



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

FIRST SECTION

CASE OF BEZYMANNAYA v. RUSSIA

(Application no. 21851/03)

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 Bezmyannaya 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 3 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 21851/03) 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, Ms Galina Aleksandrovna Bezmyannaya (“the applicant”), on 5 June 2003.

2. The applicant was represented by Mr I. Skripnichenko, a lawyer practising in Belgorod. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that she had been denied effective access to a court due to the domestic courts' refusal to examine the merits of her claim.

4. On 22 June 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in the town of Belgorod in the Belgorod Region.

6. On 29 December 1992 the applicant's husband bought municipal property, including the premises of a former restaurant. According to the applicant, several years later her husband, fearing for his life and for the safety of his family, signed a contract with a number of individuals, transferring title to the restaurant building to them.

7. On 5 May 2002 the applicant, in the interests of her minor child, lodged an action against her husband, seeking invalidation of the contract. She claimed that her husband had acted *ultra vires* while signing the contract, as he had not been the sole owner of the building. A part of the building had belonged to their minor child.

8. The Sverdlovskiy District Court of Belgorod accepted the claim for examination and listed a hearing. However, on 13 August 2002 it transferred the case to the Commercial Court of the Belgorod Region for further adjudication. The relevant part of the decision read as follows:

“By virtue of paragraph 1 of Section 4 of the Code of Commercial Procedure of the Russian Federation, which entered into force on 6 August 2002, the present case falls into the jurisdiction of a commercial court.

Under Article 7 of the Federal Law “On Putting into Operation the Code of Commercial Procedure of the Russian Federation” cases which are in the process of adjudication by courts of general jurisdiction and which, according to the Code of Commercial Procedure..., have been placed under the jurisdiction of commercial courts, should be transferred by courts of general jurisdiction, with the plaintiff's consent, to commercial courts within two weeks after paragraph 1 of Section 4 of the Code of Commercial Procedure has entered into force... If the plaintiff does not consent to the transfer of the case from the court of general jurisdiction to the commercial court, the court of general jurisdiction discontinues the proceedings in the case at issue because the case is not within the jurisdiction of the court of general jurisdiction.

At the hearing the plaintiff, [the applicant], consented, which she had confirmed in writing, to the transfer of the case to the commercial court.

The court finds it necessary to transfer the case pertaining to the [applicant's] action against [her husband]... to the Commercial Court of the Belgorod Region.”

An appeal against the District Court's decision could have been lodged before the Belgorod Regional Court within ten days.

9. On 17 October 2002 the Commercial Court of the Belgorod Region discontinued the proceedings because it found that it had no jurisdiction over the claim.

10. On 10 December 2002 the Appeal Division of the Commercial Court of the Belgorod Region upheld the decision of 17 October 2002, endorsing the reasons given by the Commercial Court. On 24 March 2003 the Federal Commercial Court of the Central Circuit, in the final instance, upheld the decisions of 17 October and 10 December 2002.

II. RELEVANT DOMESTIC LAW

11. The RSFSR Code of Civil Procedure of 11 June 1964 (in force at the material time) provided that a case accepted for consideration by a court in compliance with the jurisdictional rules was to be examined on its merits, even if it subsequently fell under another court's jurisdiction. A case could only be transferred to another court if: (a) it was considered that another court could examine the case faster and more correctly, particularly if another court sat in the place where the majority of items of evidence was situated; (b) if a respondent whose place of residence had previously been unknown asked the court to transfer his or her case to the court at the place of his or her residence; (c) if, after one or several judges had stepped down from the case, a further change of judge in that court was no longer possible; and (d) if, during the examination of the case, it became apparent that the case had been accepted for examination in violation of jurisdictional rules (Article 122).

12. The Russian Code of Commercial Procedure of 24 July 2002 provides that a commercial court should return a statement of claims to a plaintiff, if, when deciding whether to accept the action for adjudication, it establishes that the case does not fall within its jurisdiction (Article 129). If, however, a commercial court accepts the case for adjudication and subsequently discovers that it has no jurisdiction over the claim, it should discontinue the proceedings and issue a decision, explaining the reasons for discontinuation (Article 150). If the proceedings were discontinued, an individual is barred from bringing before a commercial court an action between the same parties on the same subject matter and based on the same grounds (Article 151 § 3).

