CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 5969/02
by Yuriy Semenovich GOTIN
against Russia

The European Court of Human Rights (First Section), sitting on 5 January 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 23 December 2001,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Yuriy Gotin, is a Russian national who was born in 1968 and lives in Kaliningrad. The respondent Government were represented by Mr P. A. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

The applicant is a former estate agent. In 1997 two persons drafted wills in his favour. They died shortly afterwards and the applicant unsuccessfully tried to inherit their real estate. He was involved in two sets of civil proceedings concerning the validity of the wills. Because his activity had raised suspicions, the applicant was subjected to criminal proceedings and later convicted of fraud.

1. Civil proceedings before the Oktyabrskiy District Court of Kaliningrad

One of the persons had lived in a municipal flat. She had intended to privatize the flat and launched relevant formalities, but she died before the procedure was over. On 17 July 1997 the applicant brought proceedings against the local authority claiming his right to inherit the flat. On 22 May 1998 the local authority lodged a counter-claim requesting to declare the will and the privatization agreement null and void. On 31 May 2001 the Oktyabrskiy District Court found for the local authority and rejected the applicant's claims.

The applicant appealed against the judgment. According to his submissions, he was not notified of an appeal hearing. According to the Government, notices of an appeal hearing on 25 July 2001 before the Kaliningrad Regional Court were sent on 13 July 2001 to the applicant, who received the notice on 20 July 2001, and his counsel.

On 25 July 2001 the Kaliningrad Regional Court examined the case in the presence of the local authority. It dismissed the applicant's appeal and upheld the judgment. The applicant, who was then held in a detention facility after conviction, was absent from the hearing. He was not represented by counsel.

The applicant unsuccessfully pursued the reopening of the case in supervisory review proceedings.

2. Civil and criminal proceedings before the Leningradskiy District Court of Kaliningrad

On 29 June 1998 a family member of one of the testators brought civil proceedings against the applicant in respect of a house which the latter had planned to inherit. The relative claimed that he, not the applicant, should inherit the estate. He also brought criminal proceedings against the applicant, alleging fraud.

On 22 January 1999 the Tsentralniy District Court of Kaliningrad discontinued the civil proceedings because the plaintiff had withdrawn his action.

On 7 June 2001 the Leningradskiy District Court of Kaliningrad convicted the applicant of fraud and sentenced him to six and a half years' imprisonment. On 23 October 2001, on appeal, the Kaliningrad Regional Court upheld the conviction and reduced the sentence by four months.

On 2 July 2001 a supervisory review court set aside the ruling of 22 January 1999 of the Tsentralniy District Court and ordered the resumption of the civil proceedings.

On 16 July 2001 the Leningradskiy District Court of Kaliningrad found for the plaintiff and declared the will null and void.

According to the last available information, the case is pending before an appeal court.

B. Events after the case was communicated

On 17 October 2003 the Registrar sent a letter to the applicant, informing him that the Court had decided to give notice of his application to the Russian Government.

In a letter of 29 January 2004 the applicant, then serving his sentence in facility no. OM 216/7 in Gvardeysk, acknowledged receipt of the above-mentioned Registrar's letter of 17 October 2003 and asked for its translation into Russian.

On 13 February 2004 the Government submitted their written observations on the admissibility and merits of the application. On 17 February 2004, in a letter sent by registered mail with acknowledgment of receipt, the applicant was invited to file his pleadings in reply by 13 April 2004. It emerges from the relevant acknowledgment of receipt that the letter was delivered on 27 February 2004. He did not reply.

On 1 March 2004, following the receipt on 20 February 2004 of the above-mentioned applicant's letter of 29 January 2004, the Registry sent to the applicant the Russian translation of the letters of 17 October 2003 and 17 February 2004. No reply followed.

On 17 March 2005 the Registry sent, by registered mail with acknowledgment of receipt, to two available addresses, a letter to the applicant in Russian in which he was warned that if he failed to respond to that letter, the Court might conclude that he no longer intended to pursue his application. It emerges from the relevant acknowledgment of receipt that the letter was delivered to one of the addresses on 31 March 2005.

The applicant has not to date resumed his correspondence with the Court.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that he had not been summoned to the appeal hearing before the Kaliningrad Regional Court on 25 July 2001.

2. Invoking Articles 6 and 13 of the Convention, the applicant complained about the outcome of the proceedings in which he was involved, the alleged breach of territorial jurisdiction in the criminal case, the lack of time properly to prepare for the hearings, the courts' failure properly to apply the law and assess the evidence and their failure to examine witnesses whose evidence he considered relevant. He complained that the hearing before the supervisory review court, in which it ordered the resumption of the civil proceedings against him, had been held in his absence. He alleged that in the civil proceedings before the Leningradskiy District Court he had not been allowed to file a counter-claim. He complained that the civil proceedings, which ended with the decision of 25 July 2001, had lasted too long and that the judge who considered his request for supervisory review had previously heard his case on appeal.

THE LAW

The Court, having regard to the events that occurred after the notice of the application had been given to the Russian Government and after they had submitted their observations on the admissibility and merits of the case, considers that it does not have to examine the present application and that Article 37 § 1 of the Convention should be applied. That provision, in its relevant part, reads:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application;...
>
> 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."

In this respect the Court notes that the applicant did not submit any reply to the observations submitted by the respondent Government on 13 February 2004. He has also failed to respond to a further communication from the Registry of the Court, which was a registered letter dated 17 March 2005 warning him that his application might be struck out of the list if he failed to respond.

In the circumstances, the Court concludes that the applicant does not intend to pursue the application and that it is no longer justified to continue the examination of the case. Furthermore, the Court finds no reasons of a

general character, as defined in Article 37 § 1 *in fine*, that would require it to continue the proceedings by virtue of that provision.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President