



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

FIRST SECTION

CASE OF SALIKOVA v. RUSSIA

(Application no. 25270/06)

JUDGMENT

STRASBOURG

15 July 2010

FINAL

15/10/2010

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

In the case of Salikova 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,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 24 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 25270/06) 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 Tatyana Yevgenyevna Salikova (“the applicant”), on 22 May 2006.

2. The applicant was represented by Mr V. Stepanov, a lawyer practising in Orenburg. 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 9 March 2009 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 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1931 and lives in Orenburg.

5. On 3 October 2000 the applicant filed a suit with the justice of peace of judicial circuit no. 7 of the Leninskiy District of Orenburg against a municipal enterprise. She alleged that certain actions of the respondent had led to grave damage to her privately owned house and claimed that the

respondent should repair it or provide equivalent monetary compensation, fix construction flaws and pay her compensation for non-pecuniary damage.

6. On 5 October 2000 the justice of peace left the claim without consideration for lack of competence.

7. On 10 October 2000 the justice of peace of the judicial circuit no. 6 also left the claim without consideration for the same reason.

A. First examination of the case

8. On 31 October 2000 the claim was admitted by the justice of peace of the judicial circuit no. 1 of the Tsentralnyy District of Orenburg.

9. On 20 December 2000 the hearing was adjourned due to the respondent's representative's failure to appear.

10. On 18 January 2001 the court granted the applicant's motion to identify a co-respondent and adjourned the hearing.

11. On 19 July 2001 the court ordered a technical examination, which lasted until 25 March 2002. Two questions were put to the experts.

12. On 19 April 2002 the case was transferred to the Tsentralnyy District Court of Orenburg ("the District Court") as falling within the latter's competence.

13. On an unspecified date the applicant altered her claims.

14. On 10 June 2002 the hearing was adjourned to 26 June 2002 as the applicant's counsel failed to appear.

15. On 22 August 2002 the District Court disallowed the applicant's claims. The judgment was overturned on appeal by a decision of the Orenburg Regional Court ("the Regional Court") on 10 October 2002, for erroneous application of the substantive law. The case was remitted to the first instance for fresh examination.

B. Second examination of the case

16. On 2 December 2002 the hearing was adjourned at both parties' requests.

17. Two following hearings were adjourned at the applicant's request due to her counsel's failure to appear and to enable her to secure additional evidence.

18. On 20 January 2003 the District Court ordered a technical examination. Eleven questions were put to the experts.

19. On 10 February 2003 head of the State forensic examinations bureau informed the court that the examination would start in April once the snow melted.

20. On 9 July 2003 the same official informed the court that the examination was delayed because it was necessary to carry out an additional survey and to invite another expert.

21. On 20 October 2003 the District Court requested information on the date of completion of the examination. In their reply the forensic examinations bureau referred to a heavy workload.

22. The technical examination was completed on 9 December 2003, and on 30 January 2004 the District Court resumed the proceedings.

23. Two following hearings were adjourned at the applicant's request to enable her to secure additional evidence and specify her claims.

24. On 2 March 2004 the court granted the applicant's motion for a new technical examination, which lasted until 20 March 2004. The experts had to answer one question.

25. On 5 April 2004 the District Court resumed the proceedings. The court adjourned two following hearings to enable the applicant to specify her claims and for a new respondent to familiarise themselves with the claims.

26. On 11 June 2004 the District Court granted the applicant's claims in part. However, the judgment was set aside by the Regional Court on 21 September 2004 for erroneous application of the substantive law. The case was ordered for re-examination.

C. Third examination of the case

27. On 12 November 2004 the District Court accepted alterations to the applicant's claims and, four days later, ordered a technical examination. Thirty-six questions were put to the experts. The decision to order the new examination was upheld by the Regional Court on 22 March 2005 on the applicant's appeal.

28. On 18 April 2005 the case was sent to the experts, followed by a contract for execution of services on 13 July 2005 and by payment arrangements on 12 October 2005.

