



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

FIRST SECTION

CASE OF YEMANAKOVA v. RUSSIA

(Application no. 60408/00)

JUDGMENT

STRASBOURG

23 September 2004

FINAL

02/02/2005

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 Yemanakova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 2 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 60408/00) 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 Ukrainian national, Yulia Aleksandrovna Yemanakova ("the applicant"), on 7 July 2000.

2. The applicant, who had been granted legal aid, was represented by Ms O. Panchenko, a lawyer practising in Berdyansk, Ukraine. The Russian Government ("the Government") were represented by Mr. P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the proceedings in a civil case to which she was a party were unreasonably long, in violation of Article 6 § 1 of the Convention. She also submitted that she had no effective remedies against the alleged violation, in breach of Article 13 of the Convention.

4. The application was allocated to the Second 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 November 2003 the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1919 and lives in Berdyansk, Ukraine.

9. The facts of the case are partially disputed by the parties. They may be summarised as follows.

1. The initial set of proceedings in 1990 – 1992

10. The applicant's father was subjected to repression in 1929-1930 as a rich peasant ("*kulak*"). In 1930 the family property, including a two-storey house in Sorochinsk, Orenburg Region, Russia, was confiscated. In 1989 the applicant's father was rehabilitated *post mortem*. The family house remains intact in Sorochinsk, where it is used by the Sorochinsk Veterinary College to house its employees. At some point during the proceedings the families who lived in the house were permitted to acquire their flats.

11. The applicant lives in Berdyansk, Ukraine, and the train journey to Sorochinsk takes about two and a half days.

12. In 1990 the applicant and her sister, Mrs Mikhaylishina, initiated proceedings to have their property right to the house recognised. On 26 October 1990 the Sorochinsk Town Court rejected their request and advised them to seek compensation for the property from the Orenburg Regional financial department. It appears that the department refused their request for compensation.

13. In January 1992 the applicant's sister died and the applicant remained the sole party to the proceedings.

2. Proceedings in 1992 - 2002

14. At some point in March 1992 the applicant submitted new claims to the Leninskiy District Court of Orenburg. On 24 September 1992 the Leninskiy District Court rejected both her complaint about the decision of the Regional financial department and her civil claim to have her property right to the house confirmed. On 6 May 1993 the Orenburg Regional Court quashed the decision of 24 September 1992 and remitted the case to the District Court. On 15 September 1993 the Leninskiy District Court ordered the transfer of the case to the Sorochinsk Town Court which had territorial jurisdiction for the dispute over the building.

15. On 20 January 1995 the Head of the Sorochinsk Town administration issued an order, requesting the Veterinary College to pay the applicant the maximum compensation allowed by the national legislation, which would later be reimbursed to the College by the regional budget. The order was never complied with. On 10 April 1995 the Sorochinsk Town

Court ordered the closure of the civil case as the applicant had been awarded the compensation. On 25 September 1995 the Presidium of the Orenburg Regional Court, acting by way of supervisory review, quashed the order of 10 April 1995 and returned the case to the Town Court.

16. On 27 December 1995 the Sorochinsk Town Court rejected the applicant's claim against the Town administration as having no basis in the national legislation and because she had already been awarded the compensation. On 9 April 1996 the Orenburg Regional Court quashed the judgment and remitted the case.

17. On 24 July 1996 the Sorochinsk Town Court confirmed that the applicant's family had been the owners of the property and that the confiscation had taken place, but rejected the applicant's claim to have the house returned. On 27 August 1996 the Orenburg Regional Court quashed this judgment and remitted the case.

18. On 13 February 1997 the Sorochinsk Town Court again confirmed the family's previous ownership of the property and the fact of confiscation, but rejected the applicant's claim to have the house returned. On 24 April 1997 the Orenburg Regional Court quashed this judgment. The applicant was then informed that the Orenburg Regional Court would consider her case as the first instance court.

