



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

1959 · 50 · 2009

FIRST SECTION

CASE OF PLEMYANOVA v. RUSSIA

(Application no. 27865/06)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

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 Plemyanova 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 27865/06) 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 Mariya Sergeyevna Plemyanova (“the applicant”), on 16 May 2006.

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

3. On 19 June 2008 the President of the First Section decided to grant priority treatment to the application and to give notice of it 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 1928 and lives in Krasnodar.

A. First round of proceedings

5. In October 1996 the applicant's husband sued his neighbours, Mr P and Mr Pr alleging that they prevented him from using his land. In April 1997 he amended his claim raising a complaint against the Krasnodar town administration claiming removal of structures built on his land and annulment of the administration's decision allowing such construction. In reply to the court's request, in his report dated 31 March 1997, the expert concluded that the border between P's and the applicant's land was not in line with the reference document issued in 1957. By a default judgment of 23 January 1998, the Pervomayskiy District Court of Krasnodar granted the applicant's husband's claims. Mr P sought annulment of the default judgment. On 10 April 1998 this judgment was annulled and the proceedings resumed.

6. On 5 May 1998 the Convention entered into force in respect of Russia.

B. Second round of proceedings

7. On 26 June 1998 the District Court granted the applicant's husband's claims and ordered the town administration "not to place any obstacles in the way of his building a garage". The applicant's husband and the district prosecutor lodged appeals against this judgment. On 27 August 1998 the Krasnodar Regional Court quashed the judgment on appeal; the case was remitted to the District Court.

C. Third round of proceedings

8. In the resumed proceedings, three hearings were adjourned because third parties, experts or witnesses defaulted. Two hearings were adjourned because the applicant's husband's lawyer studied the case file for ten days and because the applicant's husband drafted an amended statement of claim.

9. In April 1999 the case was re-assigned to another judge. In May 1999 the applicant's husband lodged a claim against a Ms N, his other neighbour. In June 1999 Mr P and Ms N lodged counter-claims against the applicant's husband. In July 1999 the court ordered an expert report. In the absence of the necessary documents and payment, the expert refused to submit a report.

10. In 3 February 2000 the case was re-assigned. At least five hearings were adjourned for various reasons (the judge was ill or busy; the other parties, their lawyers or other participants failed to attend). In September 2000 the applicant's husband and Mr P signed a friendly settlement agreement in respect of certain claims. On 30 November 2000 the Presidium of the Regional Court annulled it.

11. In January 2001 the applicant's husband withdrew some of his claims; Mr Pr waived his right to be present at hearings; Ms N withdrew her claims against the applicant. By a judgment of 1 February 2001, the District Court rejected the applicant's husband's claims. On 20 March 2001 the Regional Court upheld the judgment. On 2 August 2001 the Presidium of the Regional Court quashed the above judgments by supervisory review and ordered a re-examination of the case.

D. Fourth round of proceedings

12. The applicant's husband died on 8 October 2001. On 17 October 2001 the court suspended the proceedings pending the succession proceedings (see paragraph 20 below). In early 2002 the applicant informed the court that she had applied for a succession certificate.

13. In March 2002 Mr Pr waived his right to be present at hearings and asked the court to render a judgment with reference to his depositions made over the previous years. On 9 April 2002 the court resumed the proceedings. A hearing was scheduled for 3 June 2002. On the latter date, the court suspended the proceedings because the applicant decided to bring a separate court action in order to have certain succession-related documents amended. The outcome of this court action remains unclear. On 23 December 2002 the notary public issued a succession certificate to the applicant in respect of the house. Thereby the applicant acquired rent title to the land under and around the house, which was at the heart of the civil dispute initiated by her late husband.

14. In March 2003 the main proceedings were resumed. In April 2003 the case was re-assigned. In 2003 there were several adjournments for various reasons: at least five hearings were scheduled but adjourned because one or two defendants (or their lawyers) were absent or ill or because the judge was busy in other proceedings.

