



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

FIFTH SECTION

CASE OF GEORGIY NIKOLAYEVICH MIKHAYLOV v. RUSSIA

(Application no. 4543/04)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

04/10/2010

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

In the case of Georgiy Nikolayevich Mikhaylov v. Russia,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Anatoly Kovler,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 4543/04) 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, Mr Georgiy Nikolayevich Mikhaylov (“the applicant”), on 24 January 2004.

2. The applicant was represented by Mr O. Gorev, a lawyer practising in Frankfurt am Main. 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 21 October 2008 the Court declared the application partly inadmissible and decided to communicate the complaints concerning access to the appeal court, the length of the civil proceedings and the alleged interference with the applicant's right to property to the Government. It 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

A. Background of the case

4. The applicant was born in 1944 and lives in St. Petersburg.

5. In 1979 the applicant was convicted of engaging in an illegal business activity and sentenced to four years' imprisonment. The court also ordered the confiscation of his property, namely an art collection. As part of this collection allegedly disappeared, in 1985 the applicant was convicted of fraudulent theft of State property.

6. In 1989 both judgments were quashed and the proceedings against the applicant were terminated on the ground that no criminal offence had been committed.

7. Between 1989 and 1998 the applicant unsuccessfully tried to recover his art collection.

B. First-instance proceedings

8. In July 1998 the applicant lodged a claim with the Oktyabrskiy District Court of St. Petersburg ("the district court") against the local departments of the Ministries of Justice, the Interior and Finance and the St. Petersburg Prosecutor's Office, seeking compensation for the pecuniary and non-pecuniary damage caused by the confiscation of his property.

9. On 22 July 1998 the district court scheduled a hearing on 1 December 1998.

10. On 1 December 1998 the district court held a hearing, acceded to the defendant's requests and postponed the proceedings until 18 May 1999.

11. On 19 February 1999 criminal proceedings were instituted against third persons for misappropriation of the applicant's art collection; on an unspecified date the applicant was granted victim status in the criminal case.

12. Between 18 May and 31 August 1999 the district court postponed hearings on four occasions at the defendants' request.

13. On 31 August 1999 the district court granted the applicant's request to hear three witnesses and postponed the hearing until 16 September 1999.

14. On 16 September 1999 the district court heard two witnesses, granted the applicant's request to summon two other witnesses and postponed the hearing until 17 December 1999.

15. On 17 December 1999 the hearing was postponed because the judge was ill.

16. On 12 January 2000 the hearing was postponed because of the applicant's absence.

17. On 20 January 2000 the district court heard two witnesses and postponed the hearing until 22 February 2000 at the applicant's request.

18. On 22 February 2000 the hearing was postponed because the judge was ill; a new hearing was scheduled on 9 June 2000.

19. Between 9 June and 17 October 2000 hearings were postponed on three occasions at the applicant's request.

20. On 17 October 2000 the hearing was postponed until 21 November 2000 pending receipt of information from other courts confirming the applicant's claims.

21. On 21 November 2000 the district court granted the applicant's application to request materials from the criminal case in which the applicant had been granted victim status in substantiation of his pecuniary damage claims; the hearing was postponed until 13 February 2001.

22. The 13 February 2001 hearing was postponed until 26 April 2001 because of the applicant's absence.

23. The 26 April 2001 hearing was postponed because of a defendant's absence.

24. On 12 July 2001 the applicant requested the district court to amend his statement of claims; the hearing was rescheduled on 20 November 2001.

25. On 20 November 2001 the hearing was postponed because of a defendant's absence and the applicant's failure to submit an additional list of his lost property.

26. On 12 March 2002 the applicant provided the district court with an additional list of his lost property; the hearing was postponed because of the defendants' absence.

27. On 10 September 2002 a hearing was postponed because of the applicant's and defendants' absence.

28. On 13 February 2003 a hearing was postponed because the defendants had not been notified of it and failed to appear.

29. On 26 February 2003 the district court held a hearing and dismissed the applicant's claim. The court orally delivered only the operative part of the judgment, without providing any reasons.

C. Ensuing events

30. On 11 July 2003 the applicant appealed against the judgment of 26 February 2003. In his appeal he mentioned that the full text of the judgment had not yet been prepared and that therefore his appeal was preliminary and would be amended.

