court of Krasnodar, it was examined in three more rounds. In the first of them, the courts held that the applicant had abused her rights when she

refused all positions offered to her and on that ground they dismissed her claims. However, that decision was quashed by a supervisory review court which indicated that dismissal of the applicant had been unlawful and referred the case for a fresh examination to the first-instance court. In the new proceedings the first-instance court did not implement the instructions of the higher court and that failure resulted in another round of proceedings. Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that, since the remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006; and *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008). 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).

50. Having regard to the above, the Court considers that the failure of the domestic courts to promptly refer the applicant's case to an independent and impartial court and repeated referrals of the case from one court to another resulted in significant delays in the examination of the applicant's case.

51. Regarding what was at stake for the applicant, the Court reiterates that an employee who considers that he or she has been wrongly suspended or dismissed by his or her employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his or her means of subsistence (see *Frydlender*, cited above, § 45). The Court observes that in the present case the applicant was in a particularly vulnerable position, since she was dismissed while she was on maternity leave. The Court considers that those circumstances required a particular diligence on the part of the domestic courts in the examination of the applicant's claims against her employer.

52. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. The applicant complained that domestic courts violated her rights under Article 4 of the Convention by dismissing her claims against her

former employer on the ground that she had refused other positions offered to her. She further complained under Article 8 that her former employer had unlawfully collected information relating to her employment in different organisations. Finally, she complained under Article 14 that she was discriminated against on the ground of her status as a mother.

54. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

57. The Government contested that claim.

58. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the unreasonably long examination of her claims by domestic courts. However, the amount claimed appears to be excessive. Having regard to the nature of the proceedings in the present case and ruling on an equitable basis, it awards her EUR 2,100 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

59. The applicant did not make any claim for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

60. 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 2,100 (two thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 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 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President