



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

1959 · 50 · 2009

FIRST SECTION

CASE OF ZHARKOVA v. RUSSIA

(Application no. 32380/06)

JUDGMENT

STRASBOURG

17 September 2009

FINAL

17/12/2009

This judgment may be subject to editorial revision.

In the case of Zharkova 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 27 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 32380/06) 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 Elza Georgiyevna Zharkova (“the applicant”), on 19 July 2006.

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

3. On 16 June 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 1937 and lives in St Petersburg.

5. On 1 October 1997 the applicant was dismissed from her position as head of department of a state research institute. On 24 February 1998 she lodged a court action against her former employer with the Vuborgskiy District Court of St Petersburg (“the District Court”). She requested the

court to reinstate her in her previous position, recover and index-link the unpaid salary, and award compensation for unused leave and for pecuniary and non-pecuniary damage. In the course of the proceedings the applicant amended her claims. The domestic courts examined her claims three times at two levels of jurisdiction.

A. First examination of the case

6. The case was initially assigned to judge V. who, on 30 November 1998, scheduled a hearing for 3 December 1998. On an unspecified date in 2001 the case was reassigned to judge N.

7. Between 1998 and 2002 the proceedings were adjourned several times for various reasons.

8. During three periods (between 8 December 1998 and 1 March 1999, between 21 March and 28 April 2000, and between 15 January and 11 April 2001) no hearings were scheduled because the judge was on sick leave. The case was also adjourned from 5 February until 10 April 2002 because the court's registrar was on sick leave.

9. The proceedings were adjourned between 3 and 9 June 1999, 29 November 1999 and 21 March 2000, 28 April and 2 June 2000, 19 June and 25 September 2002 because the defendant failed to attend. They were also adjourned from 25 July until 9 August 2000 and from 10 April until 19 June 2002 because the defendant's representative was on a business trip.

10. The case was postponed from 9 June until 5 August 1999 and from 17 until 25 December 2002 because the applicant's counsel failed to attend.

11. The proceedings were also adjourned on several occasions because the applicant amended her claims and the defendant needed additional time to comment on them.

12. On 25 December 2002 the District Court awarded the applicant a certain amount in compensation for unused leave and compensation for legal costs. It further held that the applicant's claim for compensation for delayed payment of her salary was unsubstantiated and dismissed it. Finally, it found that the remainder of the applicant's claims were either unsubstantiated or lodged out of time.

13. On 14 April 2003 the applicant filed the final version of her grounds of appeal against the judgment of 25 December 2002 with the St Petersburg City Court ("the City Court"). A hearing was scheduled for 9 June 2003. On that date the case was adjourned until 23 June 2003 because the applicant did not attend.

14. On 23 June 2003 the City Court quashed the judgment of 25 December 2002 in so far as it had dismissed the applicant's claims for compensation for delayed payment of salary and remitted this part of the case to the District Court for fresh examination. The City Court found that

this part of the judgment was not duly reasoned. It upheld the rest of the judgment.

B. Second examination of the case

15. On 31 July 2003 the case was transmitted to the District Court and assigned to judge T. On 1 September 2003 a hearing was scheduled for 4 November 2003. On that date the case was adjourned until 17 December 2003 because the applicant's counsel failed to attend.

16. Subsequently, the case was adjourned several times for various reasons. In particular, on 25 February and 8 June 2004 the case was adjourned until 2 March and 7 September 2004 respectively because the defendant's representative did not have the necessary power of attorney. On 2 June 2004 the case was adjourned until 8 June 2004 because the judge was busy in unrelated proceedings. On 1 February 2005 the case was adjourned again because the judge was on sick leave.

17. On 17 March 2005, after a fresh examination, the District Court dismissed the applicant's claims. However, on 19 October 2005 the City Court quashed that judgment as unlawful and remitted the case to the District Court for fresh examination.

C. Third examination of the case

18. On 26 October 2005 the case was referred to the District Court and assigned to judge S.

19. On 22 November 2005 the District Court awarded the applicant compensation for delayed payment of her salary. It further held that the domestic law did not provide for further indexation of the amount of compensation. It dismissed the remainder of the applicant's claims. On 7 February 2006 the City Court upheld that judgment.

THE LAW

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

20. 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 ..."