31. On the same day the applicant complained to the St. Petersburg City Court ("the city court") that the full text of the judgment of 26 February 2003 had still not been prepared, whereas Article 199 of the Code of Civil

Procedure ("CCP") provided that a reasoned judgment was to be finalised within five days.

32. On 22 July 2003 the city court informed the applicant that Judge K. (the presiding judge in his case) was on holiday and that the full text of the judgment of 26 February 2003 would be drafted as soon as possible.

33. On 25 July 2003 the district court received the applicant's appeal.

34. On 1 September 2003 the district court dismissed the applicant's appeal on the ground of his failure to respect the ten-day time-limit prescribed by law. It mentioned that the applicant's appeal had been received on 25 July 2003, whereas the judgment had been given on 26 February 2003.

35. On 4 September 2003 the applicant was informed that the full text of the judgment had been finalised on 3 September 2003.

36. The applicant appealed against the decision of 1 September 2003. He claimed that, under Article 338 of the CCP, an appeal was to be lodged within ten days of the adoption of a final version of the judgment in issue. In his case, the final version of the judgment had been created on 3 September 2003, that is, two days after his appeal was rejected. He therefore applied for a renewal of the above time-limit.

37. On 29 October 2003 the city court rejected the applicant's appeal against the decision of 1 September 2003, having found no reason to quash it on account of a violation of Article 199 of the CCP by the district court.

38. The text of the judgment of 26 February 2003 bears a court's stamp confirming that it became final on 29 October 2003.

39. The applicant did not pursue supervisory review proceedings.

II. RELEVANT DOMESTIC LAW

Code of Civil Procedure of the Russian Federation (CCP)

40. A court may restore a procedural term established by a federal law after its expiry if it finds that reasons for failure to comply with such a term were valid (Article 112 § 1). A request to restore the term after its expiry must be lodged with the court before which the procedural act in question should have been performed, and must be examined at a court hearing. Parties to the proceedings are to be notified of the time and place of the hearing, but their failure to attend it does not preclude the court from deciding upon the issue (Article 112 § 2). The necessary procedural act in respect of which the procedural term has expired, such as lodging a complaint, or submission of documents, must be performed simultaneously with the lodging of the request for restoration of the term (Article 112 § 3). The court's ruling on the restoration of (or refusal to restore) the procedural

term may be appealed against (Article 112 § 4 as in force at the material time).

41. A judgment must be delivered immediately after the examination of a civil case. The preparation of a reasoned judgment may be postponed for not more than five days after the examination of a case; however, the first-instance court must pronounce the operative part of the judgment at the same hearing in which the examination of the case is completed (Article 199 of the CCP).

42. An appeal in a civil case may be lodged within ten days of the delivery of a first-instance judgment in its final form (Article 338 of the CCP).

43. An appeal statement is to be returned to the appellant where (i) a judge's instructions concerning an appeal statement have not been complied with; or (ii) the term for lodging an appeal has expired, provided that restoration of the term concerned has not been requested (Article 342 § 1 of the CCP).

THE LAW

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

44. The applicant complained about lack of access to the appeal court in his civil case and the length of the civil proceedings. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by a ... tribunal ...”

A. Submissions by the parties

45. The Government contested the applicant's arguments. They emphasised at the outset that pursuant to domestic regulations case materials in civil cases were to be kept in archives for five years, and explained that the applicant's case materials had been destroyed. They further submitted that, although the time-limit for preparation of a reasoned judgment in the applicant's case had not been respected, the judge responsible for it had been dismissed from office. The delay in preparation of the reasoned judgment amounted to six months and five days. The applicant's appeal statement had been returned to him because it had not contained a request to restore the time-limits in keeping with Articles 112 and 342 § 1 of the CCP. The proceedings had been lengthy because of objective factual circumstances.

