



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

FIRST SECTION

CASE OF TATYANA MAKAROVA v. RUSSIA

(Application no. 20886/04)

JUDGMENT

STRASBOURG

22 December 2009

FINAL

22/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tatyana Makarova 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,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 20886/04) 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 Tatyana Nikolayevna Makarova (“the applicant”), on 23 April 2004.

2. The applicant was represented by Mr A.V. Kiryanov, lawyer practising in Taganrog. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, the former representatives of the Russian Federation at the European Court of Human Rights.

3. On 20 November 2006 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).

4. On 3 December 2009 the Chamber decided that, in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of *Gorovaya v. Russia* and *MP Kineskop v. Russia* (applications nos. 20882/04 and 16141/05) (Rule 42).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Sochi, in the Krasnodar Region.

6. On 31 July 1998 the applicant, together with three other plaintiffs, Mr Kesyan, Ms Gorovaya and MP Kineskop, all represented by the same lawyer, filed an action against the Rostov Regional Department of the Federal Treasury and Mrs O. seeking compensation for pecuniary and non-pecuniary damage on account of the unlawful seizure of goods.

A. First round of court proceedings

7. The first hearing was scheduled for 22 September 1998 but was adjourned owing to the judge's leave. The following hearing on 28 December 1998 did not take place owing to the defendants' failure to appear in court.

8. On 11 February 1999, at the plaintiffs' request, the District Court ordered an expert examination and stayed the proceedings.

9. In September 1999 the experts' report was received. In October and November 1999 the applicant's representative amended the claims.

10. On 25 November 1999 the court proceedings were resumed.

11. Between 25 November 1999 and 3 October 2000 the District Court listed eight hearings, of which three were adjourned because the defendants failed to attend and five because none of the parties attended.

12. By a decision of 3 October 2000, the District Court declined to examine the applicant's claims on the merits on the ground of her repeated failure to appear in court.

13. On 9 July 2001 the applicant's representative requested that the decision of 3 October 2000 be set aside for the reason that neither he, nor the applicant had been duly notified of the hearings. By a decision of 12 July 2001, the District Court allowed the request and resumed the proceedings.

14. By a decision of 5 September 2001, the District Court invited the Taganrog Custom Service to join the civil proceedings as a third party.

15. Upon the third party's request of 10 October 2001, the proceedings were stayed because a related administrative case had been pending before another court. On 30 September 2002 they were resumed.

16. Between 30 September and 20 December 2002, three hearings were adjourned because the parties had failed to attend.

17. On 20 December 2002 the District Court declined to examine the applicant's claims on the merits on the ground of her repeated failure to appear in court.

18. The proceedings were resumed on 23 January 2004, upon the request of the applicant's representative of 19 January 2004, because neither he, nor the applicant had been properly summoned to the hearings.

19. Of ten hearings listed between 20 February and 16 November 2004, four hearings were adjourned owing to Mrs O.'s absence, two owing to the parties' absence, one at the request of the applicant's representative and two because the presiding judge was on leave.

20. By a judgment of 16 November 2004, the Kuybyshevskiy District Court dismissed the applicant's claim. On 16 February 2005 the Rostov Regional Court quashed the judgment of 16 November 2004 on appeal and remitted the matter to the first-instance court for fresh examination.

B. Second round of court proceedings

21. The Kuybyshevskiy District Court listed the first hearing for 18 May 2005. Of three hearings fixed between 18 May and 28 June 2005, two were adjourned because the defendants failed to attend and one was adjourned at the defendants' request.

22. On 28 June 2005, at the plaintiffs' request, the District Court ordered an expert examination and stayed the proceedings.

23. The proceedings were later resumed and, by a judgment of 15 December 2005, the Kyubyshevskiy District Court allowed the applicant's action in part. The judgment of 15 December 2005 was upheld on appeal by the Rostov Regional Court on 8 February 2006.

II. RELEVANT DOMESTIC LAW

24. The Code of Civil Procedure of the Russian Federation, which has been in force since 1 February 2003, provides as follows:

Article 113. Court notices and summons

“1. The parties to the proceedings, as well as witnesses, experts, specialists and interpreters, shall be summoned to a hearing by a letter sent by registered mail with an acknowledgment of receipt, by court summons with an acknowledgment of receipt, by telegram, by phone or fax or by any other means which can guarantee a record of the fact that the summons was sent and was received by the party...

3. Summons shall be served on the parties in such a way that they have enough time to prepare their case and appear at the hearing.”