19. On 28 April 1998 the Civil College of the Orenburg Regional Court rejected the applicant's claim for compensation filed against the Regional financial department and refused to return the house *in natura*. It ordered the Sorochinsk Town administration to pay the applicant the maximum compensation for the confiscated property in the amount of RUR 8,349 (100 "units" of the minimum monthly wage), plus travel expenses and legal fees in the amount of RUR 3,540. The applicant submits that she was served with the decision on 6 May 1998.

20. On 7 May 1998 the applicant received RUR 3,540, representing travel fees and legal costs, at the Town administration.

21. On 14 May 1998 the applicant lodged a cassation appeal with the Orenburg Regional Court, which was to be forwarded together with the case file to the Supreme Court. The applicant then wrote to the Orenburg Regional Court to inquire about the progress of the case on 21 August 1998 and 24 March 1999, but received no reply. She also wrote directly to the Supreme Court on several occasions, including on 21 August and 26 November 1998, 6 May, 21 June, 2 August, 18 August and 16 December 1999. She received standard replies from the Supreme Court on 5 November 1998, 19 July 1999 and 19 January 2000, stating that her appeal could not be considered as no case file had been attached. On at least one occasion, in May 1999, the applicant copied the decisions of the courts and her appeal and forwarded the copies to the Supreme Court herself. Her letters to other bodies, including the Ministry of Justice, the High Qualification Board of Judges, the President's administration, the Constitutional Court,

prosecutors' offices of various levels were either not answered or forwarded to the Orenburg Regional Court. The applicant submits that she was not aware of any procedural orders issued by the Regional Court in respect of her appeal.

22. According to the Government's submissions filed after the communication of the complaint, the Orenburg Regional Court pronounced its judgment on 28 April 1998 in short form (without reasoning), and then on 29 April 1998 in full. The decision was served on the applicant on 6 May 1998. She thus missed the ten-days time-limit for filing a cassation appeal, which was eventually lodged on 15 May and arrived at the Orenburg Regional Court on 25 May 1998. As a result, on 1 June 1998 the Regional Court issued a procedural order adjourning her appeal and requesting the applicant to submit reasons for the delay. This decision was forwarded to the applicant by a letter of 3 June 1998.

23. On 21 June 1998 the Orenburg Regional Court again adjourned the appeal and requested reasons for the delay from the applicant. A letter, dated by mistake 21 July 1998, was sent to the applicant. The applicant failed to respond.

24. The Government also submit that the court decision was executed in full in April 2000, when the sum of RUR 8,349 (one hundred minimum monthly wages) was transferred to a new account opened in the applicant's name in the Sorochinsk branch of Sberbank. The applicant was informed accordingly by a letter. The applicant had already received the RUR 3,539 to cover her travel expenses.

25. In February 2004, upon the Court's request, the Government submitted copies of documents supporting their submissions. These included, notably, the Orenburg Regional Court's decision of 1 June 1998, a letter from the same court dated 21 July 1998 informing the applicant about the adjournment and documents from the Sorochinsk Town Administration concerning execution of the judgment in April 2000.

26. The applicant claims that she did not receive the letters of 3 June and 21 June (July) 1998. With respect to the award, the applicant submits that she only learned of the transfer to a bank account opened in her name in 2002, after receipt of the Government's memorandum.

3. New proceedings in 2002

27. The complaint was communicated to the Russian Government in September 2001.

28. On 21 January 2002 the Presidium of the Orenburg Regional Court, acting upon the Regional Prosecutor's application for supervisory review, quashed and remitted for procedural reasons the decision of the Sorochinsk Town Court of 26 October 1990. On 30 January 2002 the applicant was informed of this.

