

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

FIRST SECTION

CASE OF VOLODINA v. RUSSIA

(Application no. 24411/05)

JUDGMENT

STRASBOURG

19 April 2011

This judgment is final but it may be subject to editorial revision.



In the case of Volodina v. Russia,

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

George Nicolaou, *President,*
Anatoly Kovler,
Mirjana Lazarova Trajkovska, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 29 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 24411/05) 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 Faina Dmitriyevna Volodina ("the applicant"), on 2 June 2005.

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

3. On 12 February 2009 the President of the First Section decided to give notice of the application to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1940 and lives in Tula.

A. The court proceedings

1. Proceedings before 1998

5. On 1 April 1994 the applicant brought a court action against a troop unit no. 92914 *(войсковая часть № 92914*), her former employer. She sought reinstatement in her job, lost wages and non-pecuniary damages.

6. By a judgment of 17 April 1996, the Tsentralniy District Court of Tula upheld the applicant's action in part. In 1997 both parties to the case

brought their appeals. However, the applicant subsequently withdrew her appeal and the defendant's appeal was not accepted by the court. The exact date when the judgment became final is unknown.

2. Proceedings in 1998 and 1999

7. On 1 June 1998 the Presidium of the Tula Regional Court, on request of the Chairman of the Tula Regional Court, by way of supervisory review proceedings quashed the judgment of 17 April 1996 and remitted the case to the first-instance court for a fresh examination.

8. The first hearing, which was scheduled for 13 November 1998, was postponed because the judge was involved in the examination of another case.

9. The next hearing was scheduled for 3 March 1999. It did not take place owing to both parties' failure to appear.

10. On 5 May 1999 the applicant asked the court to conduct an expert examination. The court adjourned the hearing in view of the need to request additional documents from the defendant.

11. The following hearings, which were scheduled for 25 June and 2 August 1999, did not take place because of the involvement of the judge in the examination of another case and the judge's illness, respectively.

12. On 11 September 1999 the defendant's representative did not attend.

13. On 20 September 1999 the court ordered the expert examination and stayed the proceedings.

3. Proceedings in 2000

14. On 13 March 2000 the District Court decided to resume the proceedings. The first hearing was scheduled for 19 May 2000. It was not held owing to the expiry of the presiding judge's term of office.

15. The hearing of 18 September 2000 did not take place because the presiding judge was involved in the examination of another case.

16. On 16 November 2000 the defendant's representative failed to attend the hearing.

17. On 6 December 2000 the court decided to give the applicant time to amend her claims.

4. Proceedings in 2001

18. The hearings on 16 January and 20 February 2001 were postponed owing to the involvement of the judge in the examination of another case and the judge's illness, respectively.

19. The hearing on 30 March 2001 was adjourned because the court decided to give parties time to negotiate the arrears.

20. On the next hearing, which was scheduled for 14 May 2001, the defendant's representative did not appear.

21. On 1 June 2001 the court, at the applicant's request, asked certain documents from the defendant.

22. The hearing on 7 September 2001 was adjourned owing to the need to summon and examine witnesses.

23. On the next hearing, which was scheduled for 1 October 2001, the defendant's representative did not appear.

24. Between 30 October and 15 November 2001 the court held seven hearings during which the applicant amended her claims and the defendant lodged a counter-claim.

5. Proceedings in 2002

25. The first hearing in 2002 did not take place due to the illness of the defendant's representative.

26. Three hearings scheduled between 15 May and 16 December 2002 were postponed at the applicant's request.

6. Proceedings in 2003

27. The first hearing in 2003 was scheduled for 20 February. It is unknown whether it took place.

28. On 1 April 2003 the applicant's case was transferred to another presiding judge.

29. The hearing of 27 May 2003 was adjourned because the court requested the applicant to amend her claims.

30. The hearing of 16 June 2003 did not take place because the defendant's representative failed to attend.

31. The next hearing was scheduled for 20 August 2003. It was postponed at the request of the defendant. Three subsequent hearings, which were scheduled for 15 October, 4 and 27 November 2003, did not take place because the defendant's representative repeatedly failed to appear in court.

7. Proceedings in 2004

32. On 20 January 2004, at the request of the applicant, the Supreme Court of Russia quashed the decision of the Presidium of the Tula Regional Court of 1 June 1998 (see paragraph 7 above) and ordered a fresh examination of her case by the Presidium of the Regional Court.

33. On 17 May 2004 the Presidium of the Regional Court again quashed the judgment of 17 April 1996 and remitted the case to the District Court for a fresh examination on merits.

34. The first hearing after the case file was received by the District Court was scheduled for 17 August 2004. It was postponed at the request of the defendant.

35. The hearing of 29 September 2004 did not take place as the defendant's representative asked time to study the case file.

36. On 30 September 2004 the court decided to invite an expert and adjourned the hearing until 12 October 2004.

37. On 12 October 2004 the District Court delivered a judgment by which it upheld the applicant's claims in part.

38. By decisions of 11 and 20 January 2005 the District Court granted the applications by the defendant and the prosecutor, respectively, for the extension of the time-limit for lodging their appeals.

39. On 5 April 2005, on appeal by the defendant and the public prosecutor, the Regional Court quashed the judgment of 12 October 2004 and remitted the case to the District Court for a fresh examination.

8. Proceedings in 2005

40. The hearing on 8 June 2005 was postponed at the request of the applicant.

41. On 6 July 2005 the court delivered a judgment by which it again upheld the applicant's claims in part.

42. On 6, 7 July and 11 October 2005 the applicant, the public prosecutor and the defendant, respectively, filed their appeals.

