

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

FIRST SECTION

CASE OF RYABIKINA v. RUSSIA

(Application no. 44150/04)

JUDGMENT

STRASBOURG

7 June 2011

FINAL

07/09/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Ryabikina v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 17 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 44150/04) 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 Larisa Ivanovna Ryabikina ("the applicant"), on 12 November 2004.

2. The applicant was represented by Mr V.N. Voblikov. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that she had been denied access to court.

4. On 22 September 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 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lived in Ryazan. On 29 September 2008 the applicant died. On 3 August 2009 Mr Yaroslav Voblikov, the late applicant's son (born on 19 August 1977), expressed his wish to pursue the proceedings before the Court.

A. Claim for pension arrears

6. On 6 April 1999 the applicant brought a claim against the regional social security service for pension arrears.

7. On 25 December 2000 the Bilibino District Court of the Chukotka Region granted the applicant's claim in part. The applicant appealed. On 15 February 2001 the Chukotka Regional Court quashed the judgment of 25 December 2000 on appeal and remitted the matter to the District Court for fresh consideration.

8. On 28 April 2001 the District Court partly granted the applicant's claims. On 4 October 2001 the Regional Court upheld the judgment of 28 April 2001 on appeal.

9. On 25 October 2001 the applicant obtained a writ of execution. Subsequently the judgment was enforced.

B. Action for compensation for the excessive length of proceedings

10. On 17 September 2002 the applicant brought an action against the Treasury of the Russian Federation, seeking compensation for non-pecuniary damage sustained as a result of the excessive length of the proceedings concerning her claim for pension arrears. She argued that the courts had failed to observe the time-limits prescribed by the Russian Code of Civil Procedure.

11. On 13 January 2003 the Anadyr Town Court of the Chukotka Region partly granted the applicant's claims.

12. On 27 March 2003 the Chukotka Regional Court quashed the judgment of 13 January 2003 on appeal and remitted the matter to the Town Court for fresh consideration.

13. On 9 October 2003 the Town Court dismissed the applicant's claims without consideration on the merits. Referring to Ruling No. 1-P adopted by the Constitutional Court on 25 January 2001, the court noted that current laws did not determine the grounds or procedure for adjudicating a claim for damages on account of the courts' failure to comply with statutory time-limits. In particular, the court noted as follows:

> "... pursuant to this Ruling of the Constitutional Court of the Russian Federation, claims for compensation for damage arising from unlawful actions of a judge should be adjudicated in accordance with the rules – other than the rules of civil procedure which are yet to be determined by the legislature (including the rules governing the jurisdiction of this type of case). The court does not contest the applicant's constitutional right to sue the state for compensation in respect of non-pecuniary damage. However, given that Ruling No. 1-P of the Constitutional Court refers to certain rules of adjudication, which have not yet been determined, the court considers that it should discontinue the consideration of the [applicant's] claims."

14. On 13 May 2004 the Regional Court upheld the decision of 9 October 2003 on appeal, finding as follows:

> "The current rules governing the adjudication of civil claims, as set forth in the Russian Code of Civil Procedure, do not take into account all the specifics of the matters concerning compensation for damage caused by unlawful actions or failure to act on the part of a court (or judge) when the case is not considered on the merits. This is supported by the prescription made by the Constitutional Court for the [Parliament of Russia] to legislate on the issue. Therefore, the current rules [of civil procedure] do not apply to the adjudication of the applicant's claims."

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Article 1064 of the Civil Code contains general provisions on liability for the infliction of damage. It establishes that damage inflicted on the person or property of an individual shall be reimbursed in full by the person who inflicted the damage (Article 1064 § 1).

16. Article 1070 of the Civil Code determines liability for the damage caused by unlawful actions of law-enforcement authorities or courts. In particular, it is established that the federal or regional treasury shall be liable for the damage sustained by an individual in the framework of the administration of justice provided that the judge's guilt has been established in a final criminal conviction (Article 1070 § 2).

17. By Ruling no. 1-P of 25 January 2001, the Constitutional Court found that Article 1070 § 2 of the Civil Code was compatible with the Constitution in so far as it provided for special conditions on State liability for the damage caused in the framework of administration of justice. It clarified, nevertheless, that the term "administration of justice" did not cover the judicial proceedings in their entirety, but only extended to judicial acts touching upon the merits of a case. Other judicial acts – mainly of a procedural nature – fell outside the scope of the notion "administration of justice". State liability for the damage caused by such procedural acts or failures to act, such as a breach of the reasonable length of court proceedings, could arise even in the absence of a final criminal conviction of a judge if the fault of the judge has been established in civil proceedings. The Constitutional Court emphasised, moreover, that the constitutional right to compensation by the State for the damage should not be tied in with the personal fault of a judge. An individual should be able to obtain compensation for any damage incurred through a violation by a court of his or her right to a fair trial within the meaning of Article 6 of the Convention. The Constitutional Court held that Parliament should legislate on the grounds and procedure for compensation by the State for the damage caused by unlawful acts or failures to act of a court or a judge and determine territorial and subject-matter jurisdiction over such claims.

