



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

FIRST SECTION

CASE OF LELIK v. RUSSIA

(Application no. 20441/02)

JUDGMENT

STRASBOURG

3 June 2010

FINAL

03/09/2010

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

In the case of Lelik 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,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 20441/02) 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 Andreyevna Lelik (“the applicant”), on 10 April 2002.

2. The applicant was represented by Mr V.N. Voblikov, a lawyer practising in Bilibino, the Chukotka Region. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, representative of the Russian Federation before the European Court of Human Rights and then by their representative Mr G. Matyushkin.

3. On 9 March 2007 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1942 and lives in Ryazan.

5. On 17 February 2000 the applicant filed with the Bilibinskiy District Court of the Chukotka Autonomous Region (“the District Court”) an action against the regional pension authorities and the district social security authority (*Отделение Пенсионного фонда РФ по Чукотскому Автономному Округу и Отдел социальной защиты населения*

Администрации Билибинского района) for recovery of arrears of her old-age pension. She also requested to index-link the arrears.

6. As the District Court consistently failed to schedule a hearing, the applicant filed a complaint about its lack of action to the Supreme Court of Russia. On 19 October 2000 the Supreme Court in the final instance refused to consider the complaint on its merits as out of the court's competence.

7. The first hearing in the case was scheduled for 13 November 2000.

8. On 13 November 2000 the judge failed to appear, and the hearing was fixed for 19 January 2001.

9. On 9 January 2001 the District Court decided not to consider the applicant's complaints about the judge's inaction ruling that such a complaint could be entertained only by the Judicial Qualifications Board (*Квалификационная коллегия судей*).

10. On 19 January 2001 the hearing was adjourned until 22 March 2001 on account of the applicant's failure to appear. The applicant's counsel attended the hearing.

11. The Government submitted that on 16 February 2001 the applicant applied for supervisory review seeking to quash the above decision to adjourn the hearing on account of certain procedural flaws. The applicant submitted an application for supervisory review with the date shown as 2 February 2001.

12. On 22 March 2001 the District Court partly granted the applicant's claims. In the same hearing the applicant's counsel informed the court of her actual place of residence which differed from the one indicated in the original statement of claim.

13. On an unspecified date the applicant filed an appeal. She submitted that in her appeal she had complained, among other things, about the first-instance court's decisions to adjourn the hearings.

14. The applicant's appeal was first fixed to be considered by the Chukotka Regional Court ("the Regional Court") on 17 May 2001 but was re-scheduled for 19 July 2001.

15. On 19 July 2001 the Regional Court overturned the judgment on appeal and remitted the case for fresh examination to the District Court. The applicant's complaint about the adjournment decisions was not addressed.

16. On 23 July 2001 the case was transferred to the Presidium of the Regional Court for consideration pursuant to the applicant's application for supervisory review of 16 February 2001.

17. On 1 August 2001 the application for supervisory review was rejected, and the case was returned to the District Court.

18. On 17 August 2001 the District Court fixed the first hearing for 5 December 2001. The court invited the applicant's counsel to provide the applicant's actual address.

19. On 28 August 2001 the applicant's counsel informed the District Court that the applicant resided at the address indicated in the statement of claim.

20. On 5 December 2001 the hearing was adjourned till 21 January 2002 on account of the applicant's failure to appear. The applicant's counsel attended the hearing.

21. On 18 January 2002 the applicant applied for supervisory review of the above decision to adjourn the hearing.

22. On 21 January 2002 the hearing had been adjourned till 26 February 2002 on account of the applicant's failure to appear. Her counsel attended the hearing, amended the claims and informed the court that the applicant resided in Ryazan. He was invited to provide the applicant's full address.

23. On 4 February 2002 the applicant applied for supervisory review of the above decision to adjourn the hearing. On 12 February 2002 the Presidium of the Regional Court called up the case.

24. On 9 October 2002 the application for supervisory review was rejected, and the case was returned to the District Court.

25. The applicant submitted that in December 2002 she had requested the District Court to inform her of the date of the next hearing but received no precise answer.

26. On 14 May 2003 the applicant filed an amendment to the original statement of claim indicating a new group of respondents.

27. On 8 July 2003 the District Court held a hearing in presence of the applicant's counsel, in which it accepted the amended claims and adjourned.

28. On 28 November 2003 the applicant's counsel informed the court that the applicant wished to have the case heard in her absence. The hearing was adjourned till 25 December 2003 on account of the applicant's failure to identify the new respondents.

29. On 7 December 2003 the applicant notified the District Court that she had already determined the new respondents in her amendment to the statement of claim of 14 May 2003.

30. On 25 December 2003 the District Court granted the applicant's claims in part.

31. On 18 March 2004 the Regional Court heard the case on appeal and amended the judgment, awarding to the applicant a total amount of 40,879 roubles and 73 kopecks.

