

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

FIRST SECTION

DECISION

Application no. 50537/06
by Olga Igorevna FEDOROVA and Leonid Ivanovich SHAKHOV
against Russia

The European Court of Human Rights (First Section), sitting on 17 February 2011 as a Committee composed of:

Christos Rozakis, *President,*
Anatoly Kovler,
Mirjana Lazarova Trajkovska, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 17 November 2006,

Having regard to the Court's decision to apply Rule 41 of the Rules of Court,

Having regard to the declaration submitted by the respondent Government on 10 September 2010 requesting the Court to strike the application out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Olga Igorevna Fedorova and Mr Leonid Ivanovich Shakhov, are Russian nationals who were born in 1964 and in 1930 respectively. The first applicant is the second applicant's niece. The applicants live respectively in Pontonnyy and in Ust-Izhora, the Saint-Petersburg Region. They are represented before the Court by Mr M. Yankevich, a lawyer practising in Saint Petersburg. The Russian Government ("the Government") were represented by Mr G. Matyushkin,

the Representative of the Russian Federation at the European Court of Human Rights.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. The applicants' land title

In the early 1990s the applicants inherited a land plot with a surface of 2,920 sq. m. from their relatives.

On 20 October 1994 the Saint-Petersburg Committee for Land Resources and Management (*Комитет по земельным ресурсам и землеустройству Санкт-Петербурга*, "the Land Committee") registered the applicants' rights of joint shared ownership *(общая долевая собственность)* to a part of the land plot, measuring 2,400 sq. m. They were thus entitled to a portion of 0.12 ha each, which corresponded to the maximum authorised limit per person under the law as in force at the material time. The boundaries of that allotment were not measured and its cadastral map was not drawn up.

On 16 and 23 May 1994 the applicants submitted applications to the Land Committee seeking to be declared life tenants of the remaining 520 sq. m. Awaiting response, they continued to use the entire 2,920 sq. m. of the land. It does not appear that the Land Committee responded to their applications.

In the meanwhile, on 31 March 1994 the Ust-Izhora local authority ("the local authority") granted Ms S. an abutting land plot with a surface area of 1,172 sq. m., which partially overlapped the land used by the applicants. On 22 November 2000 Ms S. registered title to her land plot. On 26 April 2002 she sold it to Mr A. On 23 May 2002 Mr A. registered ownership rights thereto.

On 28 March 1995 the local authority granted Mr K. another land plot with a surface area of 1,208 sq. m., which also partially overlapped the land used by the applicants. At a later stage the Land Committee issued Mr K. with a certificate proving his life-tenancy rights to the land plot.

On 5 December 1996 the head of the local authority released a new local development plan ("the local development plan"), which intended, in particular, to alter the measurements of the land used by the applicants.

With reference to the local development plan, on 31 July 1997 the head of the local authority issued a delimitation plan of the land plot of 0.24 ha owned by the applicants ("the land delimitation plan"). According to the applicants, the new abuttals differed significantly from those established for the land plot of 2,920 sq. m. Furthermore, some portions of cultivated land had been excluded therefrom, whereas others, of inferior quality, had been added to their land plot. Those lower quality portions had initially belonged to Mr B. No compensation was offered to the applicants.

B. The proceedings before the domestic courts

On 3 April 1997 the applicants sued Mr A., Mr K., Ms S., the head of the local authority and the Land Committee. They sought to repeal the land delimitation plan as *ultra vires*, invalidate Mr A.'s, Mr K.'s, Ms S.'s respective titles and obtain title to the 2,920 sq. m. land plot, delimited according to its initial measurements. They also requested damages. The applicants indicated Mr B. as a third party.

The case was assigned to the Kolpinskiy District Court of Saint-Petersburg ("the district court"). The district court scheduled the first hearing for 5 November 1997.

On 5 November 1997 the district court adjourned the hearing until 23 December 1998 due to the parties' failure to appear.

