



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

FIRST SECTION

CASE OF ZALEVSKAYA v. RUSSIA

(Application no. 23333/05)

JUDGMENT

STRASBOURG

11 February 2010

FINAL

28/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zalevskaya v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 23333/05) 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 Marina Vasilyevna Zalevskaya (“the applicant”), on 5 June 2005 and on 30 June 2007.

2. The applicant was represented by Mr A. Brykin, a lawyer practising in Novoaltaysk, the Altai Region. 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 20 November 2008 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 1977 and lives in Novoaltaysk.

5. On 3 July 2003 the Industrialniy District Court of Barnaul granted, in part, claims brought by a certain Z. against the applicant and, *inter alia*, recognised his title to a share in a flat owned by the applicant.

6. On 13 August 2003 the Altai Regional Court quashed the judgment of 3 July 2003 on the applicant's appeal and dismissed Z.'s claims. This appeal judgment became final and binding.

7. On 9 February 2004 the applicant sold the flat to a third person, S.

8. On 27 July 2004 Z. lodged an application for supervisory review of the case.

9. On 5 November 2004 a judge of the Altai Regional Court sent the case to its Presidium for consideration by way of supervisory review.

10. On 7 December 2004 the Presidium of the Altai Regional Court reassessed the evidence, quashed the appeal judgment of 13 August 2003 and upheld the judgment of 3 July 2003, granting Z.'s claims in part.

11. According to the applicant, neither she nor her lawyer attended the hearing due to the authorities' failure to notify them of its date and time.

II. RELEVANT DOMESTIC LAW

12. 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* (see *Sobelin and Others v. Russia*, nos. 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

13. The applicant complained under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1 that the appeal judgment of 13 August 2003 had been quashed by way of supervisory review on 7 December 2004. She also complained under Article 6 § 1 that she had not been informed about the hearing 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.[...]”

A. Admissibility

14. 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.

B. Merits*1. Article 6 of the Convention***(a) Supervisory review: legal certainty**

15. The Government argued that the supervisory review had been compatible with the Convention since it was aimed to correct a fundamental error, that the application for supervisory review had been lodged within the prescribed time-limit, that the Presidium did not reassess the evidence but only agreed with the assessment made by the court of first instance and that the applicant had been properly notified about the time and place of the supervisory-review hearing. The applicant maintained his complaint.

16. 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. 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).

17. 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 in force since 2003 (see, among other authorities, *Sobelin and Others*, cited above, §§ 57-58, and *Bodrov v. Russia*, no. 17472/04, § 31, 12 February 2009).

18. In the present case the final and binding appeal judgment was quashed because the Presidium disagreed with the assessment made by the appeal court, which is not in itself an exceptional circumstance warranting the quashing (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). Accordingly, there has been a violation of Article 6 § 1 of the Convention.

(b) Supervisory review: procedural issues

19. 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*, cited above, § 59).

2. Article 1 of Protocol No. 1

20. The Court further observes that under the final appeal judgment the applicant maintained her title to the contested part of the flat. Its quashing in breach of the principle of legal certainty frustrated the applicant's reliance on it. Accordingly, there has also been a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. The applicant also complained under Article 6 about the allegedly unlawful composition of the tribunal.

However, the applicant did not raise this issue either in the course of the proceedings at the first level of jurisdiction or in her points of appeal against the judgment rendered by the tribunal in question.

22. Lastly, in the application form submitted on 30 June 2007 the applicant complained under Article 8 of the Convention that the findings of the supervisory-review court had a negative effect on her family life. Even assuming that the complaint could raise an issue under Article 8, the applicant introduced it too late. The proceedings in question ended on 7 December 2004, whereas the applicant raised the complaint for the first time in her application form as of 30 June 2007.

23. It follows that these complaints must be rejected as inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government contested this claim.

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

28. 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 appeal judgment 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

29. The applicant also claimed EUR 500.17 for the costs and expenses.

30. The Government contested this claim in part, noting that she submitted the documents according to which she had spent only EUR 148.87 for representation of her interests before the Court.

31. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 484.47 covering costs under all heads, plus any tax that may be chargeable to the applicant on this account.

C. Default interest

32. 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 appeal judgment 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 violation 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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 484.47 (four hundred and eighty four euros and forty seven cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President