



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

1959 · 50 · 2009

FIRST SECTION

CASE OF VDOVINA v. RUSSIA

(Application no. 13458/07)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

18/09/2009

This judgment may be subject to editorial revision.

In the case of Vdovina v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 13458/07) 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 Nina Ignatyevna Vdovina (“the applicant”), on 9 January 2007.

2. The applicant was represented by Mr S. Zubarev, a lawyer practising in Tula. 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 7 May 2007 the President of the First Section 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 1932 and lives in Tula.

5. In 1999 the applicant inherited a flat. On 19 August 1999 Mr L., the grandson of the testator, brought an action against the applicant seeking invalidation of the will and transfer of the title to the flat. Judge A. of the Zarechinskiy District Court of Tula adjourned the examination of the action until 10 October 1999, ordering Mr L. to pay a court fee.

6. After the fee had been paid, the District Court fixed a preliminary hearing for 19 July 2000. At that hearing it ordered a post-mortem forensic psychiatric examination of the testator to establish whether she had been competent to make a will. The proceedings were stayed until 27 September 2000. According to the Government, the examination was not performed as the case file did not contain the materials necessary for the experts to carry out their inquiry.

7. No hearings were held between October 2000 and 27 June 2001.

8. On 27 June 2001 the case was assigned to judge P., who held a preliminary hearing on 16 July 2001. At that hearing the parties asked the District Court to obtain the attendance of certain witnesses. The Government submitted that the next hearing had not been scheduled to take place until 25 October 2001 because the presiding judge had to study the parties' requests.

9. On 25 October 2001 the District Court, at Mr L.'s request, again ordered a post-mortem psychiatric examination of the testator and stayed the proceedings. The expert examination was performed on 30 December 2002. Three months later the District Court resumed the proceedings.

10. The hearing fixed for 27 March 2003 was postponed until 14 May 2003 to allow the applicant's representative to lodge requests.

11. On 14 May 2003 the Zarechinskiy District Court adjourned the proceedings because Mr L. had died on 28 April 2003 and it was necessary to identify his heirs or legal successors. The proceedings were resumed on 3 December 2003 and a hearing was scheduled for 18 December 2003.

12. Of the four hearings listed between 18 December 2003 and 1 June 2004, two were adjourned because the applicant's representatives defaulted, one was rescheduled because the claimant's lawyer did not attend and one was postponed because a witness did not attend.

13. On 1 June 2004, at the request of the applicant's lawyer, the District Court authorised an additional post-mortem psychiatric examination of the testator. The experts completed the examination on 17 November 2004. The District Court received the case file with the expert report on 13 January 2005.

14. Due to judge P.'s resignation, the case was assigned to judge D., who fixed the first hearing for 4 March 2005. That hearing and the subsequent hearings on 6 and 11 April 2005 were postponed because the claimant's lawyer was ill.

15. On 7 June 2005 the District Court once again stayed the proceedings to identify Mr L.'s heirs. In the meantime, judge D. resigned and the case was assigned to judge M., who resumed the proceedings on 1 November 2005 and fixed the first hearing for 15 November 2005. Ms S. joined the proceedings as the claimant.

16. Of the fourteen hearings scheduled between 15 November 2005 and February 2007, five hearings were adjourned either because the applicant

and her representatives defaulted or she filed applications for the examination of additional evidence, six hearings were postponed because Ms S. and her lawyer did not attend, two hearings were rescheduled at Ms S.'s request and one hearing was adjourned because the claimant's witness defaulted.

17. On 7 February 2007 the District Court dismissed the action in full. On 2 August 2007 the Tula Regional Court upheld the judgment.

18. According to the applicant, her numerous complaints to various State bodies about the excessive length of the proceedings were futile. In particular, on 14 November 2005 the applicant received a letter from the acting President of the Tula Regional Judicial Qualification Board. He noted that "no unjustified procrastination in the civil case ha[d] been established".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

19. The applicant complained that the length of the proceedings had been 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..."