29. On 12 February 2002 the Sorochinsk Town Court issued an order by which the applicant and her sister were instructed to update their claim of 1990 and to submit the applicant's sister's birth certificate before 15 March 2002. On 13 February 2002 the order was forwarded to the applicant. On 26 April 2002 the applicant replied to the Sorochinsk Town Court that her sister had died in 1992 and forwarded a copy of her death certificate. On 16 May 2002 the judge of the Town Court confirmed receipt of her letter and again requested her to update the claim initially submitted in August 1990 and to clarify if she wanted the case to be reviewed in her absence. It appears that a court hearing was scheduled for 22 August 2002. The applicant responded in July 2002 that she was not interested in a new review of the case, since it had lost its meaning. Her new claims against the defendants had been submitted in 1992 to the Sorochinsk Town Court, and these proceedings were the issue of her complaint.

30. On 18 September 2002 the Orenburg Regional Court issued an information note, stating that the hearing in the applicant's claim against the Sorochinsk Town administration was adjourned to 27 September 2002, due to the non-appearance of the claimant. On 14 October 2002 the applicant requested the court to terminate these proceedings.

II. RELEVANT DOMESTIC LAW

31. Section 283 of the Civil Procedural Code then in force provided that cassation appeals are submitted through the court which acted as the court of first instance. Submission of the appeal directly to the cassation instance cannot prevent its consideration.

32. Section 284 (1) set a one month time-limit for review of cassation appeals by the Supreme Court.

THE LAW

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

33. The applicant complained under Article 6 § 1 of the Convention that the length of proceedings in her case was in violation of the "reasonable time" requirement. Article 6 § 1 of the Convention, in so far as relevant, provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

34. The Government submitted that the applicant's cassation appeal was adjourned on 1 June 1998 due to her failure to comply with the time-limit.

The applicant was informed of this by letters of 3 and 21 June 1998. Whether she received the decision in question was, in the Government's opinion, irrelevant for the calculation of the length of the proceedings. Moreover, the decision of 28 April 1998 was executed, partly in May 1998 and finally in April 2000, when the award was transferred to the applicant's bank account.

35. The applicant submitted that before receipt of the Government's memorandum in 2002 she was not aware of the decision of the Orenburg Regional Court to adjourn and to stay her cassation appeal. She stressed that in 1998 – 2002 no authority informed her of this decision either. She further submitted that the execution of the decision of 28 April 1998 in respect of part of the award had never been communicated to her, and she had only learned of it from the Government's memorandum in 2002. The documents proving the adjournment and execution were first presented by the Government in February 2004. The applicant considered that this period should be included in the overall length of proceedings.

A. Period to be taken into consideration

36. The Convention entered into force in respect of Russia on 5 May 1998. The Court is not competent to examine complaints relating to the events that occurred prior to that date. However, in cases where it can, by reason of its competence *ratione temporis*, only examine part of the proceedings, it may take into account, in order to assess their length, the stage reached in the proceedings at the beginning of the period under consideration (see, among other authorities, *Wojnowicz v. Poland*, no. 33082/96, 21 September 2000, § 46).

37. The proceedings in question started in March 1992, when the applicant applied to the Leninskiy District Court of Orenburg. The date of termination of the proceedings is disputed by the parties. The question is not, however, whether the proceedings at issue took place, but whether and when the applicant was notified of them.

38. The Court recalls its case-law in relation to calculation of the six-month period, according to which the object and purpose of Article 35 § 1 of the Convention are best served by counting as running from the date of service of the written document in cases where the applicant is entitled, pursuant to domestic law, to be served with a written copy of the final domestic decision, irrespective of whether that judgment was previously delivered orally (see the *Worm v. Austria* judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33; *Drosopoulos v. Greece* (dec.), no. 40442/98, 7 December 2000).

