CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KORMACHEVA v. RUSSIA

(Application no. 53084/99)

JUDGMENT

STRASBOURG

29 January 2004

FINAL

14/06/2004

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 Kormacheva v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 8 January 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 53084/99) 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 Tatiana Akhunbekovna Kormacheva ("the applicant"), on 25 October 1999.

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

3. The applicant complained under Articles 6 and 13 of the Convention about the length of the civil proceedings instituted by her and about the lack of an effective domestic remedy in that respect.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 6 May 2003, the Court declared the application admissible.

7. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the applicant replied in writing to the Government's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1952 and lives in Gus Khrustalnyi, a town in the Vladimir Region.

9. Before her removal to Gus Khrustalnyi the applicant lived and worked in Mys Shmidta, a town located in Chukotka, a far-eastern territory adjacent to Alaska.

10. On 31 October 1996 the applicant filed with the Shmidtovskiy District Court of the Chukotka Autonomous Region (the "Shmidtovskiy Court") an action against her former employer, a local trading office. She wanted the defendant to pay outstanding emoluments, discharge and leave allowances, and to properly formalise her discharge.

11. As the proceedings did not progress, in 1997-1999 the applicant complained several times about the Shmidtovskiy Court to a number of higher judicial and other authorities.

12. On 18 April 1997 the President of the Judicial Qualifications Board, of the Chukotka Autonomous Region (the "Regional Qualifications Board", "Board") asked the President of the Shmidtovskiy Court to inform him why it took the court so long to deal with the applicant's case and when the case would be heard.

13. On 24 July 1997 the President of the Chukotka Regional Court (the "Regional Court") asked the President of the Shmidtovskiy Court to start the proceedings, to fix a hearing and to inform the applicant about the date of the hearing before 20 August 1997.

14. On 1 August 1997 the President of the Civil Section of the Regional Court forwarded the applicant's complaint to the President of the Shmidtovskiy Court. He asked to inform him and the applicant about the state of the proceedings before 25 August 1997.

15. On 13 March 1998 the President of the Regional Court asked the President of the Shmidtovskiy Court to inform the applicant before 15 April 1998 of the date when her case would be heard. He also informed the applicant that the Regional Court could not deal with her case itself because it was understaffed. The President noted that his earlier requests to the Shmidtovskiy Court had remained unanswered.

16. On 30 March 1998 the President of the Supreme Judicial Qualifications Board asked the President of the Regional Court to investigate the applicant's complaint and take measures, if need be.

17. On 20 April 1998 the President of the Regional Court asked the President of the Shmidtovskiy Court to inform him before 20 May 1998 about the state of the proceedings. He noted that the President had not responded to the Regional Court's earlier requests to speed up the

proceedings. He also warned the President that he would have to apply to a judicial qualifications board if the procrastination continued.

18. On 18 May 1998 the Shmidtovskiy Court issued a letter rogatory by which it asked a Moscow court to question the applicant. The Moscow court could not execute the request because the applicant had not informed the courts that her address had changed.

19. On 7 July 1998 the President of the Regional Court informed the applicant that her case could not be examined because the Shmidtovskiy Court was understaffed and overloaded with work.

20. On 4 August 1998 the new President of the Regional Qualifications Board asked the President of the Shmidtovskiy Court to forward to the Board before 1 October 1998 copies of procedural documents concerning the case. She noted with displeasure that the Shmidtovskiy Court had been ignoring the applicant's earlier complaints and the Board's requests. She also informed the applicant that the Shmidtovskiy Court had been understaffed since July 1997, and that it was impossible under the law to sue the court or an individual judge for damage caused by delays in proceedings.

21. On 13 January 1999 the President of the Regional Qualifications Board asked the President of the Shmidtovskiy Court to inform the Board and the applicant before 10 February 1999 about the progress of the case. She also asked the President of the Shmidtovskiy Court to submit copies of procedural documents which would prove that the judge responsible for the applicant's case had prepared the case for a hearing. She also informed the applicant that it was impossible to summon the President of the Shmidtovskiy Court to the regional capital for explanations, because Mys Shmidta was located too far away from the capital and because the Board did not receive any financing for such purposes.