II. RELEVANT DOMESTIC LAW

32. Until 14 November 2002 the civil-law matters were governed by the Code of Civil Procedure of the Russian Soviet Federative Socialist Republic of 1964 ("the old CCivP").

33. Under Article 99 of the old CCivP, an action must be prepared for trial seven days after the action is lodged. An action brought against a State body must be examined ten days after it is lodged.

34. Under Article 284-1 of the old CCivP, an appeal court must examine an appeal ten days after it is filed.

35. On 14 November 2002 the old CCivP was replaced by the Code of Civil Procedure of the Russian Federation (“the new CCivP”).

36. Under Article 154-1 of the new CCivP an action must be examined two months after it is lodged.

37. Under Article 348-1 of the new CCivP, an appeal court must examine an appeal one month after it is filed.

THE LAW

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

38. The applicant complained under Article 6 § 1 of the Convention of unreasonable length of proceedings. As far as relevant, this provision 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 ...”

39. The Court is satisfied that the first round of proceedings began on 17 February 2000 and ended on 19 July 2001. No proceedings were pending between 23 July and 1 August 2001 when the case was being examined at the supervisory instance (see paras. 13-14 above). The second round of proceedings began on 1 August 2001, was interrupted from 12 February to 9 October 2002 due to examination of the case on application for supervisory review (see paras. 20-21 above), and ended on 18 March 2004.

40. The proceedings thus lasted 3 years and 5 months, where the case was considered twice at two levels of jurisdiction.

A. Admissibility

41. The Court notes that the application 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. The parties' submissions

(a) The Government

41. The Government observed that the delays in the proceedings which had occurred between 17 February 2000 and 19 January 2001, 17 May and 19 July 2001 had been caused by the courts' insufficient staff numbers, the judges' other commitments and a significant case load. They also argued that the length of the proceedings could still be regarded as reasonable because the most significant delays had been caused by the applicant. In particular, the applicant repeatedly challenged the first-instance decisions both in appeal and supervisory review proceedings, did not appear in the hearings and had provided a false actual address, as well as changed her claims twice and delayed in indentifying of the respondent after amendment of her claims. They also contended that the case had been complex as it had required an accurate calculation of the awarded sum amounts.

(b) The applicant

42. The applicant disagreed. She claimed that having retained a legal counsel, she had not been obligated by law to appear in the hearings to have her claims examined, that the case was not complex by nature and that she had been entitled to exercise her procedural rights by challenging the decisions she had disagreed with. She also stated that contrary to the Government's arguments, she had timely determined the respondent.

2. The Court's assessment

43. 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 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). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, among other authorities, *Zimmermann and Steiner v. Switzerland*, 13 July 1983, p. 11, § 24, Series A no. 66; see also *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

(a) Complexity of the case

44. The Court finds that the case, which concerned recovery of old-age pension arrears with index-linking was not particularly complex.

Consequently, the Court takes the view that an overall period of 3 years and 5 months could not, for this reason, be deemed to satisfy the “reasonable time” requirement in Article 6 § 1 of the Convention.

(b) Conduct of the applicant

45. Insofar as the behaviour of the applicant is concerned, the Court recalls that on three occasions a court hearing was adjourned due to the applicant's failure to appear in hearings or to explain her absence, the aggregate length of the delay being 4 months and 2 weeks. Only a year into the proceedings did the applicant's counsel mention that her actual address differed from the one indicated in the statement of claim. He did not manage to provide the correct address until well into the second round of proceedings. As the domestic courts are procedurally required to verify reception of summonses prior to the hearing, they cannot be blamed for adjournment of hearings due to the applicant's failure to supply correct information.

46. As to the Government's argument that the applicant delayed the proceedings by amending her claims, the Court observes that this fact in itself does not appear to have led to a stay of the proceedings. It is also satisfied that the applicant identified the new respondents in a timely manner in her amendment to the statement of claim.

47. The Court is not convinced by the Government's contention that the applicant contributed to the length of the proceedings by challenging the first-instance court's decisions in the appeal and supervisory instances. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by the national law in the defence of his interests (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A).

48. The Court thus finds that the applicant can be held responsible for 4 months and 2 weeks of delay in the proceedings.

(c) Conduct of the authorities

49. As regards the conduct of the judicial authorities, the Court recalls that the domestic courts failed to fix a hearing for 9 months after the applicant lodged her claim, adjourned the first hearing and an appeal hearing for 2 months each due to the judge's other commitments and failed to schedule a hearing in the second round of proceedings for 8 months. The aggregate length of the delay thus constitutes 21 months.

50. The Court reiterates that it is the States' duty to organise their judicial systems in such a way that their courts can meet the requirements of Article 6 § 1 (see *Muti v. Italy*, 23 March 1994, § 15, Series A no. 281-C). The manner in which a State provides for mechanisms to comply with this requirement – whether by way of increasing the numbers of judges, or by automatic time-limits and directions, or by some other method – is for the

State to decide. If a State lets proceedings continue beyond the “reasonable time” prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003).