43. On an unspecified date, having prepared the case file, the District Court sent it to the Regional Court for the examination of the appeals. On 24 January 2006 the latter decided to postpone the appeal hearing and remitted the file to the former for remedying certain procedural defects.

44. On 30 March 2006 the Regional Court reviewed the case and endorsed the District Court's findings.

B. Enforcement proceedings

45. On an unspecified date the applicant brought court proceedings against the Bailiffs' Service of Voronezh complaining about their failure to execute the judgment of 17 April 1996. By the judgment of 28 April 2004, the Leninskiy District Court of Voronezh dismissed her claims as being manifestly ill-founded. It appears that the applicant did not appeal and on 10 May 2004 the judgment became final. In 2005 she brought an application for supervisory review proceedings but to no avail.

II. RELEVANT DOMESTIC LAW

46. The Code of Civil Procedure of 14 November 2002 provides that parties to the proceedings are obliged to inform the court of the reasons of their failure to appear and to adduces evidence disclosing a valid excuse for not attending the hearing (paragraph 1).

47. In case a party to the proceedings was duly summoned to the hearing but failed to appear without a valid excuse, the court may examine the case in the absence of this party (paragraph 3).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

48. 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..."

49. The Court observes that the proceedings consisted of two periods. The first period lasted from 1 April 1994, when the applicant brought her action, until unspecified date in 1997, when the judgment of 17 April 1996, by which her claims had been upheld in part, became final. The second period lasted from 1 June 1998, when the supervisory review court quashed the judgment of 17 April 1996, until 30 March 2003, when the appeal court, in the final instance, upheld her claims in part.

50. The proceedings that occurred before 5 May 1998, the date of entry of the Convention into force in respect of Russia, have to be excluded from the overall length. Thus, their aggregate length within the Court's jurisdiction *ratione temporis* amounts to seven years and ten months when the applicant's case was considered twice by the first-instance court, twice by the appeal court and once by the supervisory review court.

A. Admissibility

51. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Parties submissions

52. The Government disagreed with the complaint. They presented a list of court hearings as well as reasons of the adjournment decisions. On the

basis of those data, they argued that the applicant had contributed to the length of the proceedings by having lodged numerous motions and by having failed to appear on several hearings. They also asserted that the case had been rather complex. It had been examined twice at three levels of jurisdiction. The courts did not display any negligence or procrastination. In the Government's view, the overall length of the proceedings was not excessive in the circumstances.

53. The applicant maintained her complaint.

2. The Court's assessment

54. 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).

55. The Court further reiterates that in cases relating to labour disputes, special diligence is required in view of the possible consequences which the excessive length of proceedings may have. Such issues should be dealt with speedily (see *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

56. On the facts of the case the Court first notes that the issues decided by the courts did not seem particularly complex. Furthermore, the events in question were already subject to judicial examination in 1994-1996 and were thus not completely unknown to the judicial authorities. 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).

57. Insofar as the applicant's behaviour is concerned, the Court accepts that four hearings were postponed at her requests (see paragraphs 26 and 40 above) and the resulted delay of approximately eight months should be attributed to the applicant.

58. As to the Government's argument that she delayed the proceedings by lodging procedural applications, the Court observes that she lodged two procedural applications, modified her claims on two occasion, was once invited by the court to specify her claims and on one occasion requested the supervisory review proceedings (see paragraphs 10, 17, 21, 24, 29 and 32 above). These procedural actions were not abusive, frivolous or vexatious. Furthermore, it should be reiterated that an applicant cannot be criticised for taking full advantage of resources afforded by national law in the defence of his or her interests, even if it results in a certain 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).

59. Turning to the conduct of the judicial authorities, the Court observes the applicant's case was examined two times at three levels of jurisdiction. The courts did not display any particular procrastination in scheduling the hearings and resolving the parties' applications but were not industrious either, when the case implied specific diligence. The Court notes two major deficiencies that occurred in the course of the proceedings.

60. Firstly, the unavailability of the first-instance court for the applicant's case on several occasions, notably the involvement of the bench of judges in different proceedings, their illnesses, the presiding judge's suspension from office and the transfer of the applicant's case to another presiding judge (see paragraphs 8, 11, 14, 15 and 18 above), which resulted in a total delay of more than one year and four months. The Court also notes a two-month delay when the defects in the case file required the Regional Court to postpone the appeal hearing (see paragraph 43 above).

61. Secondly, on many occasions the hearings did not take place because the defendant's representative failed to attend without a valid reason (see paragraphs 12, 16, 20, 23, 30 and 31 above). The aggregated delay amounted to approximately seven months. Nothing in the materials submitted suggests that the District Court used any measure to discipline this participant and to ensure that the case be heard within a reasonable time, or considered the possibility of the adjudication of the case in the absence of the defendant (see paragraph 47 above). It follows that the domestic authorities borne some responsibility for the delay caused by the failure of the defendant's representative to attend the hearings.

62. Having regard to the importance of the dispute for the applicant, the overall length of the proceedings and the delays imputable to the State, the Court considers that in the instant case the "reasonable time" requirement was not complied with. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. The applicant lastly complained under Article 6 § 1 of the Convention about the length of the civil proceedings which she had brought against the Bailiffs' Service of Voronezh.

64. 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

65. 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

66. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

67. The Government contested the claim.

68. 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 2,400 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

69. The applicant submitted no claim under this head.

C. Default interest

70. 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 EUR 2,400 (two thousand four 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 19 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

George Nicolaou
President