22. On 15 February 1999 the Deputy President of the Regional Qualifications Board noted that the President of the Shmidtovskiy Court had still not informed the applicant about the progress of her case despite the earlier orders. He asked the President of the Shmidtovskiy Court to provide this information to the applicant immediately.

23. On 12 April 1999 the President of the Regional Qualifications Board informed the applicant that the Board was going to visit the Shmidtovskiy Court because there had been numerous complaints about its inactivity. The visit was fixed for May-June 1999, provided that the Board would have sufficient funds for it.

24. On 26 April 1999 the President of the Supreme Judicial Qualifications Board asked the President of the Regional Court to verify the applicant's complaints and to pass them to the Regional Board if they proved to be well-founded.

25. On 3 June 1999 the Shmidtovskiy District Court passed a first judgment in the applicant's case by which her claims were granted. The defendant appealed against this judgment.

26. On 12 July 1999 the President of the Supreme Qualifications Board asked the President of the Regional Court to investigate the activity of the President of the Shmidtovskiy Court before 1 September 1999.

27. On 18 August 1999 the President of the Regional Qualifications Board informed the applicant that the Board would investigate the activity of the President of the Shmidtovskiy Court.

28. On 23 December 1999 the Regional Court granted the defendant's appeal and remitted the case to the Shmidtovskiy Court for a fresh examination.

29. On 3 April 2000 the Regional Qualifications Board officially reprimanded the judge of the Shmidtovskiy Court responsible for the applicant's case for breaches of procedural rules. The Board warned the judge that she may be dismissed from service if the breaches re-occurred.

30. On 16 March 2001 the Shmidtovskiy Court granted the applicant's claims in part.

31. On 21 May 2001 a public prosecutor of the Shmidtovskiy District appealed on behalf of the defendant.

32. On 11 October 2001 the Regional Court quashed the judgment and ordered a re-hearing of the case.

33. Meanwhile, on 23 October 2002, the applicant claimed from the Shmidtovskiy Court 200,000 roubles as compensation for the delays in the proceedings. On 10 November 2002 the Shmidtovskiy Court severed this claim from the main proceedings.

34. On 14 November 2002 the Shmidtovskiy Court granted the applicant's main claims in part.

35. On 2 April 2003 the applicant lodged an appeal against the judgment.

36. On 15 May 2003 the Regional Court quashed the judgment in part and passed a new judgment by which the applicant's claims were partly satisfied.

37. On 27 June 2003 the Shmidtovskiy Court closed the proceedings concerning the damage caused by the delays. The court found that there existed no law specifying how such actions should be entertained.

38. On 2 October 2003 the Regional Court quashed this decision on the ground that the Shmidtovskiy Court should not have considered an action directed against itself. The Regional Court decided that it will itself determine the court to deal with the action. These proceedings appear to be still pending.

39. During the proceedings the applicant also made a number of complaints to the Federal Ombudsman, the Ministry of Justice, the Government, the Parliament and the Constitutional Court. These authorities either referred her complaints to the judicial authorities of the Chukotka Autonomous Region or advised the applicant to do it herself.

II. RELEVANT DOMESTIC LAW

A. Procedural time-limits

40. Under Article 99 of the Code of Civil Procedure of 1964 ("CCivP") in force at the material time, an action must be prepared for trial seven days after the action is lodged. If litigants are not located within the same town or territory, actions between them arising out of labour disputes must be examined by a court of the first instance within twenty days.

41. Under Article 284-1 of the CCivP, an appeal court must examine an appeal ten days after it is filed.

B. Judicial Qualifications Boards

42. Section 18 of the Law "On the status of judges in the Russian Federation" of 26 June 1992, in force at the material time, established the Supreme Judicial Qualifications Board and qualifications boards of regional courts. The qualifications boards had the power to select candidates for judicial posts, to suspend or remove judges from office, to ensure judges' inviolability and to certify judges' professional skills. The functioning and specific powers of the qualifications boards were to be determined in special regulations.

