



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

SECOND SECTION

CASE OF OGANOVA v. GEORGIA

(Application no. 25717/03)

JUDGMENT

STRASBOURG

13 November 2007

FINAL

02/06/2008

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 Oganova v. Georgia,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 25717/03) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ms Karina Oganova, a Georgian national, on 18 July 2003.

2. The Georgian Government (“the Government”) were represented by their Agent, Ms I. Bartaia of the Ministry of Justice.

3. On 18 November 2005 the Court decided to communicate to the Government the applicant's complaint concerning the absence of an oral hearing before the Supreme Court. 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.

4. The Government and the applicant each filed observations on admissibility and merits (Rule 54A of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Tbilisi.

6. On 8 May 2002 the applicant brought a civil action, claiming back the money which she had lent to a private person on 14 September 1998, further to a note envisaging repayment within two months.

7. On 22 May 2002 the respondent replied in writing, claiming that she had repaid the debt and that the applicant's action was time-barred under Articles 129 and 130 of the Civil Code ("the CC").

8. On 14 June 2002 the Isani-Samgori District Court allowed the applicant's claim at an oral hearing. The court found that the respondent's assertion about payment of the debt was unsubstantiated. It did not reply to the time-bar objection.

9. On 5 August 2002 the respondent appealed, reiterating, *inter alia*, that the applicant's action was time-barred. The latter replied that, in view of the respondent's continuous promises to discharge the debt, she could not have concluded that her rights had been breached between 1998 and 2001.

10. On 18 September 2002 the Tbilisi Regional Court quashed the judgment of 14 June 2002 and decided the case anew, dismissing the applicant's action as time-barred. The appellate court found that the limitation period had started to run from the date of non-compliance with the note of 14 September 1998, that is two months after the loan, on 14 November 1998. It noted that the case materials did not substantiate the applicant's assertion that the respondent had continuously promised to return the money.

11. On 16 October 2002 the applicant lodged a cassation claim. Referring to various circumstances of the case, she reiterated that the respondent's verbal assurances had prevented her from applying to the court earlier. She consequently claimed that the appellate court had wrongly applied Articles 129 and 130 of the CC.

12. On 19 November 2002 the Supreme Court of Georgia declared the applicant's cassation claim admissible but decided to dispense with an oral hearing on the merits. Both parties were informed of that decision on 22 November 2002. On the same day, the cassation claim was forwarded to the respondent for comments. No reply was forthcoming from the latter.

13. On 6 February 2003 the Supreme Court dismissed the applicant's cassation claim. Endorsing the facts of the case as established by the appellate court, the cassation court found that the disputed Articles 129 and 130 of the CC had been correctly interpreted and applied in the appellate judgment of 18 September 2002 and that, consequently, there was no ground, under Article 393 §§ 1 and 2 of the Code of Civil Procedure, to quash it.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. *The Civil Code, as it stood at the material time*

Pursuant to Articles 129 § 1 and 130, the period for bringing contractual claims was limited to three years, and it started to run from the moment the person learnt or should have learnt about the breach of his or her rights.

15. *The Code of Civil Procedure, as it stood at the material time*

Pursuant to Article 393 §§ 1 and 2, only the lawfulness of an appellate judgment could be challenged in cassation. The disputed judgment could be found to be unlawful if the appellate court had wrongly applied or interpreted the law.

Article 396 § 1 (f) required the appellant to mention in his or her cassation claim those facts which supported the alleged breaches of procedural law if the cassation claim was calling into question the application of procedural legal provisions.

Article 404 § 1

“The cassation court shall review the [disputed] judgment only in so far as challenged in the cassation claim. The cassation court cannot go beyond the facts referred to under Article 396 § 1 (f) and inquire of its own motion into other procedural breaches.”

Article 407 §§ 1 and 2

“The cassation court shall take into account the party's submissions only in so far as disclosed by the case file or the appellate judgment; only the facts submitted under Article 396 § 1 (f) can be taken into account.

The establishment of the facts [by the appellate court] is binding on the [cassation] court, unless an additional and well-founded cassation argument has been raised.”

Article 408 § 3

“In the event the cassation court finds it appropriate..., it can decide the case without an oral hearing. The parties shall be notified of such a decision.”

Article 411

“The cassation court shall take a [final] decision itself if the circumstances of the case have been established by the appellate court without procedural breaches and there is no need for additional fact finding.”

Article 412 § 1 and 2

“If it is not possible for the cassation court to decide the case in accordance with Article 411, it shall quash the appellate judgment and remit the case for a retrial.

If the cassation court quashes the disputed judgment because of the legal assessment, it shall indicate to the appellate court which circumstances of the case require additional examination, what kind of evidence has to be collected further and what other procedural acts are to be conducted.”