THE LAW

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

13. The applicant complained under Article 6 § 1 of the Convention that the domestic courts had refused to examine the merits of her action against her husband, thus denying her access to court. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

A. Submissions by the parties

14. In their sole line of argument, the Government submitted that the applicant had failed to exhaust domestic remedies. In particular, the Government stressed that the applicant could have lodged an appeal with the Belgorod Regional Court against the District Court decision of 13 August 2002 or could have challenged that District Court ruling by way of lodging a supervisory-review application. They further cited the Constitutional Court of the Russian Federation as an alternative remedy which the applicant had failed to employ. The Government did not comment on the merits of the applicant's complaint.

15. The applicant maintained her complaints, arguing that the domestic courts were better placed to interpret the rules on the limitations to their judicial powers, including the jurisdiction clauses. She stressed that it had been open to the domestic courts, in case of a doubt or legal lacuna, to ask a higher-instance court or the Constitutional Court of the Russian Federation to clarify the jurisdictional matter. While consenting to the transfer of her case to the Commercial Court, she had no reason to doubt the correctness of the District Court decision and she could not foresee the subsequent commercial courts' refusal to examine her action. Therefore, she did not appeal against the District Court decision of 13 August 2002 within the ten-day time-limit established by the RSFSR Code of Civil Procedure.

B. The Court's assessment

1. Admissibility

16. The Court notes that the Government listed three possible avenues of exhaustion which could have been employed by the applicant, in particular an appeal to the Belgorod Regional Court, a supervisory review application and a complaint to the Constitutional Court of the Russian Federation. In this connection the Court will first reiterate the principles which govern the application of the rule on exhaustion of the domestic remedies.

(a) General principles

17. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention - with which it has close affinity -, that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the

provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

18. Under Article 35 of the Convention, normally recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). Article 35 also requires that the complaints made before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

19. Furthermore, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible and was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement.

20. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot*, cited above, § 34). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the

applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

(b) Application of the general principles to the present case

21. Turning to the present case, the Court first reiterates the Government's argument that a complaint to the Constitutional Court could have provided the applicant with redress for the alleged violation of her rights. In this connection, the Court observes that the decisive question in assessing the effectiveness of a remedy concerning a complaint of denial of access to court is whether the applicant could have raised that complaint before the Constitutional Court in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 6 § 1 of the Convention. The remedy can be either preventive or compensatory in nature (see, among other authorities, *Koval v. Ukraine*, no. 65550/01, § 94, 19 October 2006). The Court notes that the Government did not explain how a complaint to the Constitutional Court could have offered the aforementioned preventive or compensatory redress or both for allegations of denial of access to a court which had been contrary to Article 6 of the Convention. Furthermore, they did not indicate whether the applicant could have directly lodged a complaint with the Constitutional Court, without the formal institution of the proceedings being dependent on a preliminary examination of the complaint by the Secretariat of the Constitutional Court, whether the Constitutional Court had the jurisdiction to quash the decision of the court of general jurisdiction and to examine the merits of the applicant's action and whether the Constitutional Court's finding of a violation of the applicant's rights could have given rise to a retrial directly, without the applicant being obliged to lodge an application for a retrial with a competent judicial authority (see *Feldek v. the Slovak Republic* (dec.), no. 9032/95, 15 June 2000, in which the Court, on the basis of the Government's negative answers to all those questions, found that the Constitutional Court could not be considered an effective domestic remedy). Accordingly, the Court does not find that the Government have discharged the burden upon them of proving that a complaint to the Constitutional Court was accessible to the applicant and capable of providing redress in respect of her Convention complaint.

