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

FIRST SECTION

CASE OF ROLGEZER AND OTHERS v. RUSSIA

(Application no. 9941/03)

JUDGMENT

STRASBOURG

29 April 2008

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 Rolgezer and Others v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 1 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 9941/03) 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 twenty-nine Russian nationals ("the applicants"), whose names and dates of birth are listed in the schedule, on 28 February 2003.

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

3. The applicants complained, in particular, about the excessive length of the civil proceedings.

4. On 11 April 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the allegedly excessive length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicants live in the village of Naumovka in the Tomsk region in the vicinity of a radiochemical plant of the Siberian Chemical Industrial Complex (hereinafter "the plant"), owned and operated by the State.

6. On an unspecified date in July 1997 the applicants sued the plant for compensation for the damage to their health caused by its activity. They also sought an injunction banning the burial ground disposal of nuclear

waste. On 27 July 1997 the Seversk Town Court of the Tomsk Region registered the statement of claim and listed the first hearing for 3 November 1997.

7. As the Town Court was situated in the area with restricted access, the court asked the applicants to provide personal information necessary to prepare a pass for them.

8. The applicants did not appear at the hearing of 3 November 1997. Their representatives were present. The Town Court ordered an expert examination. On 9 December 1997 the Tomsk Regional Court quashed the decision because it had been taken in the applicants' absence.

9. On 28 April 1998 the applicants provided their personal information and were issued with a pass by the Seversak Town Administration.

10. At the hearing of 15 May 1998 the applicants modified their claims. They challenged the exploitation licence granted to the plant by the Tomsk Regional Government and claimed compensation in respect of non-pecuniary damage. The Tomsk Regional Government was cited as co-defendant and the hearing was adjourned until 14 July 1998.

11. On 14 July 1998 the applicants did not appear and the hearing was adjourned until 31 August 1998.

12. On 31 August 1998 only two plaintiffs came to the court and the hearing was adjourned until 21 October 1998.

13. On 21 October 1998 the applicants again modified their claims and asked the court to call witnesses. The hearing was adjourned until 24 November 1998.

14. Hearings were held on 24 November and 7 December 1998.

15. On 7 December 1998 the Seversk Town Court of the Tomsk Region ordered the Ministry of Public Health to perform an expert examination at the defendant's request and stayed the proceedings. On the same day the case file was sent to the Ministry of Public Health.

16. On 29 January 1999 the Tomsk Regional Court upheld the decision of 7 December 1998 on appeal.

17. During the following three years the Town Court sent ten warnings to the Ministry of Public Health, asking it to perform the examination or, if it was not possible, to return the case file to the court.

18. On 22 April 2002 the Ministry of Public health returned the case file to the Town Court, stating that it had not been possible to perform the examination because the defendant had not paid for it. On the same day the Town Court resumed the proceedings.

19. At the hearing of 26 June 2002 the applicants withdrew their claims against the Tomsk Regional Government and amended their claims against the plant. The hearing was adjourned until 4 July 2002.

20. The Town Court held hearings on 4 and 15 July 2002. On 15 July 2002 the Seversk Town Court of the Tomsk Region dismissed the applicants' claims as unsubstantiated.

21. On 5 November 2002 the Tomsk Regional Court upheld the judgment on appeal.

THE LAW

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

22. The applicants 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..."

A. Admissibility

23. The Court observes that the applicants introduced their claim in July 1997, however, it only has competence *ratione temporis* to examine the period after 5 May 1998 when the Convention entered into force in respect of Russia. The proceedings ended on 5 November 2002. In the post-ratification period the proceedings lasted four years and six months before two levels of jurisdiction.

24. The Court finds 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 Government conceded that a certain delay was caused by the experts' failure to perform the examination. The domestic courts had sent many warnings to the experts, prompting them to perform the examination or return the file, without success. The courts had done everything in their power to expedite the examination. Substantial delays had been attributable to the applicants who had failed to appear at many hearings and modified their claims many times.

26. The applicants submitted that they had not attended the hearings because they had no pass and could not enter the restricted-access area where the court was situated. Moreover, the hearings were listed for 10 a.m. and they could not arrive at the court at that time because they lived in a remote village. The only bus from their village arrived in the town of

Seversk in the afternoon. They had many times asked the court to fix hearings for the afternoon, to no avail.

27. 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).

28. The proceedings at issue were complex as they required an expert opinion and the examination of voluminous medical data. The applicants amended their claims on several occasions. The Court considers that the task of the courts was rendered more difficult by these factors, although it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings. Moreover, the dispute in the present case concerned compensation for health damage. The Court is of the opinion that the nature of the dispute called for particular diligence on the part of the domestic courts (compare *Marchenko v. Russia*, no. 29510/04, § 40, 5 October 2006).

29. As to the applicants' conduct, the Government claimed that they had caused delays in the proceedings by failing to attend several court hearings. The applicants argued that their absence had been due to the court's failure to supply them with a pass enabling them to reach the courtroom, or to the inconvenient hearing agenda and the court's unwillingness to cooperate in fixing the time of the hearings. The Court notes that irrespective of the reasons for the applicants' absence from the hearings, the delay incurred therefrom was negligible.

