



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

FIRST SECTION

CASE OF KOLOVANGINA v. RUSSIA

(Application no. 76593/01)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Kolovangina v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 76593/01) 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 Irina Petrovna Kolovangina (“the applicant”), on 14 September 2001.

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

3. On 9 September 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in the city of Khabarovsk.

A. Compensation proceedings

5. On 21 June 2000 the applicant issued her husband, Mr Kolovangin with a power of attorney (registered by a notary public under no. 2226) which provided as follows:

“I, Ms Irina Petrovna Kolovangina, ... hereby authorise Mr Vladimir Aleksandrovich Kolovangin,... to act on my behalf... in civil and criminal proceedings before all judicial bodies, with all the rights which the law confers on a plaintiff, defendant, third party or victim, including the rights to enter into a friendly settlement, to accept or to withdraw the claim in full or in part, to change the grounds of the claim, to lodge appeal against a judgment, to receive a writ of execution with the right to receive property and money, to sign documents on my behalf and to perform any other actions related to the fulfilment of this authority.”

6. On an unspecified date the applicant left Kaluga, where both she and Mr Kolovangin had lived, and moved to Khabarovsk.

7. On 24 May 2001 Mr Kolovangin lodged an action on the applicant’s behalf against a private company. He claimed that the company had overcharged the applicant’s telephone communications and sought compensation of pecuniary and non-pecuniary damage. He enclosed the power of attorney mentioned above.

8. On 28 May 2001 the Kaluzhskiy District Court disallowed the action with reference to Article 129 § 9 of the 1964 Code and stating as follows:

“Ms Kolovangina’s statement of claim is signed by her proxy, Mr Kolovangin. However, the right to lodge an action with a court (the right to sign the statement of claim) is not listed in the submitted copy of the power of attorney; this suggests that Mr Kolovangin does not have the right to lodge a claim on behalf of Ms Kolovangina.”

9. On 25 June 2001 the Kaluga Regional Court upheld that decision. It found that the applicant had not authorised Mr Kolovangin to sign a statement of claim and to lodge it on her behalf.

B. Proceedings for annulment of a contract

10. On 6 February 2002 Mr Kolovangin lodged on behalf of the applicant an action seeking to void a contract for the sale of shares between her and a private company. He enclosed a copy of the power of attorney no. 2226.

11. On 11 February 2002 the District Court refused to entertain the action. It reasoned as follows:

“On 6 February 2002 the Kaluzhskiy District Court received the statement of claim on behalf of Ms Kolovangina... The statement was lodged with the court and signed by Mr Kolovangin on behalf of the plaintiff. However, the power of attorney no. 2226 of 21 June 2000 produced to the court does not entitle Mr Kolovangin to lodge an action on behalf of Ms Kolovangina.

Thus, the judge disallows the action under Article 129 § 9 of the RSFSR Code of Civil Procedure, as the statement of claim on behalf of the person concerned was lodged by a person who did not have the right [to do so].”

12. On 21 March 2002 the Regional Court upheld that decision and found as follows:

“Under Article 129 § 9 of the RSFSR Code of Civil Procedure a judge disallows an action if the action was lodged on behalf of the person concerned by a person who did not have the right to pursue the case.

As the power of attorney issued by Ms Kolovangina to Mr Kolovangin did not list the right of the representative to lodge statements of claim on behalf of the represented person, the judge lawfully disallowed the action.”

II. RELEVANT DOMESTIC LAW

13. The 1964 Code of Civil Procedure (“the 1964 Code”, as in force at the material time) provided:

Article 43. Pursuing cases through representatives

“Citizens may pursue their cases in court in person or through representatives...”

Article 45. Laying down the powers of the representative

“The powers of the representative should be set down in the power of attorney issued and formalised in accordance with the law...”

Article 46. Authority of the representative

“The authority to pursue a case in court entitles the representative to perform on behalf of the client all procedural acts, with the exception of seeking the transfer of the case to a comrades’ or an arbitration court; withdrawing claims in full or in part; admitting a claim; varying the grounds of a claim; entering into a friendly settlement; transferring the power of attorney; lodging an appeal against a judgment; submitting the enforcement writ for execution; obtaining the awarded property or money. The representative’s authority to perform any of the acts listed in this Article should be explicitly stated in the power of attorney issued by the client.”

Article 129. Accepting statements of claims for examination

“The judge decides... whether to accept for examination the statement of claim in a civil case.

The judge refuses to accept a statement of claim for examination...

9) if it was submitted on behalf of the interested party by a person not empowered to pursue the case...

The judge's refusal to accept the statement of claim for examination on the grounds provided by paragraphs... and 9...does not prevent [the party] from reapplying to the court on the same ground, provided that the indicated shortcoming is rectified..."

14. The 2002 Code of Civil Procedure ("the 2002 Code") which replaced the 1964 Code from 1 February 2003 provides:

Article 54. Authority of the representative

"The representative has the authority to perform on behalf of his client all procedural actions. However, the representative's authority to sign the statement of claim; to lodge it with a court; to seek transfer of the dispute to a court of arbitration; to lodge a counter-claim; to withdraw the claims in full or in part... to enter in a friendly settlement... should be specifically listed in the power of attorney issued by the client."

