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

THIRD SECTION

DECISION

Application no. 36214/10
Tatyana Sergeyevna RYABTSEVA
against Russia

The European Court of Human Rights (Third Section), sitting on 3 November 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Alena Poláčková,
Georgios A. Serghides, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 May 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Tatyana Sergeyevna Ryabtseva, is a Russian national who was born in 1949 and lives in Voronezh. She was represented before the Court by Mr Sivoldayev, a lawyer practising in Moscow.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 30 June 2009 the applicant was dismissed from her post as director of a municipal art school in Voronezh.

4. A month later the applicant took Voronezh Town Council to court, seeking reinstatement.

5. On 20 August 2009 Judge Z. of the Central District Court of Voronezh dismissed her claim in full. It found that her dismissal had been lawful and had come as a response to her unsatisfactory performance at work.

6. The applicant appealed. She then submitted an addendum to the appeal, stating that Judge Z. was biased because the judge's daughter worked as a lawyer at the Town Council. The applicant also alleged that as Judge Z. was also a Deputy President of the Central District Court and, among other duties, was in charge of the allocation of civil cases, she had intentionally taken charge of the applicant's case.

7. An internal inquiry into the impartiality of Judge Z. was ordered by the President of the Central District Court of Voronezh.

8. The inquiry showed that there were no reasons for the judge to recuse herself *suo motu* in accordance with Article 16 of the Russian Code of Civil Procedure (see paragraph 10 below). There were no grounds to believe that Judge Z. had allocated the applicant's case to herself intentionally. She had received the case because she was a senior judge who dealt with complex issues, such as reinstatement disputes, on a regular basis. Furthermore, her daughter had no evident connection to the applicant and had never been involved with the case. Also, the judge's daughter had been on maternity leave since April 2009.

9. On 26 November 2009 the Voronezh Region Court dismissed an appeal in cassation by the applicant. The Regional Court addressed the applicant's allegations of impartiality and also found them unsubstantiated.

B. Relevant domestic law

10. Section 16 of the Russian Code of Civil Procedure reads as follows:

> "1. ... a judge shall not hear a case and shall be recused when:
>
> 1) he or she was involved in the case as a prosecutor, court clerk, representative, witness, expert or interpreter;
>
> 2) he or she is related to any person involved in a case or their respective representatives;
>
> 3) he or she has a personal direct or indirect interest in the outcome of a case or there are some other grounds to doubt his or her impartiality."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

11. The applicant complained that Judge Z. had not acted impartially while examining her case owing to the close family ties she had had with an

employee of the respondent in the case. The applicant further complained that the first-instance court had failed to give reasons for its decision in due form and that she had been deprived of an effective opportunity to make a closing argument at the cassation appeal hearing. She cited Article 6 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 an independent and impartial tribunal established by law."

A. Impartiality of the judge

1. General principles

12. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. The Court has distinguished between a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see *Morice v. France* [GC], no. 29369/10, § 73, 23 April 2015; *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009; and *Piersack v. Belgium*, 1 October 1982, § 30, Series A no. 53).

13. As to the subjective test, the question is whether it can be shown on the facts of the case that a judge acted with personal bias against the applicant (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). The principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (see, for example, *Micallef,* cited above, § 94, and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (see *Werner v. Poland*, no. 26760/95, § 41, 15 November 2001, and *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86).

14. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Morice*, cited above, § 76; *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII; and *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 58, *Reports of Judgments and Decisions* 1996- III).

15. The objective test mostly concerns hierarchical or other links between the judge and other actors in the proceedings (see, *mutatis*

mutandis, *Miller and Others v. the United Kingdom*, nos. 45825/99, 45826/99 and 45827/99, § 29, 26 October 2004) which objectively justify misgivings as to the impartiality of the tribunal, and thus fail to meet the Convention standard under the objective test (see *Kyprianou*, cited above, § 121). It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Pullar v. the United Kingdom*, 10 June 1996, § 38, *Reports* 1996-III).

16. The Court has stressed on numerous occasions that there is no watertight division between subjective and objective impartiality (see *Kyprianou*, cited above, § 119). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar*, cited above, § 32). In this respect, even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *De Cubber*, cited above, § 26).

2. Application to the present case

17. The Court observes that the fear of a lack of impartiality in the present case stems from the fact that the daughter of Judge Z., the judge presiding in the applicant's case in the first-instance court, was employed by the same organisation that the applicant had brought a reinstatement claim against.

18. The Russian Code of Civil Procedure imposes an obligation on judges to recuse themselves in cases where their impartiality could be an issue. In particular, the Code lists a parental relationship between the judge and a party to the case as one which can cast a serious doubt on the impartiality of the judge and can thus serve as a valid ground for the judge's removal from the proceedings (see paragraph 10 above). The Court therefore considers that Russian law in itself provides adequate guarantees of subjective and objective impartiality (see, *a contrario*, *Micallef,* cited above, § 100).

19. The Court further notes that Judge Z. did not display any personal bias. There is nothing to suggest that she acted favourably to the respondent in the applicant's case. It has not been shown or argued that Judge Z. held or manifested any personal convictions such as to cast doubt on her subjective impartiality.

20. As to the objective impartiality test, the Court must address the question of whether the applicant's doubts, stemming from the judge's family ties, may be regarded as objectively justified in the circumstances of the case.

21. Firstly, the Court observes that there is no evidence that there was any functional or hierarchical connection between Judge Z. and the Voronezh Town Council.

22. Assessing further the possibility of the judge having a personal interest in the outcome of the case, the Court notes that the judge's daughter was not involved in the applicant's case, in either an official or personal capacity, and had no vested interest in it (see paragraph 8 above). Furthermore, she had been on maternity leave since April 2009, that is, before Judge Z. ruled on the case, and even before the applicant was dismissed. In addition, the internal inquiry into the matter confirmed the unbiased nature of the judge's ruling in the case.

23. The Court also observes that the higher court upheld the judgment of 20 August 2009, fully endorsing Judge Z.'s findings. With regard to the impartiality issue the appeal court noted that there were no grounds to doubt the judge's professional conduct and the nature of the findings made by her in the case. The Court sees no reason to depart from the conclusions made by the Russian authorities in the present case. It thus finds no grounds to believe that personal ties between Judge Z. and her daughter affected the judge's impartiality.

24. It follows that this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Remaining complaints

25. As to the remaining complaints, having regard to all the material in its possession, and in so far as it has jurisdiction to examine these allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols regarding that part of their applications. It follows that it must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 24 November 2016.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President