16. *The Constitutional Court's judgment of 3 July 2003 in the case of Rizhamadze and Mumladze v. the Parliament of Georgia*

The Constitutional Court dismissed the applicants' complaint challenging Article 408 § 3 of the CCP, which provided for the possibility to dispense with an oral hearing in cassation proceedings.

The Constitutional Court noted that, unlike an appellate court which established facts, the cassation court could only review the application of legal provisions. It could however examine, on the basis of Articles 396 § 1 (f) and 407 §§ 1 and 2 of the CCP, the facts which have been explicitly raised by the appellant in relation to the alleged violations of procedural law.

Consequently, whilst the scope of the review was mostly limited to the assessment of the application of procedural and substantive law, the Constitutional Court concluded that the right to an oral hearing in cassation proceedings was not absolute.

17. *The Supreme Court's practice*

In its judgment of 28 February 2006 in the case of “Gokhi” v. “Telasi” JSC, the Supreme Court defined the notion of an “additional and well-founded cassation argument” (Article 407 § 2 of the CCP), as follows:

“...‘An additional and well-founded cassation argument’ is ... a reference to those procedural breaches which, having been committed by the appellate court during the examination of the case, have resulted in an erroneous assessment of the matters of fact and/or the incorrect interpretation and application of substantive legal provisions.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained, under Article 6 § 1 of the Convention, that the Supreme Court of Georgia had dispensed with an oral hearing in her case. She further challenged the outcome of the proceedings, claiming that the appellate and cassation courts should have endorsed the judgment of the first instance court. The invoked provision, in its relevant part, reads as follows:

“1. In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing...”

A. Admissibility

1. As to the complaint about the outcome of proceedings

19. By calling into question the outcome of the proceedings, the applicant requests the Court to act as an appeal court of “fourth instance”. However, the Court reiterates that the domestic courts are best placed for assessing the relevance of evidence to the issues in the case and for interpreting and applying rules of substantive and procedural law (see, amongst many authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 32; *Gurepka v. Ukraine*, no. 61406/00, § 45, 6 September 2005). In so far as the relevant domestic decisions do not disclose any manifestly arbitrary reasoning (cf., *a contrario*, *Donadze v. Georgia*, no. 74644/01, § 32, 7 March 2006), the Court finds that this limb of the applicant's complaint under Article 6 § 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. As to the complaint about the absence of an oral hearing in cassation

20. Noting that the proceedings before the Supreme Court, bearing on the assessment of the question of a limitation period, did not concern the applicant's civil right as such, the Court considers that Article 6 § 1 of the Convention is nevertheless applicable, as the outcome of the cassation proceedings was clearly decisive for the examination of her pecuniary claim on the merits (see, amongst other authorities, *Zander v. Sweden*, judgment of 25 November 1993, Series A no. 279-B, p. 38, § 22; *Moreira de Azevedo v. Portugal*, judgment of 23 October 1990, Series A no. 189, p. 17, § 66).

21. The Court further notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

22. The Government submitted that, under Georgian law, the primary role of the Supreme Court in cassation was to review the lawfulness of appellate decisions. The cassation court was not competent to examine the facts of a case, except those which had been specifically referred to in the cassation claim to demonstrate the alleged breaches of procedural law. If the Supreme Court were to find that the factual circumstances of a case had been established by the appellate court in the face of procedural violations and an additional examination of evidence was consequently required, it would remit the case for a retrial.

23. According to the Government, it was because of the aforementioned nature of cassation proceedings that Article 408 § 3 of the CCP had been enacted. Thus, where the cassation court could not inquire into the circumstances of the case and was only called on to assess the already established facts from a legal point of view, the parties' participation at an oral hearing might not always be necessary. This rule was also justified, in the Government's opinion, by such legitimate considerations as the right to a hearing within a reasonable time and the demands of economy.

24. As to the present case, according to the Government, the Supreme Court of Georgia had only to inquire into the lawfulness of the appellate judgment. It could not re-examine the factual circumstances of the case, as requested by the applicant in her cassation claim. The cassation court was not even called upon to assess the facts relating to alleged procedural breaches, as no such "cassation argument" (*sakasacio pretenzia*) had been raised by the applicant (cf. Article 407 § 2 of the CCP, paragraph 15 above). In the Government's view, the inquiry into the points of law in the light of the already established facts was fully possible on the basis of the applicant's written observations and case materials. Furthermore, the applicant had been informed in advance of the decision to dispense with an oral hearing.

25. In the light of the foregoing, the Government claimed that the absence of an oral hearing before the Supreme Court of Georgia could not be said to have breached any of the guarantees of a fair hearing.