43. On 13 May 1993 the Parliament passed "Regulations on Judicial Qualifications Boards". The Regulations remained in force until 14 March 2002 when a new law on the same subject was adopted. Under section 12 of the Regulations, a qualifications board could:

> "5. ... take a decision concerning the institution of criminal proceedings against a judge ..., the detention of a judge or his bringing to a court;
>
> 6. warn a judge to stop an activity incompatible with his position; suspend or terminate a judges' powers in cases [established by law];
>
> 7. examine [complaints] about a judge's activity or inactivity undermining the authority of the judicial power..."

44. Pursuant to section 14 of the Regulations, qualifications boards could receive information, necessary for their functioning, from presidents of courts and other judges, from law-enforcement agencies and other State bodies, from non-governmental organisations and public officials.

45. Pursuant to section 15 of the Regulations, if an application submitted to a qualifications board was within its competence, the board had to deal with it within 30 days. Three days after the board gave a decision, an extract from it had to be sent to interested parties.

THE LAW

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

46. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided 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..."

47. The Government disagreed with the complaint in substance.

48. In the instant case the period to be taken into consideration did not begin to run when the action was first brought before the relevant court on 31 October 1996, but on 5 May 1998, when the Convention entered into force in respect of Russia. However, in order to determine the reasonableness of the period concerned, regard must be had to the state of the case at that time (see, for example, *Billi v. Italy*, judgment of 26 February 1993, Series A no. 257-G, § 16). The proceedings came to an end on 15 May 2003 with the judgment of the Regional Court. Thus, they lasted a total of 6 years, 6 months and 15 days of which 5 years and 10 days fall within the Court's competence *ratione temporis*. Within this period the first-instance and appeal courts examined the case three times each.

A. Arguments of the parties

1. The Government

49. The Government submitted that the length of the proceedings had been objectively justified for the following reasons.

First, the Shmidtovskiy Court is located in the Far East of Russia, that is far away from Gus Khrustalnyi – the place where the applicant lives. Therefore, it had taken the court a long time to settle various procedural matters, for example, to obtain evidence from the applicant, notify her of hearings or receive feedback on letters rogatory.

Secondly, in its work the court had faced practical difficulties. For a long period of time it had been understaffed. Since October 1998, the court's building had been in an emergency condition, and hearings had to be held in a meeting room of the local administration. In the winter of 2000 the court's building had not been heated.

Thirdly, the applicant herself had behaved in a way that prolonged the proceedings. She had not submitted in time a copy of her work record (*трудовая книжка*) which was an important piece of evidence. She had not notified the court about changes of her address.

2. The applicant

50. The applicant challenged the arguments of the Government. In her opinion, the distance between the court and the place where she lived did not justify the length of the proceedings. According to her calculations, letters from Chukotka usually reach the Vladimir Region in 20 days. Thus, had the court mailed all procedural requests in time, it would have been able to give judgment within six months. Furthermore, in 1996-97 the court was fully staffed and did not suffer from natural calamities. The letter rogatory in which the Shmidtovskiy Court asked a Moscow court to question the applicant could not be executed because it contained an error in her address. Lastly, the proceedings had been unacceptably long since it was practically impossible for her to find a new job until an entry about her dismissal from the previous job was made in her work record.

B. The Court's assessment

51. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of 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).

52. The Court notes that the applicant's action concerned an ordinary employment dispute. Hence, the case was not particularly complex.

53. As to the applicant's conduct, the Court does not find it established that it could justify the length of the proceedings.

54. As to the conduct of the judicial authorities, the Court recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his or her civil rights and obligations (see *Frydlender*, cited above, § 45). The manner in which a State provides for mechanisms to comply with this requirement – whether by way of increasing the numbers of judges, or by automatic time-limits and directions, or by some other method – is for the State to decide. If a State lets proceedings continue beyond the "reasonable time" prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003).