On 23 December 1998 the applicants attended the hearing but it was further adjourned as the district court decided to join a number of Saint-Petersburg City authorities as third-party defendants, including the Land Committee, the Committee on Architecture and Urban Development *(Комитет по градостроительству и архитектуре администрации Санкт-Петербурга, "the Architecture Committee")* and the Department on Land Inventory and Assessment *(Государственное учреждение по инвентаризации и оценке недвижимости Санкт-Петербурга)*. The hearing was listed for 17 March 1999.

On 17 March 1999 the district court adjourned the hearing until 30 June 1999. The decision was primarily grounded by the need to join the authority of the Kolpinskiy District as a defendant, as the initial defendant, the Ust-Izhora local authority, had ceased to exist. Furthermore, the court had received new documentary evidence and the applicants had updated their claims.

On 30 June 1999 defendant Mr K. and third-party defendant Mr B. failed to appear. The district court adjourned the hearing until 27 July 1999.

On 27 July 1999 the representatives of the third-party defendants impleaded on 23 December 1998 failed to appear. The district court adjourned the hearing until 22 September 1999.

On 22 September 1999 the representative of the Architecture Committee failed to appear. The hearing was adjourned until 18 October 1999.

On 18 October 1999 the Saint-Petersburg City authority and the Land Committe requested the court to question witness L. Granting their request, the court adjourned the hearing until 23 November 1999.

On 23 November 1999 the district court further adjourned the hearing until 20 December 1999 as witness L. failed to appear.

On 20 December 1999 the Saint-Petersburg City authority asked the court to postpone the hearing due to witness L.'s failure to attend and pending receipt of documents earlier requested from the Land Committee.

Granting the respondent's request, the district court scheduled the hearing for 20 January 2000.

On 20 January 2000 the district court adjourned the hearing pending the outcome of a dispute over the lawfulness of the local development plan, lodged with the same court. It appears that the latter case was assigned the number 2-1015/04.

On 21 March 2000 the district court adjourned the hearing until 27 March 2000 as the representative of the Land Committee failed to appear.

On 27 March 2000 the applicants asked the court to postpone the hearing in order to contract a legal counsel. Granting their request, the district court listed the hearing for 4 May 2000.

On 4 May 2000 the district court adjourned the hearing until 18 May 2000, pending receipt of documents earlier requested from the Architecture Committee and granting the applicants' request to question two witnesses.

On 18 May 2000 the hearing was further adjourned until 15 June 2000, pending receipt of the documents from the Architecture Committee.

On 15 June 2000 the Saint-Petersburg City authority sought to postpone the hearing on the ground that its representative was involved in other civil proceedings. The district court granted the defendant's request and adjourned the hearing until further notice.

On 5 February 2001 the district court adjourned the hearing until 5 March 2001 as third-party defendant Mr B. and the representative of the Land Committee failed to appear.

On 5 March 2001 the district court adjourned the hearing until 28 March 2001 for an unspecified reason.

On 28 March 2001 the applicants asked the district court to postpone the proceedings pending the court's decision in case no. 2-1015/04 on the lawfulness of the local development plan. The court granted the applicants' request and stayed the proceedings.

On 21 September 2004 the district court declared the local development plan null and void.

On 10 November 2004 the district court resumed the proceedings in the applicants' case with reference to the decision of 21 September 2004 in case no. 2-1015/04. The court scheduled the hearing for 25 January 2005.

On 25 January 2005 the Land Committee requested the district court to adjourn the hearing as its representative was involved in other proceedings. The court granted the request and, taking into account the absence of information about notification of the defendants and third parties of the hearing, rescheduled the hearing for 17 March 2005.

The hearing of 17 March 2005 was also adjourned due to the Land Committee's representative's involvement in other proceedings. The hearing was listed for 10 May 2005.

The hearing of 10 May 2005 did not take place as it was a public holiday.

On 14 July 2005 the district court adjourned the hearing as on 29 June 2005 the Land Committee's representative had declared his involvement in other proceedings and failed to appear. The hearing was rescheduled for 12 October 2005.

On 12 October 2005 the Land Committee's representative failed to appear again. Given his consistent failure to appear, the district court granted the applicants' request to obtain documentary evidence from the Land Committee, including the cadastral plans of the disputed land plots. The hearing was adjourned until 1 November 2005.