26. The applicant maintained her complaint.

2. The Court's assessment

27. The Court recalls that the entitlement to a "public hearing" in Article 6 § 1 necessarily implies a right to an "oral hearing". However, the obligation under Article 6 § 1 to hold such a hearing is not an absolute one. Thus, the absence of an oral hearing may be compatible with the requirements of Article 6 when the issue which is to be decided raises no

questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see, *mutatis mutandis*, *Fredin v. Sweden* (no. 2), judgment of 23 February 1994, Series A no. 283-A, pp. 10-11, §§ 21-22; *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, pp. 20-21, § 44).

28. The Court further recalls that, in proceedings before a court of first and only instance, there is normally a right to an oral hearing (see, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 64). However, the absence of a hearing before a second or third level of jurisdiction may be justified by the special features of the proceedings at issue, provided a hearing has been held at first instance (see, for example, *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 16, § 36).

29. As regards the Supreme Court of Georgia when sitting in cassation, the Court observes that its role was primarily to examine the lawfulness of appellate decisions. It follows from the Government's submissions, undisputed by the applicant and supported by the domestic law and practice, that the cassation court was not competent to decide on matters of fact, but could only review the interpretation and application of substantive and procedural legal provisions. However, an appellant could still challenge the established facts by raising "an additional and well-founded cassation argument" that they had been determined by the lower courts in breach of procedural norms (see paragraphs 15-17 and 24 above).

30. The Court notes that, in her cassation claim, the applicant requested a review of the circumstances of her case. However, she did not specify the procedural shortcomings which allegedly resulted in a wrong assessment by the appellate court of the facts of the case (see paragraph 11 above). In these circumstances, the Supreme Court, lacking the necessary competence either to examine whether the disputed appellate decision was factually well-founded or to take new evidence, legitimately refused to inquire into the factual circumstances of the case and, instead, endorsed the appellate court's determination under Article 407 of the CCP. Reviewing the validity of the lower court's legal reasoning only, pursuant to Article 404 § 1 of the CCP, the cassation court ruled on the applicability and mode of calculation of the limitation period in accordance with Articles 129 § 1 and 130 of the CC.

31. In so far as the issue of time-bar limitation had already been subject to examination at an oral hearing before the appellate court, the applicant's right to another hearing on the same issue could, having due regard to the nature of the cassation proceedings in question, be outweighed by other legitimate considerations (see *Ekbatani v. Sweden*, judgment of 26 May 1988, Series A no. 134, p. 14, § 31; *Helmers*, cited above, § 36). In this connection, the Court accepts the Government's reference to the demands of diligence and economy.

32. Furthermore, the Court considers that, given the issue to be decided, the Supreme Court of Georgia was fully capable of properly reviewing the lower court's interpretation of the pertinent legal provisions on the sole basis of the parties' written submissions and other materials in the case file. It notes that legal arguments, as well as those relating to technical factual matters, may be presented just as effectively in writing rather than orally (see, for example, *Pursiheimo v. Finland* (dec.), no. 57795/00, 25 November 2003; *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Sutter v. Switzerland*, judgment of 22 February 1984, Series A no. 74, § 30; *Coorplan-Jenni GmbH and Hascic v. Austria*, no. 10523/02, § 63, 27 July 2006; *Salomonsson v. Sweden*, no. 38978/97, § 39, 12 November 2002; *Göç v. Turkey* [GC], no. 36590/97, § 51, ECHR 2002-V).

33. Moreover, the Court attaches special significance to the fact that, in the present case, the absence of an oral hearing did not undermine the applicant's right to adversarial proceedings, a matter undisputed by the applicant (cf., *a contrario*, *Larin and Larina v. Russia*, no. 74286/01, §§ 40, 50 *in fine* et 53, 7 June 2007). In particular, the Court notes that the respondent did not submit any reply to the applicant's cassation claim (see paragraph 12 *in fine* above). The latter, therefore, cannot claim that the absence of an oral hearing stripped her of the possibility to obtain knowledge of and, if necessary, comment on the other party's submissions before the delivery of a final judgment (see, *a contrario*, *Lobo Machado v. Portugal*, judgment of 20 February 1996, *Reports of Judgments and Decisions* 1996-I, § 31; *Vermeulen v. Belgium*, judgment of 20 February 1996, *Reports* 1996-I, § 33; *Fretté v. France*, no. 36515/97, § 47, ECHR 2002-I).

34. Finally, the Court notes that the applicant was not caught unaware by the Supreme Court's decision to dispense, in the course of the cassation proceedings, with an oral hearing, as it had been duly announced to her prior to the examination of the case (see paragraph 12 above).

35. In sum, there is nothing in the case file suggesting that the written procedure offered to the applicant by the Supreme Court of Georgia in lieu of an oral hearing either lacked transparency or disclosed other reasonable grounds to doubt its fairness (see *Rizhamadze v. Georgia*, no. 2745/03, §§ 41-43, 31 July 2007).

36. In the light of the above considerations, the Court concludes that the absence of an oral hearing before the cassation court did not amount to a violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the absence of an oral hearing before the Supreme Court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 13 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President