51. In view of the above, the Court considers that the cited difficulties do not excuse the State from ensuring that the proceedings were dealt with within a reasonable time (see *Kormacheva v. Russia*, no. 53084/99, § 55, 29 January 2004). It finds that the State is thus responsible for 21 months of delay in the proceedings.

(d) Stake for the applicant

52. The Court reiterates that certain types of cases, for example those concerning civil status and capacity or employment disputes, generally require particular diligence on the part of the domestic courts (see *Bock v. Germany*, 29 March 1989, p. 23, § 49, Series A no. 150, and *Ruotolo v. Italy*, 27 February 1992, p. 39, § 17, Series A no. 230-D). The Court finds this principle to be equally applicable to the present dispute as it concerned the payment of arrears of an old-age pension, which constituted the principal source of income for the applicant (see *Tusashvili v. Russia*, no. 20496/04, § 25, 15 December 2005).

(e) Conclusion

53. Regard being had to all the circumstances of the case, the relative simplicity of the case and its importance to the applicant, the substantial and repetitive delays attributable to the authorities, the Court find that there was a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54. The applicant complained also that in Russia there was no effective remedy against the excessive length of proceedings. She relied on Article 13 of the Convention, which 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.”

55. The Government contested that argument. They submitted that it was open to the applicant to lodge an appeal to the Judicial Qualifications Board, challenge the judge or claim compensation for non-pecuniary damage.

56. 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 *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

57. The Court reiterates that according to its case-law there is no effective remedy under Russian law capable of affording redress for the unreasonable length of civil proceedings (see, among many other authorities, *Kormacheva*, cited above, §§ 61-62; *Kuzin v. Russia*, no. 22118/02, §§ 42-46, 9 June 2005; *Bakiyevets v. Russia*, no. 22892/03, § 53, 15 June 2006; *Markova v. Russia*, no. 13119/03, § 31, 8 January 2009; and *Zaytsev and Others v. Russia*, no. 42046/06, § 48, 25 June 2009).

58. The Court notes that in the present case the Government did not provide any new argument as to whether and how the applicant could obtain effective relief – either preventive or compensatory – by having recourse to the suggested measures. It was not suggested that these remedies could have expedited the determination of the applicant's case or provided her with adequate redress of the delays that had already occurred (see *Kormacheva*, cited above, § 61). Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such a relief (see *Kudla*, cited above, § 159).

59. The Court finally observes that in the present case the applicant attempted to rectify the situation at the domestic level by complaining of the court's inaction in her appeal as well as by bringing separate complaints, but the courts proved unable to provide her with relief.

60. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. The applicant also complains under Article 1 of Protocol No. 1 that by failing for years to reach a decision in her case, the national authorities unlawfully interfered with her possessions.

62. The Court finds that this complaint does 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed non-pecuniary damage in the amount of 30,000 euros (EUR).

65. The Government contested this amount as unsubstantiated and disproportionate to the damage allegedly incurred.

66. Referring to its established case-law, the Court finds that the applicant suffered some distress and frustration caused by the unreasonable length of the proceedings. Deciding on an equitable basis, the Court awards EUR 1,500.

B. Costs and expenses

67. The applicant also claimed reimbursement of the costs and expenses incurred in the proceedings before the Court. In particular, she claimed EUR 1,230 as remuneration for her representative in accordance with the contract of 9 April 2002.

68. The Government made no specific comment on the amount claimed.

69. The Court notes that under the contract of 9 April 2002 the applicant agreed to pay her representative a fee amounting to EUR 1,230 for his representation before the Court, provided the representative duly performed his contractual obligations until the delivery by the Court of the final judgment concerning the present application and subject to payment by the Russian Federation of the just satisfaction award, should it be granted by the Court. The contract thus clearly stipulated that the applicant was to pay her representative EUR 1,230. The Court is satisfied that from the standpoint of the Convention these costs are real. The fact that the applicant was not required to pay the fee in advance does not affect this conclusion (see *Tusashvili*, cited above, § 37).

70. Further, it has to be established whether the costs and expenses incurred by the applicant for legal representation were necessary. The Court notes that this case was not particularly complex and part of the application is declared inadmissible. It therefore finds excessive the amount which the applicant claims under this head.

71. The Court awards the sum of EUR 825, together with any value-added tax that may be chargeable.

C. Default interest

72. 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

1. *Declares* unanimously the complaint concerning unreasonable length of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 and Article 13 of the Convention;
3. *Holds* by six votes to one
 - (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 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 825 (eight hundred and twenty five euros), 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;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

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

Søren Nielsen
Registrar

Christos Rozakis
President