21. The proceedings commenced on 24 February 1998, when the applicant lodged her claim with the District Court. However, the Court only has competence *ratione temporis* to examine 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. In the present case the proceedings were pending until 7 February 2006, when the City Court adopted a final decision in the case. Taking into account the above, the period to be considered is approximately seven years and nine months. During that period the case was examined three times at two levels of jurisdiction.

A. Admissibility

22. 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

23. The Government considered that the domestic courts examined the applicant's claim within a reasonable time. The case was particularly complex. The applicant amended her claims and the court needed additional time to study them and to call third parties and witnesses to the hearings. The applicant had contributed to the length of the proceedings by amending her claims and by lodging additional evidence, motions and appeals. On four occasions the case was adjourned because of her counsel's failure to attend, which resulted in a four-month delay. The courts examined the case several times. They conducted the proceedings promptly, without any delays. The case was adjourned on several occasions because the judge was on sick leave and other judges had a very heavy workload.

24. The applicant considered that the most significant delays in the proceedings were caused by the repeated reassignment of the case to different judges and the poor quality of the first-instance court decisions.

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). 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). The

Court further reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

26. The Court agrees that the proceedings at issue were of a certain complexity, in particular, because the applicant amended her claims on several occasions. However, it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings.

27. 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 and 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*, judgment of 8 June 1995, Series A no. 319-A, § 66). It is not disputed that the applicant failed to attend four hearings. However, the resulting delay of four months is insignificant compared to the overall length of the proceedings. Therefore, the applicant cannot be held responsible for any substantial delays in the proceedings.

28. 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. The Court observes in that respect that on 23 June 2003 the appeal court quashed the judgment of the first-instance court because it had rejected a part of the applicant's claim without due reasoning. However, the new decision of the District Court was again quashed on appeal as unlawful, which led to a third round of proceedings. The Court considers that the repeated shifting of the case between several levels of jurisdiction 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).

29. Furthermore, the Court does not agree with the Government that the domestic courts conducted the proceedings properly. The Court observes that the applicant lodged her claim on 24 February 1998. However, nine months elapsed before the examination of the case was scheduled for 3 December 1998. Of that period more than six months fall under the Court's temporal jurisdiction. In the second round of proceedings, the case was transmitted to the District Court on 31 July 2003; however, it was not until 4 November 2003 that the first hearing was scheduled. The Government did not provide any explanation for those delays. Furthermore, on several occasions (see paragraphs 8 and 16 above) the proceedings were adjourned because the judge or the court's registrar was on sick leave. The

accumulated delay amounted to approximately ten months. 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 are imputable to the State.

30. The Court also notes that on several occasions the hearings were adjourned because the defendant failed to attend, because their representative was on a business trip or because the latter did not have power of attorney to represent the defendant (see paragraphs 9 and 16 above). The accumulated delay amounted to approximately a year. There is no indication that the District Court took any measures to discipline the defendant.

31. In sum, the Court considers that the most significant delays in the proceedings are attributable to the domestic courts.

32. The Court finally notes that the proceedings in the present case concerned a labour dispute between the applicant and her former employer and required a particular diligence on the part of the domestic courts.

33. 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

34. The applicant complained under Article 6 of the Convention that the domestic courts had wrongly applied substantive law. She finally complained under Article 1 of Protocol No. 1 that the domestic courts had refused to index-link the amount of compensation for the delayed payment of her salary. Having regard to all the material in its possession, and in so far as those 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

35. 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

36. The applicant considered that the amount of compensation awarded by the domestic courts had lost its value because the proceedings had lasted a very long time and the domestic courts had refused to index-link the awards. She claimed 3,927 euros (EUR) in that respect. She further claimed EUR 4,708 in respect of pecuniary damage caused by the late payment of her salary and EUR 2,116 for loss of profit which she could have made if she had received her salary without delay. Finally, the applicant claimed EUR 5,000 in respect of non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern any causal link between the violation found and the applicant's claims for pecuniary damage; it therefore rejects her claims in that part. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the lengthy examination of her claim. Ruling on an equitable basis and having regard to the nature of the proceedings in the present case, the Court awards the applicant EUR 4,800 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

39. The applicant also claimed EUR 31 for costs and expenses incurred before the domestic courts and the Court.

40. The Government accepted the applicant's claims under that head.

41. 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, regard being had to the information in its possession and the above criteria, the Court considers that the sum claimed should be awarded in full, plus any tax that may be chargeable.

C. Default interest

42. 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 in respect of the excessive length of the proceedings;
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 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage and EUR 31 (thirty one euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant 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 17 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President