THE LAW

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

15. The applicant complained under Articles 6, 13 and 17 of the Convention that the domestic courts had refused to examine the claims submitted on her behalf by Mr Kolovangin. The Court considers that her complaint raises an issue of the applicant's access to a court and will examine it under Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

Article 6 § 1

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

A. Admissibility

16. 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

17. The Government submitted that Article 46 of the RSFSR Code of Civil Procedure required that the delegation of the power to enter into a

friendly settlement, amend, withdraw or admit a claim be expressly conferred upon a representative. The authority to sign a statement of claim and to lodge it with a court had been akin, by its nature, to the above-mentioned powers and thus had also required the plaintiff's explicit authorisation. Otherwise, a lawyer could bring proceedings which ran counter to his client's interests. The domestic courts' interpretation of Articles 129 and 46 had been sufficiently clear and foreseeable. They also claimed that the domestic courts' interpretation had been supported by the text of Article 54 of the 2002 Code which had explicitly listed that requirement. Having issued a power of attorney for her husband, the applicant must have believed that he would adequately protect her interests, as if he were a professional lawyer. The courts had twice advised him of the need to have explicit authorisation to bring an action. Despite the refusal to process her claims, the applicant had still had an opportunity to resubmit them to a court.

18. The applicant maintained her complaint.

19. The Court notes at the outset that the applicant's complaint relates to almost identical sets of facts and thus it will examine both situations simultaneously.

20. The Court reiterates that the right to a court, of which the right of access constitutes one aspect, is inherent in the right stated by Article 6 § 1 of the Convention (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36). This right of access is not absolute but may be subject to limitations permitted by implication (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, p. 24-25, § 57). Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Khalfaoui v. France*, no. 34791/97, § 35, ECHR 1999-IX; *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, § 65; and *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 41, § 31).

21. Turning to the circumstances of the present case, the Court observes that the domestic courts refused to examine the applicant's claims because the power of attorney did not expressly mention Mr Kolovangin's right to sign statements of claim and lodge them on the applicant's behalf. Thus, their decisions in respect of both sets of proceedings may be regarded as imposing restrictions on the applicant's right of access to a court.

22. The Court has previously held that for the right of access to be effective an individual must have a clear, practical opportunity to challenge an act that is an interference with his or her rights, in particular as regards the procedures for making use of the available remedies (see *Bellet*, cited

above, § 36, and *F.E. v. France*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3350, § 47). In the present case the domestic courts, by way of preliminary procedural decisions, disallowed the applicant's applications with reference to Article 129 § 9 of the 1964 Code. Under this provision, a judge could refuse to accept for examination a statement of claim submitted by a person who was not properly authorised to do so (see paragraph 13 above). In each set of proceedings, the applicant's representative received a decision putting him on notice that the court held the view that his written authority to act did not include an authorisation to sign and lodge on the applicant's behalf the statement of claim in question and affording the applicant an opportunity to rectify what it had considered a shortcoming (compare *Grof v. Austria*, no. 25046/94, Commission decision of 14 April 1998). Instead of seeking to do so, the representative opted to lodge an appeal, but on each occasion the appellate court upheld the lower court's decision.

23. Whilst Article 46 of the 1964 Code did not expressly mention signature and lodging of a statement of claim among those procedural acts that ought to be specifically authorised by the client, the impugned preliminary dismissals of the applicant's suits had been based on Article 129 § 9. In this connection it is to be reiterated that it is not the Court's task to take the place of the domestic courts and it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This applies, in particular, to the interpretation by courts of rules of a procedural nature. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3235, § 43, and *Ivanova v. Finland*, (dec.), no. 53504/99, 28 May 2002).

24. The Court sees no reason to disagree with the Government's argument that the authority to sign a statement of claim and to lodge it with a court is, by its nature and possible implications, akin to such procedural acts as withdrawing, amending or admitting a claim. It is also to be noted that the applicant did not contest their argument or otherwise submit that the courts' interpretation of the impugned provision had been unforeseeable and if so for what reason. Neither did she argue that she was in any manner prevented from seeking professional legal advice at the time when she wished to issue the proceedings (see, *mutatis mutandis*, *Cañete de Goñi v. Spain*, no. 55782/00, § 41, ECHR 2002-VIII). In sum, the Court considers that the condition imposed by the national courts for the applicant to pursue her suits before them was not such as to render the procedure unforeseeable from the point of view of the applicant (see *Levages Prestations Services v. France*, judgment of 23 October 1996, *Reports* 1996-V, p. 1453, § 42).

25. As regards the aim of the restriction, the Court is ready to accept that the requirement to list the authority to sign and lodge a statement of claim in the power of attorney was intended to protect the plaintiffs against possible abuses by their representatives and served the more general interest of proper administration of justice.

26. Finally, it is important to note that the refusal to entertain the applicant's claims in no way barred their examination and that the applicant could re-submit them in accordance with Article 129 of the 1964 Code (see, by contrast, *Canea Catholic Church v. Greece*, judgment of 16 December 1997, *Reports* 1997-VIII, p. 2857, § 41, and *De Geouffre de la Pradelle v. France*, judgment of 16 December 1992, Series A no. 253-B, §§ 27-31). In the case at hand the domestic courts advised the applicant and her representative of the need to rectify what could reasonably be considered a simple formality. In particular, the applicant had two options – either to sign her statements of claims or to issue Mr Kolovangin with a proper power of attorney. It has not been submitted that either option was impracticable for the applicant, for example by reason of difficulties to meet time-limits, or otherwise impossible to comply with. Hence, in the Court's opinion, it cannot be said that the essence of the applicant's right of access to a court was impaired or that the proportionality principle was not respected in the present case.

27. The foregoing considerations lead the Court to conclude that there has been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant complained under Article 1 of Protocol No. 1 that she had sustained pecuniary damage in the amount of 3,000 US dollars, without providing any further details.

29. The Court observes that, apart from a general allegation that she had sustained pecuniary damage, the applicant failed to specify what exactly constituted the alleged interference with her rights under Article 1 of Protocol No. 1. In any event, the Court finds that the complaint does not disclose any appearance of a violation of the provision complained of. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of access to a 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 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President