



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

FIRST SECTION

CASE OF ORLOVA v. RUSSIA

(Application no. 21088/06)

JUDGMENT

STRASBOURG

9 October 2008

FINAL

09/01/2009

This judgment may be subject to editorial revision.

In the case of Orlova v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 21088/06) 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 Tamara Nikolayevna Orlova (“the applicant”), on 7 May 2006.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 2 April 2007 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1937 and lives in St Petersburg.

5. In February 1998 she lodged a court action against her brother and the St Petersburg Committee on Land Management with the Vyborgskiy District Court of St Petersburg (“the District Court”). She claimed that her brother had unlawfully acquired the title deeds to a plot of land adjacent to her house and had destroyed her garden. In the course of the proceedings the applicant amended her claim several times.

A. Decision to leave the applicant's claim without examination

6. On 20 July 1998 Judge A. accepted the case for examination. Several hearings were scheduled in 1998 and in the first half of 1999. They were adjourned either because the parties failed to appear or because the judge was on sick leave.

7. On 8 June 1999 the District Court refused to examine the case on the grounds that the applicant had failed to appear at two court hearings. The applicant requested the District Court to reinstate the proceedings as she had not been duly notified of the hearings. On 28 June 1999 the proceedings were reinstated.

B. Suspension of the proceedings pending an expert study

8. The first hearing in the reinstated proceedings was scheduled for 22 September 1999. On that date the applicant amended her claim and the case was adjourned. The hearing of 21 October 1999 was adjourned because the judge was on sick leave and that of 14 December 1999 because she was involved in unrelated proceedings.

9. In 2000 several hearings were adjourned for a variety of reasons.

10. On 4 July 2000 the judge ordered an expert's report at the applicant's request, and suspended the proceedings.

C. Decision to terminate the proceedings in the case

11. On 5 March 2001 the expert's report was finished and the proceedings were resumed. Several hearings were scheduled in the remaining part of 2001 at regular intervals but most of them were adjourned for various reasons.

12. In 2002, the hearing of 29 March did not take place because the judge was involved in unrelated proceedings. The next hearing, scheduled for 29 May, was adjourned because the judge was on a training course.

13. Several hearings were scheduled in 2003. Of them, the hearing of 4 June did not take place, because the representative of the Committee on Land Management failed to appear. The next hearing was scheduled for 16 September, but it was postponed because the judge was on sick leave. The hearing of 2 December 2003 did not take place because the judge was involved in unrelated proceedings.

14. In 2004, the hearing of 11 February was postponed because the applicant was sick. The next hearing was scheduled for 12 May; however, it did not take place due to the defendants' failure to appear. The next hearing was scheduled for 22 September, but the representative of the Committee on Land Management did not appear and requested that the case go ahead in his absence. However, the judge postponed the examination of the case until

30 November 2004. On that date the hearing was adjourned because the defendant's representative failed to attend. The hearing of 21 December 2004 did not take place because the judge was involved in unrelated proceedings.

15. Several hearings were scheduled in the first half of 2005. They were adjourned for a variety of reasons.

16. On 1 June 2005 the District Court terminated the proceedings in the case on the grounds that the applicant's claim could not be examined within civil proceedings. On 31 August 2005 the St Petersburg City Court ("the City Court") quashed the decision of 1 June 2005, on the applicant's appeal, having found that that decision had not corresponded to the circumstances of the case and had been made in violation of procedural rules. Furthermore, the City Court drew the District Court's attention to the fact that the proceedings had already lasted for seven years and that such a duration could be said to have violated the applicant's right to examination of her claims within a reasonable time. The City Court remitted the case for a fresh examination to the first-instance court.

D. Determination of the applicant's claim

17. On 10 November 2005 the District Court heard the case and dismissed the applicant's action in full. On 3 March 2006 City Court upheld that judgment on appeal.

THE LAW

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

18. The applicant complained that the domestic courts had failed to examine her claim within a reasonable time. The Court will examine that complaint under 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 ..."

19. The proceedings commenced in February 1998, when the applicant lodged her claim with the District Court. However, the Court will only consider the period of the proceedings which began on 5 May 1998, when the Convention entered into force in respect of Russia. 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 period in question ended on 3 March 2006 with the decision of the City Court. Thus the Court has competence *ratione temporis* to examine the period of approximately seven

years and ten months. During that period the case was examined at two levels of jurisdiction.

