



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

FIRST SECTION

CASE OF KOLOMIYETS v. RUSSIA

(Application no. 76835/01)

JUDGMENT

STRASBOURG

22 February 2007

FINAL

22/05/2007

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 Kolomiyets 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 N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 76835/01) 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 two Russian nationals, Ms Svetlana Yevgenyevna Kolomiyets and Ms Galina Nikolayevna Kolomiyets (“the applicants”), on 1 June 2001.

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

3. On 25 May 2005 the Court decided to give notice of the application to the Government. 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

4. The applicants were born in 1970 and 1946 respectively and live in the town of Kireyevsk of the Tula Region. They are relatives.

5. On 23 October 1992 the second applicant lodged an action against her former husband, claiming division of their marital property, including a country house.

6. On 29 December 1993 the Kireyevskiy District Court of the Tula Region ordered the equitable distribution of property. The judgment was quashed on 26 April 1994 and the case was remitted for a fresh examination.

7. On 14 June 1994 the Kireyevskiy District Court transferred the case to the Tsentralniy District Court and on 10 July 1995 the Tsentralniy District Court partly accepted the action. On 16 May 1996 the Tula

Regional Court quashed the judgment and remitted the case for a fresh examination.

8. On 10 January 1997 the first applicant entered the proceedings in the capacity of a co-plaintiff. In September 1998 the applicants' amended their claim.

9. According to the Government, after September 1998 the District Court listed several hearings which were adjourned because the defendant defaulted and the District Court had to summons additional witnesses.

10. In 1999 the applicants complained to the Judicial Department of the Supreme Court of the Russian Federation and the Tula Regional Judicial Qualification Board about the excessive length of the proceedings. On 13 April 1999 the Tula Regional Judicial Qualifications Board informed the applicants that the excessive length had been caused by the complexity of the case, a large amount of cases pending before the court and the parties' failure to attend hearings. The Board also noted that the presiding judge had been asked to observe the time-limits.

11. On 4 December 2000 the Presidium of the Tula Regional Court, by way of a supervisory review, quashed the decision of 14 June 1994 and transferred the case back to the Kireyevskiy District Court for further examination.

12. On 25 December 2000 the Kireyevskiy District Court received the case-file. On the same day the applicants asked for a stay in the proceedings because they had complained about the decision of 4 December 2000 to the Supreme Court of the Russian Federation. The proceedings were resumed in February 2001 after the Supreme Court had refused to quash the decision of 4 December 2000.

13. By a decision of 18 December 2001 the Kireyevskiy District Court severed the applicants' claims concerning the common household and decided to examine them in a separate set of the proceedings. On 3 April 2002 the District Court dismissed those claims. The judgment was not appealed against and became final on 14 April 2002.

14. On 23 July 2002 the Kireyevskiy District Court examined the remaining claims and partly accepted the applicants' action. The Tula Regional Court quashed the judgment in the part concerning the division of the country house and remitted the case for a new examination on 14 November 2002.

15. The Kireyevskiy District Court fixed a preparatory hearing for 17 March 2003. Of the six hearings listed between 1 April 2003 and 28 April 2004, four hearings were adjourned because the defendant did not attend and two were adjourned upon the applicants' requests awaiting the outcome of the related proceedings.

16. On 30 April 2004 the District Court discovered that the defendant had died on 17 April 2004. The proceedings were stayed for determination of a successor. The Kireyevskiy District Court resumed the proceedings on 1 April 2005 as the defendant's daughter, Ms K., entered the proceedings on his behalf.

17. On 25 April 2005 the District Court asked Ms K. to provide certain evidence related to the inheritance procedure. The District Court set the time-limit until 15 June 2005.

18. The proceedings were stayed again on 23 June 2005 because the Kireyevskiy District Court had discovered certain deficiencies in inheritance documents provided by Ms K.