15. On 26 January 2004 the court issued an order allowing the applicant to step into the proceedings as the plaintiff's heir. In 2004 and 2005 hearings were regularly scheduled but were adjourned for various reasons, mainly on account of the illness or unavailability of one or more parties.

16. In 2006 three hearings were scheduled and adjourned because the defendants failed to appear or because the judge was busy in other proceedings or ill.

17. Hearings were held on 12 and 21 February 2007. On the latter date, the court refused to start the deliberations because of the announcement of Mr Pr's death. Thus, the proceedings resumed. In March 2007 the applicant asked the District Court to discontinue the proceedings in respect of Mr Pr. On 18 April 2007 the court granted her request. Despite the applicant's objection, the court also considered that the rights of Mr Pr's heirs might be affected by the applicant's civil case, and thus suspended the proceedings

pending determination of the succession issue. On 24 October 2007 the Regional Court refused to re-examine the above decision by way of supervisory review.

18. The main proceedings resumed in April 2008. The case was reassigned. According to the Government, the parties failed to attend a hearing on 2 June 2008. Mr Pr's heirs indicated that they would obtain a succession certificate only in early August 2008.

19. By a judgment of 12 August 2008, the District Court granted the applicant's claims in part. With reference to the 1997 expert report, the court concluded that the border between P's and the applicant's land was not in line with the reference document issued in 1957. The court also heard the parties' neighbours who made contradictory statements. On 7 October 2008 the Regional Court upheld the judgment, except for one claim against Mr P. Having noted that the case had already been pending for more than ten years, the appeal court itself re-examined that claim and rejected it.

II. RELEVANT DOMESTIC LAW

20. Pursuant to the RSFSR Code of Civil Procedure in force before 1 February 2003, the court was required to suspend the proceedings if one party had died and the claims could be succeeded to (Article 214). The suspension had to be valid until a successor was identified (Article 216). Similar provisions are contained in Articles 215-217 of the 2002 Code of Civil Procedure.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

21. The applicant complained that the length of the civil proceedings had been in breach of the “reasonable time” requirement under Article 6 of the Convention, which in the relevant part 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 ...”

A. Submissions by the parties

22. The Government submitted that the period to be taken into consideration started on 5 May 1998 and ended on 7 October 2008. They argued that the proceedings were complex on account of the nature and the

number of the claims, which were amended several times, and the number of persons and judicial instances involved in the dispute. Delays were occasioned by the time needed for the applicant and a co-respondent's heirs to confirm their succession status. Thus, following the death of the applicant's husband the proceedings remained suspended for fourteen months. The case had to be adjourned on fifteen occasions because both parties failed to appear, thus delaying the proceedings for eleven months in total. The applicant was solely responsible for eight adjournments amounting to a cumulative delay of five months. The other parties caused delays on twenty-one occasions (a delay of nearly thirteen months). Certain delays were caused by the fact that the parties appealed against first-instance judgments. Lastly, the Government acknowledged that the national authorities were responsible for a cumulative period of fifteen months resulting from adjournments on account of the judges' unavailability or illness.

23. The applicant maintained her complaint. She argued that the case was not complex. The case file contained six volumes, half of which were documents of a procedural nature. Moreover, one of two respondents, Mr Pr, accepted the applicant's claims and thus there was no need to adjourn subsequent proceedings insisting on his presence. The other respondent, Mr P, was responsible for twenty-one adjournments resulting in a cumulative delay of one year, eleven months and seven days. The court was responsible for six years, six months and fifteen days. Certain delays were caused by the court's failure to apprise the parties of hearings. Adjournments had lasted over a month each and were, at times, ordered despite a party's waiver of the right to be present. The case was arbitrarily re-assigned between district court judges. No penalties had been imposed on the defaulting party. Lastly, the applicant accepted that she could be held accountable for adjournments on nine occasions amounting in total to one year, six months and six days, in particular after her husband had died and before she stepped into the proceedings as her husband's heir.

B. The Court's assessment

1. Admissibility

24. The Court notes that the 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.

2. *Merits*

(a) Period to be taken into account

25. Having regard to the materials in the case file, the Court accepts that the domestic proceedings started in October 1996. However, the Court's competence *ratione temporis* is limited to the proceedings pending after 5 May 1998, the Convention having entered into force in respect of Russia on that date. In assessing the reasonableness of the time that elapsed after that date, the Court may, however, take account of the state of proceedings at the time.

