



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

FIRST SECTION

CASE OF TYUKOV v. RUSSIA

(Application no. 16609/05)

JUDGMENT

STRASBOURG

2 May 2013

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

In the case of Tyukov v. Russia,

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

Elisabeth Steiner, *President*,

Mirjana Lazarova Trajkovska,

Ksenija Turković, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 9 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 16609/05) 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, Mr Vitaliy Anatolyevich Tyukov (“the applicant”), on 25 March 2005.

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

3. On 12 February 2009 the application was communicated to the Government.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1955 and lives in Moscow.

5. On 30 April 1998 the applicant bought a building at auction.

6. On 1 July 1998 the former owner of the building, a private company T., lodged an action against the applicant and a private company E., seeking annulment of the results of the auction.

7. On 14 July 1998 and 10 December 1998 the Tsentralniy District Court of Tver (trial court, District Court) upon the motions of the company T. and the applicant issued injunctions prohibiting use and disposal of the building.

8. On 2 November 1998 the trial court ordered the state property management and tax authorities to join the proceedings as third parties.

9. Between 16 November 1998 and 13 January 2000 at least four scheduled hearings were adjourned at the requests of the parties and

subsequently the proceedings were suspended for eleven months to resolve the issue whether the acting president of the company E. lawfully acquired his status.

10. On 24 March 2000 the District Court dismissed the lawsuit of the company T. and lifted the injunctions. The plaintiff missed the time-limit for lodging an appeal and further attempts to restore it were unsuccessful.

11. On 5 February 2001 the Supreme Court of the Russian Federation upon the request of the Deputy Prosecutor General of the Russian Federation annulled the judgment of 24 March 2000 and ordered reconsideration of the case.

12. The District Court received the case file and fixed a preliminary hearing for 10 May 2001. At the following hearing on 4 June 2001 the trial court upon the motion of the company T. issued an injunction prohibiting use and disposal of the building. It was challenged by the applicant without success.

13. On 16 November 2001 the District Court held a conference with the parties and fixed another preliminary hearing.

14. Between 26 December 2001 and 12 September 2002 at least eight hearings were adjourned for various reasons including three times because of the applicant travel abroad, failure to appear for the hearing, order for the applicant to produce documentary evidence. The other reasons included illness of a judge, orders to produce evidence, failure to notify certain parties of the hearing or their failure to appear.

15. On 12 September 2002 the District Court dismissed the case as falling out of jurisdiction; however this decision was annulled by the Tver Regional Court on 14 November 2002.

16. Between 21 January 2003 and 30 May 2003 at least five hearings were adjourned for various reasons including twice for the failure of the parties to appear and once at the request of the applicant.

17. Between 13 July 2003 and 8 December 2003 at least four hearings were adjourned for various reasons including once for the failure of the defendants to appear, twice for the applicant's travel and medical treatment abroad, and once because the applicant had to produce documentary evidence.

18. On 8 December 2003 the District Court denied the applicant's motion to lift the injunction prohibiting use and disposal of the building. On 12 February 2004 his appeal against the decision was dismissed by the Tver Regional Court.

19. On 5 March 2004 the hearing was adjourned due to the applicant's vacation abroad; and on 15 April 2004 due to failure of the plaintiff and the defendants (except for the applicant) to appear.

20. Between 19 May 2004 and 21 June 2005 at least fourteen hearings were adjourned for various reasons, including twice due to the applicant's travel abroad, once due to his illness, and once due to his request to obtain

documentary evidence from the commercial courts. Other hearings were adjourned due to failure of the parties to appear, requests to adjourn the proceedings, change of certain defendants, and amendments to the lawsuit.

21. On 30 June 2005 the District Court discontinued consideration of the lawsuit due to repeated failure of the plaintiff to appear without a valid reason. The plaintiff requested the District Court to resume the proceedings, but the request was denied on 26 September 2005. On 25 November 2005 the plaintiff's appeal was dismissed by the Tver Regional Court.

22. On 8 December 2005 the District Court lifted the injunction prohibiting the use and disposal of the building.

THE LAW

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

23. 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 ..."

24. The Government contested that argument.

25. The periods to be taken into consideration are between 1 July 1998 and 24 March 2000 and after the proceedings were re-opened between 5 February 2001 and 8 December 2005. Thus the proceedings lasted six years and seven months for three levels of jurisdiction.

A. Admissibility

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

B. Merits

27. The applicant contended that the proceedings in his case were tainted by unjustified delays and that the domestic courts failed to consider the case in a timely manner.

28. The Government argued that the length of the proceedings was not unreasonable having regard to the nature of the case, frequent delays

attributable to the parties to the proceedings, and absence of periods of inaction on the side of the domestic courts.

29. 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).

30. The Court observes in respect of the domestic proceedings that they were relatively complex, since the lawsuit aimed at annulment of the results of a public auction necessarily involved participation of several defendants and third parties in the hearings, required examination of a significant amount of documentary evidence, and involved jurisdictional issues. Change of certain defendants (other than the applicant) and amendments to the lawsuit introduced by the plaintiff company T. clearly acted as further impediments to the progress of the proceedings.

31. As regards the conduct of the domestic courts the Court notes that the materials in its possession do not indicate any periods of inactivity during the course of the proceedings. Further, the absence of such periods is not disputed by the parties. Over the three rounds of proceedings the domestic courts scheduled more than thirty five hearings and virtually always the hearings were adjourned at the requests of the parties, their failure to appear, or motions to adjourn hearings until documentary evidence could be produced or related legal issues were resolved in other proceedings. Lastly, the Court notes that the domestic courts in 2005 took definitive step to prevent proceedings from lasting unreasonably long by discontinuing consideration of the lawsuit due to the repeated failure of the plaintiff to appear for hearings without a valid reason.

32. In respect of the applicant's conduct the Court notes that significant proportion of the hearings were adjourned by the domestic courts at the request of the applicant due to his travels abroad, medical treatment, vacation, illness, and the need to obtain and produce documentary evidence. While the applicant's cannot be blamed for his intention to personally participate in the hearings or to strengthen his arguments by procuring evidence (see, *mutatis mutandis*, *Sokolov v. Russia*, no. 3734/02, § 38, 22 September 2005, with further references), the Court is unable to attribute the delays caused by the applicant's requests for adjournment to the responsibility of the national authorities.

33. Admittedly a dispute concerning his property was of importance to the applicant; however, he did not advance any reasons before this Court justifying that his stakes in the proceedings were higher than usual. At the same time the proceedings were not of the kind, which by their nature require the most expeditious consideration (see, *a contrario*, *Voleský v. the Czech Republic*, no. 63267/00, § 102, 29 June 2004 concerning

custody dispute or *Bock v. Germany*, 29 March 1989, § 248, Series A no. 150 concerning civil status and capacity).

34. Accordingly, the Court, having examined all the materials submitted to it and having regard to its case-law on the subject, considers that in the instant case the length of the proceedings was not excessive or unreasonable.

35. There has accordingly been no violation of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. The applicant also complained under Article 6 of the Convention that the final judgment of 24 March 2000 had been annulled by way of the supervisory review on 5 February 2001. In this respect the Court notes that the applicant lodged his complaint in this regard on 25 March 2005, which was more than six months after the judgment was annulled. Therefore, this complaint must be rejected under Article 35 § 1 of the Convention.

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 no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 2 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Elisabeth Steiner
President