A. Admissibility

20. The Government submitted that the applicant had not exhausted available domestic remedies. She could have used such domestic remedies to speed up the proceedings in her case or to receive redress for the lengthy examination of her case. They claimed that the applicant could have complained about the judge in charge of the case to the board of judges or asked to have her replaced, she could have appealed against the decisions of the District Court to postpone the hearings, she could also have asked the judge to replace the expert if she considered that the timescale for the filing of the expert's report was too long, she could have appealed against the final decision in her case at a supervisory review hearing and, finally, she could have appealed to the President of the District Court.

21. The applicant did not comment on this particular part.

22. The Court reiterates that under Article 1 of the Convention the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention.

23. The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

24. The only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27; *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 87-88, § 38; and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

25. 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 judge in charge of the case, higher

judicial or other authorities. It was not suggested that any of the remedies referred to by the Government or a combination of them, could have expedited the determination of the applicant's claims 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 those means, it was possible for the applicant to obtain such relief (see, *mutatis mutandis*, *Kudla*, cited above, § 159). For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

26. The Court considers that the application 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

27. The Government firstly argued that the length of proceedings in the present case was due to the particular complexity of the case. They further submitted that the applicant had caused some delays in the proceedings. She amended her claim, requested an expert's report, insisted on the examination of the expert and of witnesses and appealed against the first-instance judgments. The applicant and/or the defendants had failed to appear at several hearings and on some occasions they had asked to adjourn the hearings. The Government accepted, however, that the applicant had been present at most of the hearings. They also pointed out that the case had been examined by domestic courts several times. The hearings had been scheduled regularly and the domestic courts had not caused any substantial delays in the proceedings.

28. The applicant contested the Government's submissions. She considered that the case was not complex. She submitted that ten hearings had not taken place due to the domestic court's failure to duly notify the parties and fourteen hearings had not taken place either because the judge was on sick leave, was busy in other proceedings, was on training or because the court's registrar was absent.

29. 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 applicant and 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). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

30. The Court accepts that the proceedings at issue were of a certain complexity as they concerned property claims, involved three parties and required an expert's report. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of proceedings.

31. As to the applicant's conduct, the Court is not convinced by the Government's arguments that the applicant should be held responsible for amending her claim, requesting an expert opinion, the examination of the expert and witnesses and for lodging appeals. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by the 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). Furthermore, the Government accepted that the applicant had been present at most of the hearings. Accordingly, the Court considers that the applicant was not responsible for any substantial delays in the proceedings.

32. As regards the conduct of judicial authorities, the Court notes the Government's argument that the domestic courts had examined the case several times. However, the Court considers that the fact that the courts heard the case several times did not absolve them of complying with the reasonable-time requirement of Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

33. The Court further notes that the parties agreed that the defendants had failed to appear at numerous hearings and thus caused certain delays in proceedings. However, the Government submitted that they had been duly notified of the hearings and the applicant argued that the courts had failed to duly inform them. The Court considers that it is not necessary to examine why the defendants failed to appear, as there are sufficient elements to conclude that the responsibility for most of delays in the proceedings, in any event, lies with the domestic authorities.

34. The Court observes that several hearings (14 December 1999, 29 March and 29 May 2002, 2 December 2003 and 21 December 2004) did not take place because the judge was involved in unrelated proceedings or was on a training course. In this connection, the Court recalls that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision within a reasonable time (see, for instance, *Löffler v. Austria*, no. 30546/96, § 21, 3 October 2000). Therefore, the delays resulting from the judge's absence from the hearings are imputable to the State.

35. Furthermore, the Court is particularly struck by the fact that after several years of proceedings, on 1 June 2005, the District Court held that the applicant's claim was not of a civil nature and that it was therefore not competent to examine the case. On 31 August 2005 the City Court quashed that decision as unlawful and drew the District Court's attention to the fact

that the proceedings had been very long and could be in breach of the applicant's right to examination of her claim within a reasonable time. The Court considers that the District Court's decision resulted in a significant delay in the examination of the case.

36. Finally, the Court observes that the applicant was already very elderly when she brought her action and her claim concerned a plot of land which she used as a garden. The Court is of the opinion that the nature of the dispute and the applicant's advanced age called for particular diligence on the part of the domestic courts.

37. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, in particular to the delays which occurred before the District Court, 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. 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."

A. Damage

39. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government contested the claim.

41. The Court considers that the applicant must have suffered distress and frustration resulting from the excessive length of proceedings. Making its assessment on an equitable basis, it awards her EUR 3, 600 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

42. The applicant also claimed 10,055 Russian roubles for the costs and expenses incurred before the domestic courts and before the Court.

43. The Government contested the claim.

44. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 275 covering costs under all heads.

C. Default interest

45. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 in accordance with Article 44 § 2 of the Convention the following amounts to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount;
 - (ii) EUR 275 (two hundred and seventy-five euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on that amount;
 - (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 9 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President