29. On 13 January, 1 March and 31 May 2006 the District Court inquired with the forensic examinations bureau about the results of the examination. It is unclear whether it received any reply.

30. On 8 August 2006 the applicant complained to the president of the District Court of unreasonably long consideration of the case. The parties did not submit any information regarding a reply to this complaint.

31. On 21 August 2006 the District Court received the examination results and resumed the proceedings.

32. Between 30 August 2006 and 14 March 2007 nine hearings were adjourned at the applicant's request for various reasons, mainly to summon witnesses and secure additional evidence, as well as to enable the respondents to familiarise themselves with the amended claims.

33. On 19 March 2007 the District Court disallowed the claim. On 6 June 2007 the Regional Court overturned the judgment on appeal for erroneous application of the substantive law and required a new hearing.

D. Fourth examination of the case

34. On 8 August 2007 the District Court granted the applicant's motion for a new technical examination and a forensic medical examination.

35. On 23 October 2007 at the applicant's request the District Court commissioned the medical examination to a different agency.

36. On 22 November 2007 the District Court granted the applicant's claims in part ordering the town administration to build a drainage system in the vicinity of the applicant's house, and dismissed the other claims. The judgment was upheld on appeal by the Regional Court on 6 February 2008.

37. On 27 May 2008 the bailiff service initiated the enforcement proceedings. Four months later they were terminated as the court judgment had been deemed executed.

E. Supervisory review and fifth examination of the case

38. On 21 October 2008 the Supreme Court of Russia, acting upon the applicant's request for supervisory review, quashed the judgment of 22 November 2007 and the decision of 6 February 2008 in the part concerning dismissal of the applicant's claim for compensation of pecuniary damage. The case was remitted in the relevant part to the first instance for fresh consideration.

39. On 18 December 2008 the District Court stayed the proceedings until the applicant's recovery from illness.

40. On 19 December 2008 head of the regional bailiff office quashed the decision to terminate the enforcement proceedings after establishing that the court judgment had not been properly enforced. The enforcement proceedings were resumed.

41. On 11 January 2009 the District Court clarified its judgment of 22 November 2007 at the bailiff's request.

42. On 2 February 2009 the court proceedings were resumed.

43. On 12 March 2009 the District Court ordered a new technical examination at the applicant's request.

44. On 5, 7 and 14 May 2009 the District Court reminded the applicant to allow the experts access to the examined objects. However, the applicant failed to do so.

45. On 18 May 2009 the court dismissed the applicant's request for extension of the time-limit for appeal of the decision to order the new technical examination. It is not clear from the parties' submissions when this examination was completed.

46. On 13 November 2009 the District Court granted the applicant's claim for pecuniary compensation in part, awarding her 67,555 roubles to be paid by the town administration. In particular, the court repeatedly referred to expert conclusions from different years which established that the

condition of the applicant's house was 'unacceptable' and 'dangerous for human habitation'.

47. On 16 December 2009 the Regional Court upheld the judgment on appeal.

48. The judgment of 22 November 2007 has not been enforced to date.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVELY LONG PROCEEDINGS

49. The applicant complained that the proceedings in her case had been excessively long, breaching the “reasonable time” requirement of Article 6 § 1. The relevant part of the 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 ...”

50. The Court observes that the proceedings in the applicant's case commenced on 3 October 2000, when the applicant lodged her claim, and ended on 16 December 2009. During this time the domestic courts reviewed the case five times at two levels of jurisdiction. However, the period from 6 February to 21 October 2008 has to be excluded from the overall length, as the case was being examined on application for supervisory review and not pending. Accordingly, the period to be taken into consideration amounted approximately to eight years and six months.

A. Admissibility

51. 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

52. The applicant submitted that her case had not been complex and had not warranted such a long examination by the domestic courts.

53. The Government disagreed. They stated that the applicant's case had been technically complex requiring a number of expert examinations which overall lasted for a reasonable time. They further submitted that the majority of the unnecessary delays had been caused by the applicant's lodging

multiple motions, altering her claims and requesting adjournments. She also did not object to the other party's motions delaying the proceedings. Finally, the hearings were scheduled regularly and motions were examined promptly.

