



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

FIRST SECTION

CASE OF OLSHANNIKOVA v. RUSSIA

(Application no. 77089/01)

JUDGMENT

STRASBOURG

29 June 2006

FINAL

29/09/2006

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 Olshannikova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 8 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 77089/01) 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 Mariya Protasovna Olshannikova (“the applicant”), on 26 March 2001.

2. The applicant was represented by Ms Svetlana A. Poznakhirina, a lawyer practising in Novovoronezh. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 17 March 2004 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1916 and lives in the village of Kolodeznoye, the Voronezh Region.

5. According to the applicant, a number of third persons unlawfully occupied a part of her house.

6. On 8 August 1997 she filed a civil action with the Voronezh Region Kashirskiy District Court (“the District Court”) in which she sought the eviction of a number of third persons.

1. First round of proceedings

(a) Proceedings at first instance

7. On 12 August 1997 the statement of claim and supporting documents reached the District Court.

8. By decision of 15 January 1998 the District Court accepted the case for examination.

9. It appears that a proper resolution of the dispute required questioning of a person living in the town of Yuzhnosakhalinsk. On 10 April 1998 the District Court made such request to the Yuzhnosakhalinskiy District Court.

10. According to the Government, the hearings in the case were suspended pending the response.

11. On an unspecified date the District Court received the transcripts of the questioning of the witness.

12. Having resumed the hearings in the case on 7 April 1999, by judgment of the same date the District Court partly granted the applicant's claim and ordered the defendants not to prevent the applicant from using her house. The court rejected the claim insofar as the eviction was concerned.

13. A copy of the judgment was served on the applicant on 7 September 1999. The applicant appealed against the judgment.

(b) Appeal proceedings

14. On 8 August 2000 the Voronezh Regional Court ("the Regional Court") accepted the applicant's appeal on the ground that the District Court had failed to notify the applicant and her counsel of the hearing in the case and had taken decisions in their absence. The Regional Court quashed the judgment of 7 April 1999 and remitted the case for a fresh consideration at first instance.

2. Second round of proceedings

(a) Proceedings at first instance

15. The Regional Court returned the case-file to the District Court on 21 August 2000.

16. On 28 November 2000 the judge in charge of the case withdrew from the proceedings on the ground that she had already expressed an opinion on the merits of the dispute.

17. By decision of 5 March 2001 the Presidium of the Regional Court quashed the withdrawal and on 3 May 2001 returned the case to the first instance.

18. Thereafter the proceedings were adjourned due to the judge's illness and the transfer of the case to another judge.

19. On 10 January 2002 the applicant amended her claims.

20. The next hearing took place on 19 December 2002.

21. On that date a prosecutor joined the case, acting for the applicant. The applicant and her counsel failed to attend that hearing.

22. The hearings were postponed on 22 January, 19 February, 16 March and 10 April 2003 due to the defendants' failure to attend.

23. On 28 April 2003 the District Court delivered a judgment in the case in which it dismissed the applicant's claims.

(b) Appeal proceedings

24. It does not appear that the parties appealed against that judgment.

25. On 29 April 2004 the prosecutor, acting for the applicant, brought a supervisory review complaint against the judgment of 28 April 2003.

26. The outcome of those proceedings is unclear.

3. The applicant's complaint in respect of the allegedly excessive length of proceedings

27. On several occasions, between 1997 and 2002, the applicant complained about the excessive length of the case to the prosecutors and higher courts, requesting them to speed up the proceedings and to bring criminal proceedings against the judge who sat in her case.

28. On 31 May 2001 the applicant received a letter from the Regional Prosecutor's Office in which the authority admitted unjustified delays in the proceedings. However, it rejected the applicant's requests.

29. According to the Government, in November 1998 disciplinary proceedings were brought against the judge in charge of the case in the District Court and by decision of 24 April 2002 the Regional Qualifications Board dismissed her from the post for, among other things, excessive delays in the examination of the applicant's case.

THE LAW

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

30. 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, insofar as relevant, as follows:

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

31. The Government contested that argument and submitted that the proceedings had not breached the reasonable time requirement of Article 6.

32. The Court recalls that the proceedings in question commenced on 8 August 1997 when the applicant filed her civil action with the District Court. However, the period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account may be taken of the state of proceedings at the time.

33. In the circumstances of the present case, the Court finds that the period in question ended on 28 April 2003 with the delivery of the first instance judgment in the applicant's case. Thus, the length of the proceedings which falls within the Court's competence was almost five years.

A. Admissibility

34. The Court notes 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

35. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII)

36. The Court observes that the proceedings relating to the housing dispute between the applicant and a number of third persons were not particularly complex. It furthermore considers that the applicant's conduct did not noticeably contribute to the length of the proceedings.

37. As regards the conduct of the judicial authorities, the Court notes that it led to substantial delays in the proceedings. In particular, it took eleven months for the judicial authorities to question the witness who resided in another town and to resume the proceedings at first instance. Furthermore, the first judgment delivered by the District Court in the applicant's case on 7 April 1999 was quashed on appeal due to the court's failure properly to summon the applicant and her counsel to the hearing. In addition, a copy of that judgment did not reach the applicant until 7 September 1999 thus precluding her for another five months from bringing an appeal against the judgment. Finally, it took the District Court an additional two years and four months to recommence fresh hearings of the case, once the case had returned from the Regional Court on 21 August

2000. The Government have not submitted any convincing arguments for these considerable delays.

38. Having regard to the above, the Court considers that the length of the proceedings did not satisfy the “reasonable-time” requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

39. The applicant complained also that the domestic legal system had failed to afford her an 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.”

A. Admissibility

40. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

41. The Government submitted that when the applicant had complained to higher judicial authorities, these authorities urged the District Court to speed up the proceedings. Furthermore a judge who had presided in her case was dismissed for, among other things, excessive delays in processing the applicant’s case.

42. 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).

43. The Court notes that the Government did not 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 *Kudla*,

cited above, § 159, *Kormacheva v. Russia*, no. 53084/99, §§ 61-62, 29 January 2004 and *Kuzin v. Russia*, no. 22118/02, §§ 42-46, 9 June 2005).

44. It is true that the applicant's numerous complaints to the authorities ultimately culminated in the decision of the Regional Qualifications Board of 24 April 2002 by which the judge responsible for her case was dismissed from the post. 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).

45. Accordingly, the Court finds 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. The applicant also complained about the outcome of the proceedings in her case. In this respect, the Court recalls that, in so far as it falls within its competence to examine such a complaint, the applicant failed to bring an appeal against the first instance judgment of 28 April 2003 and thus failed to exhaust all remedies available to her under the domestic legal system, as required by Article 35 § 1 of the Convention.

47. Accordingly, this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

50. The Government considered these claims excessive.

51. The Court does not discern any causal link between the violation found and the amount of pecuniary damage alleged; it therefore rejects this aspect of the claim. However, on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

52. The applicant did not claim reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

53. 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 complaints concerning the excessive length of the proceedings and the lack of an effective remedy admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in

respect of non-pecuniary damage to be converted into Russian roubles at the rate applicable on 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President