The applicant's civil case had been particularly complex: the civil case had been closely linked to the criminal investigation and hearings had been postponed on several occasions to obtain the criminal case materials; the defendants had been State agencies; the applicant had confirmed that the case had been complex as he had amended his statement of claims and had not attended every hearing. In the Government's submission, the applicant's civil case had been examined within four years and seven months. A period of inactivity of the district court of one year, five months and twenty-one days had been attributable to the applicant. A delay of four months and eighteen days had been attributable to the judge's illness; moreover, the judge had been disciplined for protracting the case and dismissed from office. The length of the proceedings would have been shorter had the applicant not contributed to the delays. The Government further claimed that the applicant had not requested supervisory review of the rulings of 1 September and 29 October 2003 or complained about the excessive length of his civil proceedings to the Judiciary Qualification Board. In sum, the Government claimed that there had been no violation of the applicant's rights under Article 6 § 1 of the Convention.

46. The applicant maintained his claims. He submitted that he had waited nine months to receive the text of the judgment. The applicant also asserted that the length of the proceedings had been excessive and that he had attended every hearing he had been notified of.

B. The Court's assessment

1. Admissibility

47. In so far as the Government may be understood to claim that the applicant's failure to complain to the Judiciary Qualification Board about the excessive length of the civil proceedings amounted to non-exhaustion of domestic remedies, the Court notes that it has already found that an application to the Judiciary Qualification Board is not an effective remedy against the excessive length of proceedings (see *Kormacheva v. Russia*, no. 53084/99, §§ 61 and 62, 29 January 2004, and *Falimonov v. Russia*, no. 11549/02, § 50, 25 March 2008). It therefore dismisses the Government's objection.

48. In so far as the Government may be understood to plead non-exhaustion as regards the applicant's failure to apply for supervisory review of the rulings of 1 September and 29 October 2003, the Court reiterates that supervisory review in civil proceedings under Russian law is not an effective remedy to be exhausted (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999, and *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). The Court thus dismisses the Government's objection.

49. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) Access to court

50. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, §§ 35-36, Series A no. 18).

51. The Court further reiterates that, whilst the Convention does not provide any right to an appeal in civil cases, if a right of appeal is provided in domestic law, Article 6 § 1 applies to such appellate procedures (see *Delcourt v. Belgium*, 17 January 1970, § 25, Series A no. 11). The right of access to an appeal court is not absolute and the State, which is permitted to place limitations on the right of appeal, enjoys a certain margin of appreciation in relation to such limitations (see *Brualla Gomez de la Torre v. Spain*, 19 December 1997, § 33, *Reports of Judgments and Decisions* 1997-VIII, and *De Ponte Nascimento v. the United Kingdom*, (dec.), no. 55331/00, 31 January 2002). The Court reiterates, however, that the limitations in question 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 *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports* 1996-V).

52. Turning to the circumstances of the present case, the Court points out that under domestic law the applicant was entitled to lodge a regular appeal against the first-instance judgment in his civil case within ten days from the delivery of the text of the first-instance judgment in its final form (see paragraph 42 above). It reiterates in this respect that the rules governing the formal steps to be taken in lodging an appeal are aimed at ensuring the proper administration of justice. Litigants should expect the existing rules to be applied. However, the rules in question, or the application thereof, should not prevent persons amenable to the law from making use of an available remedy (see *Société Anonyme Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, § 20, ECHR 2000-XII).

53. The reason why the applicant's appeal was not examined by the domestic courts is that the district court found that the applicant had failed to comply with the time-limit for lodging his appeal. The Court observes in this connection that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve

problems of interpretation of domestic legislation. The role of the Court is limited to verifying whether the effects of such interpretation are compatible with the Convention (see *Maresti v. Croatia*, no. 55759/07, § 36, 25 June 2009).

54. However, the right to the effective protection of the courts entails that the parties to civil proceedings must be able to avail themselves of the right to lodge an appeal from the moment they can effectively apprise themselves of court decisions which may infringe their legitimate rights or interests (see *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 37, ECHR 2000-I). Given that the applicant was not able to become acquainted with the district court's reasoned judgment before 4 September 2003 (see paragraph 35 above), he cannot not be said to have had an effective right to appeal against it prior to that date.

55. In the Court's opinion, the fact that the applicant had no opportunity to study the text of the first-instance judgment prior to lodging his appeal is difficult to reconcile with Article 6 of the Convention, which, according to the Court's established case-law, embodies as a principle linked to the proper administration of justice the requirement that court decisions should adequately state the reasons on which they are based (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, and *Angel Angelov v. Bulgaria*, no. 51343/99, § 38, 15 February 2007).