54. 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).

55. The Court finds that the proceedings at issue were of some complexity as they required the taking of an expert opinion and involved several respondents. The applicant amended and supplemented her claims on at least three occasions. The Court considers that the task of the courts was rendered more difficult by these factors, although it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings (see, among others, *Antonov v. Russia* (dec.), no. 38020/03, 3 November 2005).

56. Insofar as the applicant's behaviour is concerned, the Court accepts that indeed she delayed the proceedings to some extent by requesting adjournments and, in one particular instance, failing to comply with the court's requests to provide access to the experts (see para. 44 above). As to the applicant's amending and supplementing her claims, 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 defence of his interests (see, mutatis mutandis, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A). Accordingly, the Court finds that the overall delay imputable to the applicant did not exceed eleven months.

57. Turning to the conduct of the authorities, the Court recalls that the domestic courts examined the case in five rounds of proceedings. It accepts the Government's argument that the courts did not display any procrastination in scheduling the hearings and resolving the parties' motions. However, the Court observes three major deficiencies that occurred in the course of the proceedings.

58. Firstly, it notes that the authorities had failed to establish the court competent to deal with the applicant's claims for eighteen months. The Court reiterates that the authorities are responsible for the delays stemming from the courts' mistakes concerning jurisdiction (see *Gheorghe v. Romania*, no. 19215/04, § 58, ECHR 2007-III (extracts)). It was

incumbent upon the domestic authorities to ensure that the national law provided clear guidance on the application of the courts' jurisdiction.

59. Secondly, it recalls that the aggregate length of the time it took to complete four technical examinations of varying complexity was almost three years. While the Court is not in possession of the relevant documents and cannot assess the necessity and complexity of these examinations, it is mindful that the authorities substantively acknowledged the fact of the delays, as evidenced in the correspondence between the domestic court and the State forensic examinations bureau. In particular, it takes cognisance of the District Court's procrastination in submitting all necessary documents to the bureau and the latter's repeated references to a heavy workload. The Court recalls in this respect that the principal responsibility for the delay due to the expert opinions rests ultimately with the State (see *Capuano v. Italy*, 25 June 1987, § 32, Series A no. 119). Accordingly, this period is also imputable to the State.

60. Furthermore, the Court observes that the first-instance judgments in the applicant's case were set aside four times either by the appeal or by the supervisory-review courts for erroneous application of the substantive law. In this respect the Court reiterates that the Convention and its Protocols must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory. The right to have one's claim examined within a reasonable time would be devoid of all sense if domestic courts examined a case endlessly, even if at the end the length of proceedings per instance did not appear particularly excessive (see, *mutatis mutandis*, *Svetlana Orlova v. Russia*, no. 4487/04, § 47, 30 July 2009).

61. Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that multiple repetition of re-examination orders within one set of proceedings may disclose a deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006; and *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008). The fact that the domestic courts heard the case several times did not absolve them from complying with the reasonable time requirement of Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004; and *Svetlana Orlova*, cited above, § 50).

62. Having regard to the above, the Court considers that the failure of the domestic authorities to promptly refer the applicant to a competent court, delays in completing the technical examinations and repeated referrals of the case to the first instance significantly contributed to the length of the examination of the applicant's case.

63. Regarding what was at stake for the applicant, the Court observes that, according to the findings of the State experts and domestic courts, the applicant's only housing had indeed suffered a grave damage that made it hardly suitable for living (see para. 46 above). Taking into additional

consideration the applicant's advanced age, the Court is of the opinion that those circumstances required a particular diligence on the part of the domestic authorities.

64. The foregoing considerations are sufficient to enable the Court to conclude that the length of the proceedings in the present case was excessive. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the length of proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF NON-ENFORCEMENT

65. The applicant also complained that the non-enforcement of the judgment of 22 November 2007 in the part ordering construction of the drainage system in the vicinity of her house breached Article 6 § 1 of the Convention. The relevant part of the provision reads as follows:

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

A. Admissibility

66. 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

67. The Government did not provide a clear response to the complaint, having merely referred to the actions undertaken by the enforcement authorities.

68. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicants and the authorities behaved, and what was the nature of the award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

69. The Court accepts that the enforcement of the applicant's award was relatively complex due to its technical nature and is mindful of the fact that a clarification of the judgment was demanded by the bailiff service.

70. At the same time, it observes that the applicant did not obstruct the enforcement and that the award has not been enforced for more than two years. It also takes cognizance of the fact that the drainage system has been

badly needed to prevent further damage to the applicant's house and worsening of her housing situation.

71. Having regard to the above, the Court concludes that the State's failure to comply with the judgment has breached Article 6 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

72. The applicant further complained that she had no effective domestic remedies against the excessive length of the proceedings and non-enforcement of the judgment in her favour. 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.”

A. Admissibility

73. 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

74. The Government contested the applicant's argument. Regarding the complaint of lack of effective remedies in respect of the excessive length of the proceedings, they stated that it had been open to the applicant to motion for replacement of the technical experts, to complain to the Judicial Qualifications Board or to the president of the court examining her case. In respect of the complaint of lack of effective remedies against non-enforcement, they argued that such remedies existed and had been identified by the Government in the case of *Burdov v. Russia* (no. 2).

75. 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).

76. The Court reiterates that according to its case-law there was at the material time 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).

77. The Court recalls that in the present case the applicant had used one of the measures offered by the Government, namely, she had complained to the president of the first-instance court examining her case. However, it does not appear from the submissions that this expedited the proceedings or led to the provision of compensation. As to the other suggested remedies, the Government did not supply any new argument as to whether and how the applicant could obtain effective relief by having recourse to them. 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 relief (see *Kudla*, cited above, § 159). Accordingly, the Court rejects this part of the Government's argument.

78. Turning to the existence of effective remedies against the non-enforcement, the Court observes that the effectiveness of the suggested measures had been refuted in its previous findings (see, in particular, *Burdov v. Russia (no. 2)*, no. 33509/04, § 101-116, ECHR 2009-...). In the present case the Government did not provide any information that would warrant a different conclusion.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The Court observes that in her submissions the applicant did not make any claims in respect of pecuniary damage, nor did she explicitly request to enforce the judgment of 22 November 2007 in the part ordering construction of the drainage system. However, the Court is of the opinion that the claim for enforcement transpires from the nature of the applicant's complaint.

82. The Court recalls that in general the most appropriate form of redress in respect of violations found is to put applicant as far as possible in the position he or she would have been in if the Convention requirements had not been disregarded (see, among many other authorities, *Dovguchits v. Russia*, no. 2999/03, § 48, 7 June 2007). Having regard to the violation

found on account of the State's failure to enforce the judgment in the applicant's favour, this principle is applicable in the present situation.

83. Therefore the Court considers that the Government shall secure, by appropriate means, the enforcement of the judgment of 22 November 2007 in the case no. 2-1467-07 (see *Lesnova v. Russia*, no. 37645/04, § 25, 24 January 2008).

84. The applicant claimed 68,181 euros (EUR) in respect of non-pecuniary damage.

85. The Government disputed the claim arguing that it was arbitrary and excessive.

86. Referring to its case-law, the Court finds that the applicant suffered some distress and frustration caused by the unreasonable length of the proceedings and by the State's continuing failure to enforce a judgment in her favour. Deciding on an equitable basis, the Court awards the applicant 5,000 EUR under this head.

B. Costs and expenses

87. The applicant also claimed EUR 493 for the costs and expenses incurred before the domestic courts.

88. The Government disagreed with the claim as unsupported by any evidence.

89. The Court observes that the applicant failed to submit any documents that could prove the allegedly sustained expenses. Accordingly, the Court rejects the claim.

C. Default interest

90. 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 on account of the excessively long proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of non-enforcement of the final judgment in the applicant's favour;

4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the judgment of 22 November 2007 in the case no. 2-1467-07;
 - (b) 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 5,000 (five 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;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President