26. The domestic proceedings ended on 7 October 2008. The Court considers that the period from 20 March to 2 August 2001 should not be taken into account because no proceedings were pending before the national courts.

27. Thus, the proceedings took approximately eleven years and eight months, of which the period of ten years and nearly one month (at two level of jurisdiction) was within the Court's competence *ratione temporis*.

(b) Reasonableness of the period

28. 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 conduct of the relevant authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

29. The Court considers that the case was not particularly complex, despite the involvement of several parties and their claims. In the course of the proceedings a number of claims and counterclaims were withdrawn. It is noted in that connection that the court determined the dispute in 2008 essentially with reference to an expert report issued already in 1997.

30. The Court considers that first the applicant's husband and then the applicant, at least to a certain extent, contributed to the length of the proceedings as they or their lawyers failed to appear at several hearings, which resulted in adjournments. The applicant accepted that she was accountable for a cumulative delay of three months and for the period after 17 October 2001 when the proceedings were suspended at her request pending determination of her succession status and the issuing of the relevant certificate (see paragraph 23 above). Whatever the applicant's responsibility for that delay may be, there is insufficient factual basis for the Court to conclude that the period from October 2001 to March 2003 was attributable to the applicant or the State in the circumstances of the case (see paragraphs 12 - 14 above). The same considerations apply in relation to the suspension of the proceedings in 2007 following Mr Pr's death (see

paragraph 17 above). The Government produced no evidence confirming their argument that the applicant was responsible for any delays other than those indicated above.

31. As regards the conduct of the judicial authorities, bearing in mind the above considerations, the Court observes that no full hearing was held between 2003 and early 2007. Although there were no significant periods of inactivity directly attributable to the court, the latter did not take any measures to discipline the defaulting parties, thus allowing the proceedings to drag on for years (see *Salmanov v. Russia*, no. 3522/04, § 87, 31 July 2008, with further references). The Court reiterates in that connection that the respondent States have a duty to organise their legal systems in such a way that their courts can meet the obligation to hear cases within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006). Moreover, the Court notes that the court insisted on a number of occasions on Mr Pr's presence despite the fact that in 2002 he had asked the court to render a judgment in his absence (see paragraph 13 above). Lastly, the Government provided no explanation for replacing the trial judge in the course of the proceedings, which contributed to their overall duration.

32. The Court notes that the length of the proceedings was also due to the fact that the civil case was re-examined several times. Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that, since the remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see *Oblov v. Russia*, no. 22674/02, § 28, 15 January 2009, with further references).

33. Having regard to the above, to the fact that the case was not complex and that the proceedings within the Court's competence *ratione temporis* lasted over ten years, the Court considers that the length of the proceedings did not satisfy the "reasonable-time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ANOTHER ALLEGED VIOLATION OF THE CONVENTION

34. The applicant complained in substance under Article 6 § 1 of the Convention about the discontinuation decision of 18 April 2007 (see paragraph 17 above).

35. The Court observes that the applicant did not bring an ordinary appeal against this decision. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government considered that the claim was excessive and unsubstantiated.

39. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

40. The applicant also claimed 50,000 Russian roubles (RUB) for legal advice given by a Ms Fomicheva in relation to the proceedings before the Court and RUB 12,799 for various costs and expenses, including postage, incurred at the national level and before the Court.

41. The Government submitted that the second claim was unrelated to the proceedings before the Court.

42. 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. The applicant submitted that she was assisted by Ms Fomicheva, deputy director of the Krasnodar regional society for consumer rights, in the proceedings before the Court and thus claimed reimbursement of RUB 50,000 paid for her advice. It is undisputed that the applicant did pay this sum to the above non-governmental organisation. Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 710 covering costs under all heads.

C. Default interest

43. 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, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and EUR 710 (seven hundred ten euros) in respect of costs and expenses, both sums to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President