18. The Russian Code of Civil Procedure established that a civil claim should be dismissed, in particular, if it was not amenable to examination in civil proceedings (Article 220).

THE LAW

I. AS TO *LOCUS STANDI* OF MR VOBLIKOV

19. Following the applicant's death, her son Mr Ya. Voblikov expressed the wish to pursue the application. He submitted that he was her heir and that he intended "to fulfil his mother's will to obtain the judgment of the European Court of Human Rights in her case".

20. The Court reiterates that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court. It has done so most frequently in cases which primarily involved pecuniary, and, for this reason, transferable claims. However, the question whether such claims are transferable to the persons seeking to pursue an application is not the exclusive criterion. In fact, human rights cases before the Court generally also have a moral dimension and persons near to an applicant may have a legitimate interest in seeing to it that justice is done even after the applicant's death (see, among other authorities, *Horváthová v. Slovakia*, no. 74456/01, § 26, 17 May 2005).

21. Having regard to the circumstances of the present case, the Court accepts that the applicant's son has a legitimate interest in pursuing the application in the late applicant's stead. It will therefore continue dealing with the case at his request.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22. The applicant complained under Article 41 of the Convention that the domestic courts had refused to consider her claims for damages against the Treasury of the Russian Federation. The Court will examine the complaint under Article 6 § 1 of the Convention, which, 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 [a] ... tribunal ..."

23. The Government did not comment.

A. Admissibility

24. 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

25. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the "right to court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see *Sergey Smirnov v. Russia*, no. 14085/04, § 25, 22 December 2009, and *Teltronic-CATV v. Poland*, no. 48140/99, § 45, 10 January 2006).

26. The "right to court" is not absolute and may be subject to limitations. The Court must be satisfied that the limitations applied do not restrict or reduce the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired. Furthermore, the Court underlines that a limitation will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see *Sergey Smirnov*, cited above, §§ 26-27; *Jedamski and Jedamska v. Poland*, no. 73547/01, § 58, 26 July 2005*;* and *Kreuz v. Poland*, 19 June 2001, no. 28249/95, §§ 54 and 55, ECHR 2001-VI).

27. Finally, 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 Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Société Anonyme Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, § 17, ECHR 2000-XII).

28. In the instant case the applicant attempted to sue the Russian treasury for the damage caused by the allegedly excessive length of civil proceedings concerning her pension claims. The possibility of lodging such claims was envisaged in Articles 1064 and 1070 of the Civil Code of the Russian Federation (see paragraphs 15 and 16 above). The Constitutional Court clarified that State liability for the damage caused by any violation of the litigant's right to a fair trial, including a breach of the reasonable-time guarantee, would arise even if the fault of the judge was established in civil – rather than criminal – proceedings and that the right to compensation by the State for the damage should not be tied in with the personal fault of a judge (see paragraph 17 above). It also held that an individual should be able to obtain compensation for any damage incurred through a violation of his or her right to a fair trial within the meaning of Article 6 of the Convention. It follows that the applicant's claim concerned her civil rights

of a pecuniary nature and should have been amenable to examination in civil proceedings.

29. The domestic courts dismissed the applicant's claim on the grounds that the legislature had not yet determined jurisdiction over such claims. This limitation on the right to court excluded any possibility of having such a claim examined and, accordingly, undermined the essence of the applicant's right of access to court. The Government did not offer any justification for the lack of legislation governing the procedure for examination of such claims.

30. Accordingly, the Court finds that the applicant was denied the right of access to court and that there has been a violation of Article 6 § 1 of the Convention in that regard.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. Lastly, the applicant complained under Articles 6 and 13 of the Convention that the two sets of civil proceedings in her case had been unreasonably long. However, having regard to all the material in its possession, the Court finds that there is no appearance of a violation of the provisions invoked. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government submitted that the applicant's allegations should not give rise to an award of compensation. In any event, they considered the applicant's claims excessive and unsubstantiated.

35. The Court considers that the applicant must have suffered distress and frustration as a result of the refusal of the domestic courts to entertain his claims. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. The particular amount claimed is however excessive. Making its

assessment on an equitable basis, the Court awards the applicant EUR 7,200 for non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

36. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the domestic courts' refusal to consider on the merits the applicant's claim for compensation in respect of non-pecuniary damage resulting from the allegedly excessive length of civil 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 Mr Yaroslav Voblikov, the late applicant's son, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,200 (seven thousand and two 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 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Nina Vajić President