



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

FIRST SECTION

CASE OF TALYSHEVA v. RUSSIA

(Application no. 24559/04)

JUDGMENT

STRASBOURG

22 December 2009

FINAL

22/03/2010

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 Talysheva 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,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 24559/04) 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 Emma Vladimirovna Talysheva (“the applicant”), on 26 May 2004.

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

3. On 10 July 2007 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).

4. The applicant and the Government each submitted observations on the merits (Rule 59 § 1).

THE FACTS

5. The applicant, Mrs Emma Vladimirovna Talysheva, is a Russian national who was born in 1934 and lives in Krasnodar.

I. THE CIRCUMSTANCES OF THE CASE

A. Housing disputes

6. The applicant sued her relative, Mr T., claiming sole ownership of a house. By a judgment of 1 March 2001 the Pervomayskiy District Court of Krasnodar granted her claims. No appeal was lodged.

7. Subsequently, the applicant sued Mr T. and the Krasnodar Town Council, seeking annulment of their title to the ramshackle buildings adjacent to the house.

8. On 18 June 2003 the Justice of the Peace in the 64th Circuit of the Tsentralniy District of Krasnodar granted her claims. No appeal was lodged.

9. In 2004 Mr T. applied for supervisory review of the judgments of 1 March 2001 and 18 June 2003.

10. On 12 February 2004 the Presidium of the Krasnodar Regional Court quashed the judgment of 18 June 2003 because the Justice of the Peace had misapplied the domestic law. Having re-examined the case, the Presidium issued a new judgment, rejecting the applicant's claims.

11. On the same date in the other case the Presidium also set aside the judgment of 1 March 2001 on account of procedural defects. In the Presidium's view, the first-instance court had misinterpreted the applicant's claim, had not supplied a legal basis for its findings, and had erroneously found that the defendant had admitted the claims. The Presidium re-examined the case and issued a new judgment rejecting the applicant's claims.

12. Both of the Presidium's judgments indicated that the parties had been notified of the hearing and had appeared before it.

B. The land dispute

13. On 21 July 2001 Mr T. applied for a court injunction to prevent the applicant from using a plot of land. By a default judgment of 30 October 2001, the Justice of the Peace in the 61st Circuit of the Tsentralniy District of Krasnodar granted the injunction. Upon the applicant's request, the Justice of the Peace revoked that judgment on 3 September 2002. On 21 November 2002 the Pervomayskiy District Court, sitting on appeal, decided that the default judgment should remain in force.

14. On 10 April 2003 the Presidium of the Krasnodar Regional Court quashed the judgment of 21 November 2002 and remitted the case to the Justice of the Peace.

15. On 14 December 2004 the District Court discontinued the proceedings because the parties had repeatedly failed to attend hearings.

16. The proceedings were resumed on an unspecified date. On 11 April 2006 the District Court endorsed a friendly settlement which had been reached by the parties.

C. Other disputes

17. On 27 February 2001 the Krasnodar Regional Court took a final decision rejecting the applicant's claims in an inheritance dispute.

18. The applicant was also an unsuccessful party to another land dispute. The final decision on that matter was taken by the Krasnodar Regional Court on 22 April 2003.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law governing the supervisory review procedure at the material time is summed up in the Court's judgment in the case of *Sobelin and Others v. Russia* (no. 30672/03 et seq., §§ 33-42, 3 May 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

20. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the judgments of 1 March 2001 and 18 June 2003 in her favour had been quashed by way of supervisory review on 12 February 2004. She also complained under Article 6 § 1 that her procedural rights had been violated in the supervisory review proceedings. In so far as relevant, these Articles read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.[...]"

21. The Government contested that argument. They argued that the supervisory review had been compatible with the Convention as the lower courts had made judicial errors in applying the substantive law. They also noted that the Presidium, when reversing the final judgments, in fact acted as a court of second instance.