Relying on Article 13 of the Convention, she further complained that there was no court in Russia to which application could be made to complain of the excessive length of proceedings. Article 13 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. The parties' submissions

20. At the outset the Government argued that the applicant's complaints were inadmissible for the following two reasons. Firstly, the application had been lodged too late, as the final decision in the case had been issued by the Tula Regional Judicial Qualification Board on 14 November 2005. In addition, the applicant had failed to exhaust the available domestic remedies as she did not appeal against the decision of the Regional Judicial Qualification Board to the Tula Regional Court.

21. Alternatively, the Government submitted that the applicant's complaints about the excessive length of the proceedings were manifestly ill-founded. While accepting that the domestic authorities had been responsible for the delays in the proceedings from 10 October 1999 to 19 July 2000 and from 3 October 2000 to 27 June 2001, the Government stressed that the overall length of the proceedings, which according to them had been pending from 19 August 1999 to 11 July 2007, had an objective justification. In particular, the case had been very complex, involving examination of complicated issues of legal succession and inheritance. The proceedings had been further complicated by the claimant's death. The domestic courts had needed additional time to identify the heirs and invite the legal successors to participate in the proceedings. Furthermore, an aggregated delay of over two years had been caused by the three expert examinations authorised at the parties' request. In the Government's opinion, the applicant and her representatives had also added to the length of the proceedings by failing to attend four hearings and asking for an adjournment of an additional three hearings to enable additional evidence to be obtained. In addition, the claimant and her representative had failed to attend at least ten hearings.

22. The applicant maintained her complaints, arguing that the domestic courts had been entirely responsible for the delays and that she had had no effective remedies in respect of the domestic courts' conduct. In particular, she noted that in accordance with the legal requirements an expert examination had to be performed within a month and, in exceptional cases, no later than two months after it had been authorised. However, in violation of the domestic legal norms, it had taken the experts over a year and five months and over seven months respectively to perform the second and third expert examinations. An examination authorised on 19 July 2000 had never been carried out. Furthermore, additional delays had been caused by the delayed transfer of the case file and expert reports from the experts' offices to the court.

23. The applicant further pointed to a delay between 7 June and 1 November 2005 when the proceedings had been stayed to allow the District Court to identify Mr L.'s legal successors. However, in the applicant's opinion, that delay had had no objective justification, as the examination of the case had previously been adjourned for more than six months (from 14 May to 3 December 2003) for the same purpose. The applicant further disputed the assertion that she had contributed to the delays in the proceedings by failing to attend four hearings. As regards the three adjournments on her applications, she stressed that she had been entitled to make use of her procedural rights.

B. The Court's assessment

1. Admissibility

(a) Non-exhaustion issue

24. The Government raised the objection of non-exhaustion of domestic remedies by the applicant. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint that she did not have at her disposal an effective remedy by which to complain about the excessive length of the proceedings in her case. Thus, the Court finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 13 of the Convention.

(b) Six-month issue

25. The Court further recalls the Government's argument that the applicant failed to lodge her application within the six-month time-limit, as the final decision in her case had been taken by the Tula Regional Judicial Board on 14 November 2005 and the application had only been lodged with the Court on 9 January 2007.

26. The Court observes that, normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of (see *Keenan v. the United Kingdom* (dec.), no. 27229/95, 22 May 1998). In this respect the Court observes that the present application concerns an alleged infringement of the applicant's right to examination, within a reasonable time, of a civil case to which she was a party. The civil proceedings at issue ended on 2 August 2007 with the final judgment of the Tula Regional Court. Without prejudging the merits of the applicant's complaint under Article 13 of the Convention about the absence of an effective domestic remedy, the Court can already conclude at this juncture that the six-month time-limit started to run not earlier than 2 August 2007 when the Regional Court delivered its final judgment. The application lodged on 9 January 2007 was therefore introduced within the requisite six months and cannot be rejected pursuant to Article 35 § 4 of the Convention.

(c) Period to be considered

27. The Court observes, and it was not disputed by the parties, that the period to be taken into consideration began on 19 August 1999 when Mr L. brought an action against the applicant. The period in question ended on 2 August 2007 when the Tula Regional Court issued the final judgment,

dismissing the action in full. It thus lasted approximately eight years before two levels of jurisdiction.