22. As to the Government's further argument pertaining to a supervisory review application, the Court reiterates that it has already found in a number of cases against Russia that supervisory-review proceedings are not an effective remedy for the purpose of Article 35 § 1 of the Convention (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999, and, more recently, *Gusinskiy v. Russia* (dec.), no. 70276/01, 22 May 2003). In particular, the Court held that under the RSFSR Code of Civil Procedure, in force at the material time, the power to institute supervisory-review proceedings was discretionary, that is to say it was solely for the State

official concerned to decide whether or not a particular case warranted a supervisory review (see *Ryabykh v. Russia*, no. 52854/99, § 34, ECHR 2003-IX). It follows that supervisory-review proceedings could not have been set in motion by a party and that that “remedy” was not accessible to applicants (see, for similar reasoning, *Russian Conservative Party of Entrepreneurs and Others v. Russia*, nos. 55066/00 and 55638/00, § 88, ECHR 2007-I). The Court sees no reason to depart from that finding in the present case and rejects this aspect of the Government's non-exhaustion objection.

23. As to the third avenue allegedly open to the applicant, the Government insisted that an appeal against the District Court's decision of 13 August 2002 before the Belgorod Regional Court could have been an effective remedy for the applicant's complaint about the District Court's refusal to examine the merits of her action. At the same time the applicant, without disputing the effectiveness of that “remedy” *per se*, argued that she had had no reason to make use of that avenue when she had still been able to employ it, that is within ten days after the decision of 13 August 2002 had been issued. In the applicant's opinion, the decision of 13 August 2002 had not yet barred her access to a court as she had still had legitimate expectation that her action would be examined by the competent judicial authority.

24. In this connection, the Court reiterates that on 13 August 2002 the Sverdlovskiy District Court transferred the applicant's case to the Commercial Court for examination on the merits. The transfer was made with the applicant's consent. At the same time the District Court noted that should the applicant refuse the transfer, the proceedings in her case would be discontinued (see paragraph 8 above).

25. The Court observes that the decision to transfer the applicant's action to the Commercial Court was based on the District Court's assessment of the procedural rules governing the subject matter over which it had jurisdiction. The Court subscribes to the general assumption that domestic courts are better schooled in and more able to interpret complex and rather technical legal rules defining the jurisdictional limits of their judicial power. In such a situation it is not surprising that the applicant did not lodge an appeal against the decision of 13 August 2002, seeing no reason to doubt the correctness of the District Court's finding and consenting to the transfer of the case, particularly so when she was faced with a dilemma: either to proceed with her action in another court or to endure the closing of the proceedings (see paragraph 8 above). In reaching this conclusion the Court attributes particular weight to the fact that the District Court grounded its decision of 13 August 2002 on interpretation of the legal act which had entered into force only a week before (see paragraph 8 above). Furthermore, the Government did not argue that the District Court's interpretation of the jurisdictional parameters of its powers had been so manifestly incorrect that

it had become absolutely evident to the applicant that the transfer of her case to the Commercial Court would result in the discontinuation of the proceedings (see, for similar reasoning, *Hajiyev v. Azerbaijan*, no. 5548/03, § 43, 16 November 2006). In fact, the Government have never identified the court, either District or Commercial, which had the authority to examine the applicant's case.

26. In addition, the Court observes that it was not until 17 October 2002, the date on which the Commercial Court's decision on discontinuation of the proceedings was issued, that the applicant could finally foresee the consequences of her decision to consent to the transfer of the case from the District Court to the Commercial Court. However, by that time the avenue of appeal against the decision of 13 August 2002 was no longer open to her as the ten-day time-limit envisaged for institution of appeal proceedings had expired. The Court is mindful of the fact that in these circumstances the applicant still tried to avail herself of the judicial protection. She appealed against the Commercial Court's decision of 17 October 2002 to a higher-ranking court and subsequently, being unsuccessful in her appeal, challenged the latter court's decision. In these circumstances the Court finds that the applicant cannot be said to have failed to exhaust domestic remedies by not bringing a formal appeal against the decision of 13 August 2002. It follows that the complaint cannot be declared inadmissible for non-exhaustion of domestic remedies.