56. It is true that the Government argued that the applicant could have gained access to appeal proceedings by filing a specific request for restoration of the procedural term for lodging an appeal. The Court notes that it is not entirely clear whether the applicant actually missed the term in question since, first, the reasoned judgment in its final form was prepared only on 3 September 2003 and, secondly, the judgment became final on 29 October 2003 (see paragraph 38 above). Supposing, however, for argument's sake, that the term for lodging an appeal expired before 25 July 2003, as suggested by the district court (see paragraph 34 above), the Court observes that in his appeal statement and complaint to the city court of 11 July 2003 the applicant referred to the district court's failure to provide him with the reasoned text of the judgment within the term established by law and unequivocally stated that he wished to appeal against the judgment in question (see paragraphs 30 and 31 above). Therefore the applicant may be considered to have made an implied request to restore the procedural term. To assume the contrary would, in the Court's view, be excessively formalistic. Furthermore, given that the manner in which the court proceedings had been administered contributed to the applicant's failure to comply with a time-limit for lodging an appeal, it was for the national courts to restore the time-limit in question on their own motion.

57. In sum, the Court concludes that the district court interpreted a procedural rule on time-limits in such a way as to prevent the applicant's

appeal being examined on the merits, with the effect that the latter's right to the effective protection of the courts was infringed (see, *mutatis mutandis*, *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 51, ECHR 2002-IX, and *Fetaovski v. "the former Yugoslav Republic of Macedonia"*, no. 10649/03, § 39, 19 June 2008).

58. Lastly, the Court observes that the Government admitted the district court judge's failure to comply with a legal requirement to produce a reasoned judgment within five days from the date of its pronouncement. It follows that the applicant was prevented from effectively exercising his right to appeal solely because of the district court's failure to perform its duty and provide him with a finalised text of the judgment in a timely fashion.

59. All in all, having regard to the circumstances of the case as a whole, the Court finds that the applicant did not enjoy a practical, effective right of access to court.

60. There has accordingly been a violation of Article 6 § 1 of the Convention on account of lack of access to court.

(b) Length of proceedings

61. The Court will now examine whether the length of the civil proceedings instituted by the applicant was "reasonable". It points out that the parties made no submissions as to the exact period to be taken into consideration. It considers that the relevant period started in July 1998, when the applicant brought his claims before the district court. In the absence of the parties' submissions as to the exact date on which the proceedings ended, the Court is ready to accept that they were pending until the date when the judgment of 26 February 2003 became final. Given that the official stamp on the text of the first-instance judgment defines the date in question as 29 October 2003 (see paragraph 38 above), the Court finds that the overall length of the proceedings amounts to almost five years and three months.

62. The Court notes that the prevailing part of this period relates to the examination of the applicant's civil case in the first instance and points out that the first-instance proceedings could not be regarded as completed until the moment when a party to the proceedings has an opportunity to become acquainted with a reasoned written text of the first-instance decision, irrespective of whether it was previously delivered orally (see, *mutatis mutandis*, *Soares Fernandes v. Portugal*, no. 59017/00, § 17, 8 April 2004, and *Groshev v. Russia*, no. 69889/01, § 22, 20 October 2005). It concludes, therefore, that the first-instance proceedings ended on 4 September 2003, when the applicant was informed that the text of the judgment of 26 February 2003 had been finalised on 3 September 2003. The overall length of examination of the applicant's civil case in the first instance amounted to five years and one month.

63. The Court reiterates that the reasonableness of the length of proceedings coming within the scope of Article 6 § 1 must be assessed in each case according to the particular circumstances. The Court has to have regard, *inter alia*, to the complexity of the factual or legal issues raised by the case, to the conduct of the applicant and the competent authorities and to what was at stake for the former (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In addition, only delays attributable to the State may justify a finding of a failure to comply with the “reasonable time” requirement (see *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, § 44, 19 June 2003).