(d) The Court's decision on the admissibility of the application

28. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

(a) Article 13

29. 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). It notes that the Government have failed to submit evidence as to the existence of any remedy that could have expedited the determination of the applicant's case or provided her with adequate redress for the delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, § 64, 29 January 2004). In particular, the Government did not explain how an application to the Tula Regional Judicial Board and an appeal against the Board's decision to the Tula Regional Court could have expedited the civil proceedings to which the applicant was a party or what relief – either preventive or compensatory – the applicant could have obtained by having recourse to those domestic authorities (see, to the same effect, *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007, and *Shneyderman v. Russia*, no. 36045/02, § 33, 11 January 2007).

30. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies and concludes that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

(b) Article 6 § 1

31. 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).

32. The Court notes that the parties did not dispute that the case was complex. The Court sees no reason to conclude otherwise. 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.

33. As regards the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be criticised for requesting the adjournment of hearings in order for additional evidence to be obtained. It has been the Court's consistent approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his or her interests (see *Skorobogatova v. Russia*, no. 33914/02, § 47, 1 December 2005). The Court further observes, and this was not disputed by the parties, that four hearings were rescheduled in eight years, during which time the proceedings were pending, because the applicant and/or her representatives defaulted. Irrespective of the reasons for the applicant's and her lawyers' behaviour, the Court finds that the delay incurred through their absence was negligible having regard to the overall length of the proceedings.

34. The Court observes, on the other hand, that substantial periods of inactivity, for which the Government have not submitted any satisfactory explanation, are attributable to the domestic authorities. It took the District Court several months to fix hearings. For example, a period of more than nine months elapsed between October 1999 when the District Court accepted the action for adjudication following the payment of the court fee, and 19 July 2000 when it held the first preliminary hearing (see paragraph 6 above). Nor were any hearings held between October 2000 and 27 June 2001 (see paragraph 7 above).

35. The Court further observes that the proceedings were stayed three times for the preparation of expert opinions. An aggregated delay of approximately two years resulted (see paragraphs 6, 9 and 13 above). The Court reiterates that the principal responsibility for a delay caused by expert examinations rests ultimately with the State (see *Marchenko v. Russia*, no. 29510/04, § 38, 5 October 2006, with further references). The Court cannot overlook the fact that no steps were taken to avoid delays in the present case. In particular, the Court finds it striking that no expert examination was performed during the first stay of the proceedings in July-September 2000 (see paragraph 6 above). Furthermore, at no point did the District Court enquire into the progress of the experts' work. The transfer of the case file between the District Court and the experts' offices was also carried out with substantial delays (see paragraphs 9 and 13 above). Accordingly, this period is attributable to the State.

36. Furthermore, the Court observes that the composition of the District Court hearing the case changed three times, causing a substantial delay in the proceedings (see paragraphs 8, 14 and 15 above). Each time a judge resigned the proceedings recommenced, which involved fixing new

hearings, rehearing the parties and re-examining evidence. In this respect the Court notes that Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial systems in such a way that their courts are able to fulfil the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria (No. 2)*, no. 72159/01, § 57, 4 March 2004). In addition, there were several shorter periods during which there was no apparent progress in the case. In particular, the Court notes that it took the District Court over three months to examine the parties' applications for witnesses to attend (see paragraph 8 above). Furthermore, the Government did not explain why it had been necessary to stay the proceedings for the second time in June 2005, allegedly to identify the claimant's heirs, when the proceedings had previously been stayed for more than six months for the identical purpose (see paragraphs 11 and 15 above).

37. Having regard to the overall length of the proceedings, the Court concludes that the applicant's case was not examined within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

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 7,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government argued that the applicant's claims were excessive and unreasonable.

41. The Court considers that the applicant suffered distress, anxiety and frustration because of the unreasonable length of the proceedings and the lack of an effective remedy in respect of the breach of the requirement to hear her case within a reasonable time. Making its assessment on an equitable basis, it awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

42. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and before the Court.

43. Accordingly, the Court does not award any sum under this head.

C. Default interest

44. 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. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint about the excessive length of the proceedings, and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *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 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President