30. The Court observes, however, that a substantial period of inactivity was attributable to the authorities. More than three years and four months elapsed between 7 December 1998, when the Town Court ordered an expert examination by the Ministry of Public Health, and 22 April 2002, when the case file was returned to the court without an expert opinion. The examination had not been performed because the defendant, a State-owned company, had failed to pay for it. The Court reiterates in this respect that the principal responsibility for the delay due to the expert opinions rests ultimately with the State. It was incumbent on the domestic court to ensure that the defendants had promptly paid for the expert examination and that the examination had been performed without delay (see *Volovich v. Russia*, no. 10374/02, § 30, 5 October 2006; and *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32).

31. Having regard to the considerable period of inactivity attributable to the authorities and what was at stake for the applicants, the Court concludes that the applicants' case was not examined within a “reasonable time”. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. 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. Each applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government submitted that the claim was excessive. The award should not exceed the amount awarded by the Court in the case of *Kirsanova v. Russia* (no. 76964/01, 22 June 2006).

35. The Court observes that the applicants must have suffered certain distress and frustration resulting from the extension of the proceedings beyond a "reasonable time". However, the amounts claimed appear excessive. Where common proceedings have been found to be excessively long, the Court must take account of the manner in which the number of participants in such proceedings may influence the level of distress, inconvenience and uncertainty affecting each of them. Thus, a high number of participants will very probably have an impact on the amount of just satisfaction to be awarded in respect of non-pecuniary damage. Such an approach is based on the fact that the number of individuals participating in common proceedings before the domestic courts is not neutral from the perspective of the non-pecuniary damage that may be sustained by each of them as a result of the length of those proceedings when compared with the non-pecuniary damage that would be sustained by an individual who had brought identical proceedings on an individual basis. Membership of a group of people who have resolved to apply to a court on the same factual or legal basis means that both the advantages and disadvantages of common proceedings will be shared (see *Arvanitaki-Roboti and Others v. Greece* [GC], no. 27278/03, § 29, 15 February 2008). The Court takes into consideration the number of applicants, the nature of the violation found and the need to determine the amount in such a way that the overall sum is compatible with the relevant case-law and is reasonable in the light of what was at stake in the proceedings in question. On the basis of the above considerations, and ruling on an equitable basis, the Court awards EUR 2,000 to each of the applicants, plus any tax that may be chargeable.

B. Costs and expenses

36. The applicants also claimed EUR 1,600 for costs and expenses. They submitted documents relating to postal and copying expenses.

37. The Government submitted that the claim was excessive.

38. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 60 to Ms A. Rolgezer, plus any tax that may be chargeable on that amount.

C. Default interest

39. 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 application admissible;

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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros) to each of the applicants in respect of non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 60 (sixty euros) to Ms A. Rolgezer in respect of costs and expenses, 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 amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President

SCHEDULE

List of applicants

No.	Name	Year of birth
1.	Ms Antonina Fedorovna Rolgezer	1953
2.	Ms Galina Vasilyevna Bakakina	1940
3.	Mr Igor Vasilyevich Bakakin	1978
4.	Mr Grigoriy Yuryevich Grigoryev	1982
5.	Ms Irina Yuryevna Lisimenko	1979
6.	Ms Yelena Aleksandrovna Degtyareva	1982
7.	Mr Aleksandr Aleksandrovich Zibayev	1981
8.	Mr Dmitriy Aleksandrovich Zibayev	1980
9.	Ms Valentina Fedorovna Klimacheva	1934
10.	Mr Aleksandr Ivanovich Konstantinov	1981
11.	Ms Tatyana Ivanovna Konstantinova	1983
12.	Ms Nadezhda Alekseyevna Kuzmina	1967
13.	Mr Sergey Iosifovich Rolgezer	1984
14.	Mr Dmitriy Pavlovich Savelyev	1977
15.	Ms Tatyana Pavlovna Savelyeva	1982
16.	Ms Tamara Ilyinichna Savelyeva	1932
17.	Ms Lyudmila Semakova	1954
18.	Ms Tatyana Insafetdinovna Staseyeva	1979
19.	Ms Yelena Insafetdinovna Khaliulina	1978
20.	Ms Irina Alekseyevna Pishchulina	1960
21.	Mr Vasiliy Dmitriyevich Pishchulin	1959
22.	Ms Raisa Moiseyevna Tryasugina	1938
23.	Mr Aleksandr Alekseyevich Zibayev	1953
24.	Ms Nadezhda Dmitrievna Savelyeva	1954
25.	Ms Nadezhda Ivanovna Zibayeva	1949
26.	Ms Svetlana Yakimovna Grigoryeva	1960
27.	Ms Lyudmila Vasilyevna Khaliulina	1957
28.	Ms Mariya Aleksandrovna Konstantinova	1958
29.	Ms Olga Fedorovna Degtyareva	1961