64. Turning to the circumstances of the present case, the Court considers that the applicant's civil dispute was not particularly complex. It is not convinced by the Government's argument that the fact that the defendants were State agencies could in any manner add to the complexity of the proceedings for compensation for pecuniary and non-pecuniary damage. Further, the Court notes that the applicant did amend his statement of claims on one occasion (see paragraph 24 above). However, it is not persuaded that this factor in itself rendered the task of the district court more difficult. In any event, assuming that the applicant's civil proceedings were not straightforwardly simple, 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 (see *Malinin v. Russia* (dec.), no. 58391/00, 8 July 2004, and *Ivanov v. Russia* (dec.), no. 31266/02, 5 October 2006).

65. As to the applicant's conduct, the Court notes that on three occasions delays were caused by the applicant's failure to appear (see paragraphs 16, 22 and 27 above). It observes at the same time that the hearing of 10 September 2002 would most likely have been postponed even if the applicant had attended it, owing to the defendants' absence. It follows that the total delay incurred as a result of the applicant's failure to appear in the court room amounted to less than four months.

66. As regards the delays caused by the applicant's requests to summon witnesses, as well as his requests for information on the criminal case in which he was victim (see paragraphs 13, 14, 21 and 20), the Court reiterates that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see, among other authorities, *Patta v. the Czech Republic*, no. 12605/02, § 69, 18 April 2006, and *Stojanov v. “the former Yugoslav Republic of Macedonia”*, no. 34215/02, § 56, 31 May 2007). Accordingly, it finds no reason to conclude that the applicant's behaviour was dilatory.

67. The Court further observes that substantial periods of inactivity for which the Government have not submitted any satisfactory explanation are attributable to the domestic authorities. For example, the Government failed to provide any justification for the delay from July 1998, when the applicant lodged his claim, to 1 December 1998 when the district court held its first

hearing in the case (see paragraph 9 above). Further delays in the proceedings were due to infrequent hearings scheduled with significant intervals of sometimes several months (see *Falimonov*, cited above, § 57). The Government did not explain why no hearings had been scheduled between 1 December 1998 and 18 May 1999, 26 April and 12 July 2001, 12 July and 20 November 2001, 20 November 2001 and 12 March 2002, 12 March and 10 September 2002 and 10 September 2002 and 13 February 2003.

68. The Court also considers that the domestic authorities were responsible for a substantial delay in the proceedings caused by the defendants' failure to attend hearings (see paragraphs 12, 23, 25, 26 and 28 above). The Government have not provided any information suggesting that the domestic authorities took adequate steps in order to ensure the defendants' presence, or reacted in any way to the defendants' behaviour, or used the measures available to them to discipline the participants to the proceedings and ensure that the case be heard within a reasonable time (see *Kesyan v. Russia*, no. 36496/02, § 58, 19 October 2006).

69. Moreover, the Court cannot but be struck with the fact that it took the district court more than six months to prepare the text of the first-instance judgment. It takes note of the Government's submission that this delay was in breach of domestic rules and considers that it is clearly attributable to the State.

70. Lastly, the Court reiterates that the dispute in the present case concerns compensation for pecuniary and non-pecuniary damage caused by confiscation of the applicant's property in the course of criminal proceedings that were discontinued for lack of a crime. In such circumstances it cannot be said that the issue at stake for the applicant was of no particular importance.

71. In the light of the foregoing considerations, the Court finds that the applicant's civil case was not heard within a "reasonable time". There has accordingly been a violation of Article 6 § 1 of the Convention on account of the excessive length of civil proceedings.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

72. The applicant complained that refusal to admit his appeal against the judgment in his civil case had deprived him of the right to the peaceful enjoyment of his possessions, in breach of Article 1 of Protocol No. 1, which reads, in so far as relevant, as follows:

"Every ... person is entitled to the peaceful enjoyment of his possessions..."

73. The Government contested that argument.

74. The applicant maintained his complaint and submitted that he had lost property of considerable value because of the State agencies' actions.

75. The Court has already examined the applicant's complaint concerning the lack of access to the appeal court under Article 6 of the Convention. In view of its conclusion that there has been a violation of that provision, it finds that no separate issue arises under Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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.”

77. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

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 on account of lack of access to court;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of civil proceedings;
4. *Holds* that no separate issue arises under Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President