39. The Court is of the opinion that its case-law as set out above applies by analogy. If these principles are applicable where a party to the proceedings, being generally aware of the nature of the decision, can still be

allowed to obtain a written copy of that decision before the prescription period starts to run, it should be even more so in cases where there is no reason to believe that the party has been at all aware of such proceedings. The Court notes, in particular, that the applicant continued to address the Orenburg Regional Court, the Supreme Court and other authorities with requests concerning her cassation complaint in June 1998 – 2000. However, apart from copies of letters of 1 and 27 June (July) 1998, submitted by the Government in February 2004, and which the applicant claims she had never received, no other evidence has been submitted which would allow the Court to conclude that the applicant was indeed notified of these proceedings. From the nature of the applicant's requests to the Orenburg Regional Court, the Supreme Court and other authorities it should have been clear that the applicant was not aware of the decision to adjourn the cassation appeal. It does not appear, however, that after 21 June 1998 any steps were taken to inform the applicant properly.

40. Taking into account the above considerations as well as the particular circumstances of the present case – namely, the substantial distance between Orenburg and the applicant's place of residence in Ukraine, the overall length of proceedings by that date as well as the applicant's age – the Court finds it established that the applicant was not properly informed of the decision of the Orenburg Regional Court of 1 June 1998 to adjourn her cassation appeal at least until February 2002, when she received a copy of the Government's memorandum.

41. Accordingly, the period under consideration started on 5 May 1998, when the Convention entered into force in respect of Russia. At that date, the proceedings had already lasted from March 1992, with an interval from 10 April until 25 September 1995, when no proceedings were pending. The proceedings ended in February 2002, when the applicant was informed of their outcome. The Court is thus required to consider a length of three years and ten months, which itself followed some six years of proceedings before 5 May 1998.

B. Reasonableness of the length of proceedings

42. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down by the Court, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

43. As to the complexity of the case, the Court observes that it involved some complexity, originating in the events of 1930. At the same time the Court notes the modest size of the disputed property, the limited number of documents in the case-file and the absence of any witnesses to be heard. In

view of the above, the Court cannot conclude that the nature of the legal or factual issues examined would warrant the opinion that the case was of such complexity as to justify the length of the proceedings.

44. The Court observes that almost the whole period under consideration was covered by the failure to notify the applicant of the adjournment of her cassation appeal after 1 June 1998, at least until February 2002. During this period, there was no activity on the part of the judicial authorities whatever.

45. Having regard to the above, as well as the applicant's personal circumstances and what was at stake for her, the Court considers that the proceedings in the present case were not dealt with within the "reasonable time" referred to in Article 6 § 1. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant also complained that she had no effective remedy against the delays in the procedure. The Court has examined this complaint under Article 13 of the Convention, which provides:

"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."

47. The applicant submitted that she had no effective remedies against the delays in the proceedings. She stressed that her numerous requests to various judicial and administrative authorities concerning the lack of information on her case have been left without substantive answers.

48. The Government did not address the issue of effective remedies in their submissions.

49. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided her with adequate redress for delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, 29 January 2004, § 64).

50. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed that as a result of the lengthy proceedings she was deprived of a judicial decision in a dispute concerning her father's house. The applicant requested compensation for pecuniary damage in the amount of EUR 25,540. She also claimed EUR 100,000 in compensation for non-pecuniary damage for the moral suffering caused to her through the absence of a final judicial decision.

53. The Government considered these claims to be excessive and unreasonable.

54. The Court notes that the decision of April 1998 in the applicant's favour was executed and the sum awarded by the national court was transferred to an account opened in the applicant's name. It therefore rejects the applicant's claim for pecuniary damage. On the other hand, the Court accepts that the applicant suffered distress, anxiety and frustration exacerbated by the unreasonable length of the proceedings. Making its assessment on an equitable basis, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

55. In addition to the expenses covered by the legal-aid scheme, the applicant claimed a total of UAH 260 for fees and costs incurred in the proceedings before the Court.

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

57. The Court notes that it has granted the applicant legal aid under the Court's legal-aid scheme for the submission of her observations and additional comments and secretarial expenses. The applicant submitted no justification for additional legal expenses. Accordingly, the Court is not required to make an award under this head.

C. Default interest

58. 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. *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, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into Ukrainian hryvnas at the rate applicable at the date of settlement, 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 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 23 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President