19. On 28 November 2005 the District Court resumed the proceedings and ordered an expert study. The expert fees were to be paid by the Federal Treasury. The decision of 28 November 2005 was upheld on appeal, subject to certain amendments.

20. The case-file was sent to the experts on 16 January 2006. In March 2006 the experts asked the Kireyevskiy District Court for additional materials. On 15 March 2006 the District Court provided the experts with the necessary documents.

21. It appears that the proceedings are at present pending before the Kireyevskiy District Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF THE PROCEEDINGS

22. The applicants complained that the length of the proceedings was 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...”

23. The period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The proceedings in question have not yet ended. They have thus lasted so far for more than eight years and eight months.

A. Admissibility

24. 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

25. The Government argued that the proceedings were complex as the subject-matter of the claim had concerned personal relationships and the domestic courts had had to be particularly sensitive. Delays had been caused by the applicants' frequent amendments to their claims, the death of the defendant and the necessity to identify a successor. Another delay resulted from the need to obtain an expert opinion.

26. The applicants maintained their claims.

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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

28. The Court agrees that the proceedings at issue were complex as they required examination of voluminous documents and expert studies. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings.

29. As concerns the applicant's conduct, the Court is not convinced by the Government's argument that the applicants should be held responsible for amending their claims. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see, *mutatis mutandis*, *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

30. The Court, however, observes substantial periods of inactivity, for which the Government have not submitted any satisfactory explanation, are attributable to the domestic courts. In particular, the Court finds it striking that it took the domestic authorities more than six years to determine the court competent to examine the applicants' case (see paragraphs 7 and 11 above). The Court is not called upon to determine the reasons for that delay because the principle responsibility for it rests ultimately with the State (see, among other authorities, *Löffler v. Austria*, no. 30546/96, § 57, 3 October 2000). Furthermore, the Court observes that the proceedings in the present case are still pending before the first-instance court and that the Government did not provide any explanation as to the District Court's failure to render the judgment.

31. Having examined all the material submitted to it and having regard to the overall length of the proceedings, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE TRANSFER OF JURISDICTION

32. The applicants complained under Article 6 of the Convention that on 4 December 2000 the Presidium of the Tula Regional Court had unlawfully quashed the decision of 14 June 1994.

33. The Court observes that on 4 December 2000 the Presidium of the Tula Regional Court quashed a procedural decision of 14 June 1994 by which the applicants' claim had been sent to the Tsentralniy District Court for an examination. By the decision of 4 December 2000 the case was returned to the Kiryevskiy District Court.

34. The Court observes that the decisions of 14 June 1994 and 4 December 2000 concerned determination of the territorial jurisdiction of the domestic courts in examination of the applicants' claim. They did not determine, either finally or provisionally, the applicants' civil rights and obligations (see *Fedotova v. Russia* (dec.), no. 73225/01, 1 April 2004). The Court therefore concludes that the applicants' complaint about the procedural decision of 4 December 2000 as such is outside the scope of Article 6 of the Convention (see, e.g., *Verlagsgruppe News GmbH v. Austria* (dec.), no. 62763/00, 16 January 2003; *Wiot v. France* (dec.), no. 43722/98, 15 March 2001; *Apis a.s. v. Slovakia* (dec.), no. 39754/98, 13 January 2000).

35. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. Invoking Article 8 of the Convention and Article 1 of Protocol No. 1, the applicants finally complained that they had sustained pecuniary damage and that their health had deteriorated during the proceedings, that certain employees of the Kireyevskiy District Court were relatives of the employees of the Tula town council and that the defendant had sold the country house.

37. Having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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.”

39. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

40. The Court observes that on 8 September 2005 the applicants were invited to submit by 10 November 2005 quantified claims for just satisfaction. No claims were received within the time allowed. Accordingly, the Court considers that there is no call to award the applicants any sum on that account.

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 a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings in the applicants' case;
3. *Holds* that there is no call to award the applicants just satisfaction.

Done in English, and notified in writing on 22 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President