55. In their observations, the Government cited mainly objective difficulties faced by the Shmidtovskiy District Court, such as the lack of staff, poor technical condition of its building and geographical remoteness.

The Court considers that these difficulties do not excuse the State from ensuring that the proceedings were dealt with within a reasonable time.

56. The Court recalls further that employment disputes by their nature call for expeditious decision (see, *mutatis mutandis*, *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, § 72). The applicant's case concerned, *inter alia*, the formalisation of her dismissal without which she was seriously disadvantaged in finding a new employment. The Court finds that the applicant had an important personal interest in securing a judicial decision on that matter promptly.

57. Having regard to this and to the fact that the case was pending for more than five years the Court finds that the foregoing considerations are sufficient to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

58. The applicant complained also that in Russia there was no effective remedy against the excessive length of proceedings. She relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

59. The Government contested that argument. They submitted that when the applicant had complained to higher judicial authorities, the authorities urged the Shmidtovskiy Court to speed up the proceedings.

60. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

61. The Court notes that the Government did not, however, indicate whether and, if so, how the applicant could obtain relief – either preventive or compensatory – by having recourse to the higher judicial and other authorities. It was not suggested that this remedy could have expedited the determination of the applicant's case or provided her with adequate redress for delays that had already occurred. Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such a relief (see *Kudła*, cited above, § 159).

62. It is true that the applicant's numerous complaints to the judicial authorities ultimately culminated in the decision of the Regional Qualifications Board of 3 April 2000 by which the judge responsible for her case was officially reprimanded. But the Court does not consider that this

specific procedure was an effective remedy against the length of the proceedings in terms of Article 13. First, the applicant's complaint to the Board was in fact no more than information submitted to this supervisory organ with the suggestion to make use of its powers if it saw fit to do so. These powers can be exercised in the same way without the initiative coming from the applicant. If such a complaint is made, the Board is only obliged to take up the matter with the judge against whom the complaint is directed if it considers that the complaint is not manifestly ill-founded. If proceedings are instituted, they concern the Board and the judge in question, whereas the applicant will not be a party in these proceedings. The effect of any decision taken will concern the personal position of the responsible judge, but there will not be any direct and immediate consequence for the proceedings which have given rise to the complaint (see, *mutatis mutandis*, *Karrer, Fuchs and Kodrnja v. Austria*, no. 7464/76, Commission decision of 5 December 1978, Decisions and Reports (DR) 14, p. 51).

63. Lastly, the Court does not have before it any indication that in the proceedings which the applicant brought against the Shmidtovskiy Court on 23 October 2003 she was able to obtain substantive relief.

64. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby she could enforce her right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 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 pecuniary damage under a number of heads, including the emoluments allegedly underpaid at her dismissal, approximately amounting to 2,058,326.10 roubles (RUR). She asked the Court to recognise the date of the final judgment as the date of her dismissal from work.

67. The Government made no specific comment on the sums claimed but noted that the Court should limit its award, if any, to what is reasonable.

68. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim.

69. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. She claimed that if the Shmidtovskiy District Court had given a judgment which was fair and timely, she would not have had to live years in misery.

70. The Government submitted that if the Court were to find a violation of the Convention, this would in itself be a sufficient just satisfaction.

71. The Court finds in the present case that it is reasonable to assume that the applicant suffered some distress and frustration caused by the unreasonable length of the proceedings. Deciding on an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

72. The applicant also claimed RUR 1,965 for the costs and expenses incurred before the domestic courts and RUR 7,461 for those incurred before the Court.

73. The Government made no specific comment in this regard.

74. 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 information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 200 covering costs under all heads.

C. Default interest

75. 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

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 13 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;

(ii) EUR 200 (two hundred euros) in respect of costs and expenses;
(iii) any tax that may be chargeable on the above amounts;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President