A. Admissibility

22. 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

23. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental errors. Their review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination (see *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

24. The Court reiterates that it has frequently found violations of the principle of legal certainty and of the right to a court in the supervisory review proceedings governed by the Code of Civil Procedure of 2003 (see, among other authorities, *Sobelin and Others*, cited above, §§ 57-58, and *Bodrov v. Russia*, no. 17472/04, § 31, 12 February 2009)

25. In the present case the final judgment of 18 June 2003 was quashed on the grounds of another interpretation of substantive law, which is not in itself an exceptional circumstance warranting the quashing of a binding and enforceable judgment (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

26. As to the quashing of the final judgment of 1 March 2001, the procedural defects that the Presidium put as a basis for the quashing cannot be considered as fundamental errors (see paragraph 11 above). Thus, these defects did not affect the defendant's procedural rights (see, by way of contrast, *Protsenko v. Russia*, no. 13151/04, §§ 30-33, 31 July 2008). Indeed, the defendant was present at the hearing on 1 March 2001, had never appealed against it and only lodged an application for supervisory review in 2004. There is no other reason to consider these procedural defects fundamental errors requiring a final judgment to be reversed.

27. Therefore, the reversals of the final judgments were not justified by exceptional and compelling reasons and are in breach of the legal certainty

requirement. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

28. As to the alleged violation of the applicant's procedural rights in the supervisory review proceedings, the Court considers that given the finding of a violation by the very use of supervisory review, it is unnecessary to examine this complaint (see *Ryabykh v. Russia*, no. 52854/99, § 59, ECHR 2003-IX).

29. The Court further observes that under the final judgments the applicant obtained title to the contested house. The judgments thus created an asset within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002, and *Malinovskiy v. Russia*, no. 41302/02, § 43, ECHR 2005-VII (extracts)). The quashing of the judgments in breach of the principle of legal certainty frustrated the applicant's reliance on the binding judicial decision and deprived her of an opportunity to receive the judicial awards she had legitimately expected to receive (see *Dovguchits v. Russia*, no. 2999/03, § 35, 7 June 2007). There has accordingly been a violation of Article 1 of Protocol No. 1, too.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. The applicant complains under Article 6 of the Convention that she was not notified of the hearings on 30 October 2001 and 22 April 2003 and therefore did not attend them. She also complains about the length of proceedings in the first land dispute. Finally, she complains in general terms that the courts were biased in favour of the other party and delayed the proceedings.

31. The complaints about the applicant's absence from the hearings on 30 October 2001 and 22 April 2003 were raised for the first time only on 26 May 2004, which is later than the six months prescribed by the Convention for lodging a complaint before the Court.

32. As to the length of the land dispute, only the periods when the case was actually pending before the courts are taken into account (see, for example, *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004). Consequently, the proceedings lasted not more than three years and six months (from 21 July to 30 October 2001, from 3 September to 21 November 2002, from 10 April 2003 to 14 December 2004, and from an unspecified date after 14 December 2004 to 11 April 2006) at three levels of jurisdiction. Assessing the reasonableness of the length, the Court takes into account the complexity of the case, the conduct of the applicant and of 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). The dispute at issue was somewhat complex. The applicant repeatedly defaulted in attendance (see paragraph 15). No significant delays can be attributed solely to the State.

The applicant's right to a plot of land was at stake. Regard being had to all the circumstances of the case, the Court considers that the “reasonable time” requirement has been complied with.

33. Finally, the complaints about the courts' bias and procrastination in other proceedings are unsubstantiated, especially taking into account the strong presumption of impartiality of judges (see, for example, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 58, Series A no. 43).

34. Therefore the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government contested this claim.

38. As to pecuniary damage, the Court makes no award as there was no relevant claim made by the applicant.

39. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress and frustration resulting from the quashing of the final and binding judgments in her favour. However, the amount claimed appears excessive. 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 made no claims under this head. Accordingly, the Court will make no award under this head.

C. Default interest

41. 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 complaints concerning the supervisory review proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 in respect of the quashing by way of supervisory review of the final judgments in the applicant's favour;
3. *Holds* that there is no need to examine the complaints under Article 6 of the Convention concerning the alleged violations of the applicant's procedural rights in the supervisory review proceedings;
4. *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, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President