27. The Court further notes 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.

2. Merits

28. The Court considers firstly that the restriction on the applicant's ability to take legal proceedings must be considered from the perspective of the right of access to a court. It reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. The Court observes that it would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit without also protecting the right of access to a court which makes it in fact possible to benefit from such guarantees. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings (see *Golder v. the United Kingdom*, 21 February 1975, Series A no. 18, §§ 31-39). The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly true of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (see *Airey v. Ireland*, 9 October 1979, Series A no. 32, § 24). A restrictive

interpretation of the right of access to a court guaranteed by Article 6 § 1 would not be consonant with the object and purpose of the provision (see *De Cubber v. Belgium*, 26 October 1984, Series A no. 86, § 30).

29. The Court further reiterates that the “right to a court” is, however, not absolute. The right by its very nature calls for regulation by the State and may be subject to limitations (see *Ashingdane v. the United Kingdom*, 28 May 1985, Series A no. 93, § 57). At the same time, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. Lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Levages Prestations Services v. France*, 23 October 1996, *Reports of Judgments and Decisions* 1996-V, § 40, and *Luordo v. Italy*, no. 32190/96, § 85, ECHR 2003-IX).

30. Turning to the facts of the present case, the Court observes that, following the District Court's decision of 13 August 2002, the applicant's civil action by which she sought the invalidation of the contract was transferred to the Commercial Court on the ground that the subject matter of the action was outside the District Court's judicial power. In its turn, the Commercial Court, whose decision was subsequently endorsed by the two higher-instance courts, decided that it also lacked authority to adjudicate the applicant's case and that the District Court should have taken jurisdiction over the matter. As a result the proceedings in the applicant's case were discontinued.

31. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The role of the Court is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of rules of a procedural nature (see *Miragall Escolano and Others v. Spain*, no. 38366/97, §§ 33-39, ECHR 2000-I).

32. The Court accepts that the rules on jurisdictional parameters to judicial powers of various courts within the entire network of the State's judicial system are undoubtedly designed to ensure the proper administration of justice. Those concerned must expect those rules to be applied. However, the rules in question, or the application of them, should not prevent litigants from making use of an available remedy (see, *mutatis mutandi*, *Leoni v. Italy*, no. 43269/98, § 23, 26 October 2000).

33. In the present case the Court adheres to the applicant's description of the situation in which she found herself as a result of the domestic courts' interpretation of the jurisdictional parameters to their authority. She was locked in a vicious circle where the national courts were pointing at each other and refusing to hear her case in view of the alleged limitations on their

judicial powers. The domestic courts virtually left the applicant, through no fault of her own, in a judicial vacuum (see, *mutatis mutandis*, *Marini v. Albania*, no. 3738/02, § 122, ECHR 2007-XIV (extracts)). In this regard the Court is also mindful of the fact that the Government did not advance any justification for the domestic courts' actions and did not indicate any legitimate aim it could have possibly pursued. The Court, however, is not prepared to substitute the Government on that account (see, for similar reasoning, *Dunayev v. Russia*, no. 70142/01, § 37, 24 May 2007). It therefore finds that there has been an unjustified infringement of the very essence of the applicant's right to a tribunal.

34. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it 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

36. 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

37. The applicant claimed 1,515,150 euros (EUR) in respect of pecuniary damage, representing the cost of the building, the title to which had been ceded by the applicant's husband. She further claimed EUR 1,000,000 in respect of non-pecuniary damage.

38. The Government submitted that the applicant's claim for pecuniary damage had no causal link to the alleged restriction on the applicant's right of access to a court. They further argued that the claim in respect of non-pecuniary damage was highly excessive. The Government drew the Court's attention to a number of cases in which violations of the applicants' rights under Article 6 of the Convention had been found. They argued that the

amount of compensation in those cases did not exceed EUR 3,000 and asked the Court, if it was to find of a violation in the present case, to apply a similar standard.

39. 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, it notes that it has found a violation of the applicant's right of access to a court in the present case. The Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

40. The applicant, without submitting any documents in support, also claimed EUR 800 for the costs and expenses incurred before the Court.

41. The Government stressed that the applicant's claims were unsubstantiated.

42. 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 applicant did not produce any document justifying her claim (copies of contracts with lawyers, invoices, payment certificates, and so on.). The Court is unable to determine whether the expenses claimed by the applicant were, in fact, incurred in the amount she claimed and it therefore makes no award under this head.

C. Default interest

43. 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 a denial of access to a court 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 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

(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 22 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President