The hearing of 1 November 2005 was adjourned until 29 November 2005 pending receipt of the documentary evidence requested on 12 October 2005.

On 29 November 2005 the district court dismissed the applicants' claims. With regard to the land plot of 0.24 ha, the court indicated that since the registration of their title in 1994, the applicants had been fully aware that the boundaries and measurements of the parcel had not yet been determined. Consequently their property rights could not have been impaired by the registration of their neighbours' titles to the overlapping parcels in 1994 and 1995 as the applicants' land plot had not been delimited at that stage. The court further found that the applicants failed to prove that they had any rights to the remaining 520 sq. m. of the land. In its reasoning, the court did not refer to proceedings no. 2-1015/04 whereby the local development plan had been declared null and void.

On 24 January 2006 the reasoned judgment was made by the district court. The applicants could obtain a copy thereof on 27 January 2006. They appealed.

On 17 May 2006 the Saint-Petersburg City Court upheld the judgment on appeal.

COMPLAINTS

The applicants complain under Article 6 § 1 of the Convention about the outcome of the proceedings and their excessive length.

Under Article 1 of Protocol No. 1 the applicants complain about the unfavourable outcome of the proceedings.

THE LAW

1. The applicants complained under Article 6 of the Convention that the proceedings lasted unreasonably long.

Article 6 provides, in so far as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

By a letter of 10 September 2010 the Government submitted a unilateral declaration. The relevant parts of the declaration read as follows:

> "I, Georgy Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights, hereby declare that the Russian authorities acknowledge that the length of proceedings in the applicants' case was in breach of the "reasonable time" requirement.
>
> The authorities of the Russian Federation are ready to pay each applicant *ex gratia* a sum of EUR 3,500 as just satisfaction.
>
> The authorities therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the three-month period, the Government undertake to pay simple interest on it from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> This payment will constitute the final resolution of the case."

In a letter of 31 October 2010 the applicants expressed the view that the award proposed by the Government was unacceptably low.

The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Article 37 § 1 *in fine* includes the proviso that:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

As the Court stated in *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 74-77, ECHR 2003-VI, a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings and, on the other, unilateral declarations – such as the present declaration – made by a respondent Government in public and adversarial proceedings before the Court. In accordance with Article 38 § 2 of the Convention and Rule 62 § 2 of the

Rules of Court, the Court will proceed on the basis of the Government's unilateral declarations and the parties' observations submitted outside the framework of any friendly-settlement negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement.

The Court considers that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar,* cited above, § 75, and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

The Court notes that it has specified in a number of cases the nature and extent of the obligations which arise for the respondent State under Article 6 of the Convention as regards the guarantees of the right to a trial within a reasonable time (see, among many others, *Kuzin v. Russia*, no. 22118/02, §§ 33-39, 9 June 2005, and *Svetlana Orlova v. Russia*, no. 4487/04, §§ 42-52, 30 July 2009). Where the Court has found a breach of this provision it has awarded just satisfaction, the amount of which depended on the particular features of the case.

As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the Government, the Court notes, in the first place, that the present application does concern an issue which has already been examined by the Court in numerous cases.

Further, the Court observes that, having acknowledged in their unilateral declaration that the domestic proceedings had been unreasonably lengthy, the Government offered each applicant redress in the form of monetary compensation of 3,500 euros (EUR). The Court considers that the sum proposed in the declaration is consistent with the amounts awarded by the Court for non-pecuniary damage in similar cases.

Therefore, in the circumstances of the present case, the Court finds that the Government established a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of this aspect of the case at hand (see *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

That being so, the Court accepts the Government's request and decides to strike this part of the application out of its list of cases under Article 37 § 1 (c) of the Convention.

2. The applicants also complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the unfavourable outcome of the proceedings.

The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols other then those examined above. Accordingly, these complaints must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in so far as it concerns the complaint about the excessive length of proceedings, in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

André Wampach
Deputy Registrar

Christos Rozakis
President