Article 222. Ground for leaving the case without consideration on merits

“A court shall leave a case without examination on the merits if the parties to the proceedings have failed to attend at least two scheduled hearings.”

Article 223. Procedure and consequences of leaving the case without consideration on merits

“1. Where a case is left without examination on the merits, the proceedings shall be discontinued by a decision of the court...”

3. The court shall revoke its decision if the party concerned adduces evidence disclosing a valid excuse for not attending the hearing(s).”

THE LAW

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

25. 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...”

26. The Government contested that argument.

27. The period to be taken into consideration began on 31 July 1998 when the applicant lodged her action with the Kuybyshevskiy District Court and ended on 8 February 2006 with the final judgment of the Rostov Regional Court. It thus lasted for approximately seven years and seven months at two levels of jurisdiction.

A. Admissibility

28. The Court notes that the application 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

29. The Government stated that the national authorities can be held liable only for a delay of nine months and twenty-four days. They argued that the overall length of the court proceedings was mainly attributable to the complexity of the case and to the conduct of the applicant and her representative. According to the Government, the proceedings had been complex due to the large number of participants, that is to say four plaintiffs, two defendants and one third party, and the need to conduct two

expert examinations. They further asserted that, though the applicant's efforts to ensure the best representation of her interests were understandable, the manner in which she had exercised her procedural rights had undoubtedly contributed to the prolongation of the proceedings. The Government also imputed to the applicant a failure to enquire promptly about developments in the proceedings. In particular, the request by the applicant's representative asking the District Court to set aside their decision of 3 October 2000 to discontinue the proceedings was only submitted on 9 July 2001. Then, only on 19 January 2004 did the applicant's representative request that the proceedings discontinued by the District Court's decision of 20 December 2002 be resumed.

30. The applicant maintained her complaint.

31. 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).

32. The Court is not convinced by the Government's argument that the above-mentioned number of parties and the conducting of the two expert examinations can sufficiently substantiate the complex nature of the dispute. In any event, the Court is of the view that the complexity of the case, taken on its own, cannot justify the seven years and seven months of the proceedings.

33. As to the applicant's conduct in the present case, nothing indicates that her procedural requests were abusive, frivolous or vexatious. She cannot be criticised for amending her claims and seeking to obtain additional evidence, or, in other words, for taking full advantage of the resources afforded by national law in the defence of her interests, even though that resulted in an increase in the length of the proceedings (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A and *Sürmeli v. Germany* [GC], no. 75529/01, § 131, ECHR 2006-VII). The opposite approach would render the concept of litigation meaningless.

34. The Court cannot accept the Government's further argument that the applicant and her representative did not enquire duly about the progress of the proceedings. The Court notes that the national law explicitly provides for an obligation on the part of the domestic courts to inform the parties, in a proper manner, of the dates of hearings (see § 24 above). In the present case, the District Court twice discontinued the proceedings on the ground of the applicant's repeated failure to appear in court, although this was, in fact, owing to its own failure to notify her of the scheduled hearings (see § 12 and § 17 above). In such circumstances, the time that elapsed while she waited in vain for the court summons and the time that elapsed before the

discontinued proceedings were resumed cannot be imputable to the applicant.

35. With regard to the national authorities' conduct, the Court reiterates that it is incumbent on the respondent State to organise its legal system in such a way as to enable its courts to comply with the requirements of Article 6 § 1 (see, *Sürmeli*, cited above, § 129). Referring to the above findings, the Court concludes that on several occasions the District Court failed to properly inform the applicant and her representative of the scheduled hearings and that the result was an aggregate delay of at least two years. The Court further notes that the examination of the case was substantially prolonged in consequence of the defendants' failure to attend a number of hearings. It is not critical to establish whether that was caused by their own fault or by the negligent notification by the District Court. The Court is of the opinion that, in any event, the delay is to be imputable to the respondent State, as the domestic authorities either failed to ensure that the participants were duly notified or to take the appropriate procedural measures that are available under the national law.

36. Having examined all the materials submitted and the existing 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. 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 2,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of a violation of her right to a fair trial within a reasonable time.

39. The Government submitted that the claim was excessive and unreasonable and if the Court were to find a violation of the Convention, this would, in itself, be sufficient just satisfaction.

40. The Court considers that the applicant must have sustained non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. The Court considers that it should award the full sum claimed.

B. Costs and expenses

41. The applicant did not claim reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

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 application admissible;
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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on 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.

Done in English, and notified in writing on 22 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President