CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 60408/00
by Yulia Aleksandrovna YEMANAKOVA
against Russia

The European Court of Human Rights (Second Section), sitting on 13 September 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced on 7 July 2000 and registered on 29 August 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Yulia Aleksandrovna Yemanakova, is a Ukrainian national, born in 1919 and living in Ukraine. She is represented before the Court by Mrs. Panchenko, a lawyer practising in Berdyansk, Ukraine.

A. The circumstances of the case

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

The applicant's father was subjected to repressions in 1929-1930 as a rich peasant ("kulak"). In 1930 all the family property, including a two-storey house in the village of Sorochinsk, Orenburg Region, was confiscated. In 1989 the applicant's father was rehabilitated after his death. The family house remains intact in Sorochinsk, and was used by the Sorochinskiy Veterinary College to house its employees. At some point during the proceedings the three families who live in the house privatised their flats and became owners of their living quarters.

On 26 October 1990 the Sorochinskiy Town Court rejected the applicant's request to recognise her right to the property of the house, advising her to apply to the Orenburg Regional financial authority (*Оренбургское областное финансовое управление*), with a claim for financial compensation. The Regional financial authority rejected the applicant's request for compensation as having no grounds in the existing national legislation.

On 24 September 1992 the Leninskiy District Court of Orenburg rejected both the applicant's complaint about the actions of the Regional financial authority and her civil claim to confirm her right of property over the house. On 6 May 1993 the Orenburg Regional Court (*Судебная коллегия по гражданским делам Оренбургского областного суда*) quashed the decision of 24 September 1992 and remitted the case to the District Court. On 15 September 1993 the Leninskiy District Court of Orenburg ordered the transfer of the case to the district court which had jurisdiction for the area in which the building was located.

On 20 January 1995 the Head of the Sorochinsk Town administration issued an order, recommending the Veterinary College to pay the applicant the maximum compensation allowed by the national legislation, which would later be reimbursed to the College by the regional budget. The order was never complied with. On 10 April 1995 the Sorochinskiy Town Court ordered the closure of the civil case as the applicant had been awarded financial compensation. On 25 September 1995 the Presidium of the Orenburg Regional Court, acting as a supervisory instance, quashed the order of 10 April 1995 and returned the case to the Town Court.

On 27 December 1995 the Sorochinskiy Town Court rejected the applicant's claim to the Town administration, on the ground that it was not based on national legislation and that she had already been awarded the maximum compensation for the house. On 9 April 1996 the Orenburg Regional Court quashed the decision of the Town Court of 27 December 1995 and again remitted the case.

On 24 July 1996 the Sorochinskiy Town Court established that the applicant's family had been the owners of the property, and confirmed that the confiscation had taken place, but rejected the applicant's claims for return of the house. On 27 August 1996 the Orenburg Regional Court quashed the decision of 24 July.

On 13 February 1997 the Sorochinskiy Town Court once again confirmed the family's previous ownership of property and the confiscation, but rejected the applicant's claims. On 24 April 1997 the Orenburg Regional Court quashed the decision of 13 February. On 20 April 1997 the applicant was informed that the Orenburg Regional Court would consider her case as the first instance court.

On 28 April 1998 the Civil College of the Orenburg Regional Court rejected the applicant's claim to the Regional financial authority for compensation and refused to return the house *in natura*. It ordered the Sorochinsk Town administration to pay to the applicant the maximum compensation for the confiscated property (100 "units" of the minimum monthly wage), travel expenses and legal fees. The applicant received the decision on 6 May 1998.

On 14 May 1998 the applicant lodged her cassation appeal with the Orenburg Regional Court, for forwarding, with the case file, to the Supreme Court. The applicant then wrote to the Orenburg Regional Court to ask about progress in the case on 21 August 1998, 24 March 1999, but received no reply. She also wrote directly to the Supreme Court on several occasions, including on 21 August 1998, 26 November 1998, 6 May 1999, 21 June 1999, 2 August 1999, 18 August 1999, 16 December 1999. She has received standard replies from the Supreme Court on 5 November 1998, 19 July 1999, 19 January 2000 that her appeal could not be considered as no case file was attached. The applicant has on at least one occasion - on 6 May 1999 - copied the decisions of the courts and her appeal and forwarded it to the Supreme Court. Her letters to other bodies, including the Ministry of Justice, the High Qualification Board of Judges, the President's administration, the Constitutional Court, the General and Orenburg Regional prosecutors were either not answered or forwarded to the Orenburg Regional Court.

B. Relevant domestic law

The Civil Procedural Code

Article 283 provides that cassation or supervisory appeals are submitted through the court which acted as the court of first instance. Submission of the appeal directly to the cassation instance can not prevent its consideration.

Article 284 sets a one month time-limit for review of cassation appeals by the Supreme Court.

The 1991 Law on Rehabilitation of Victims of Political Repressions (*Закон «О реабилитации жертв политических репрессий»*), as amended in 1995, provided at Article 16-1 that where return of property to rehabilitated persons *in natura* is impossible, there is instead a right to compensation of up to 100 "units" of the minimum monthly wage.

Decisions as to the return of property and about payment of compensation are taken by the local self-government bodies at the location of the property.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the length of proceedings in her case is in violation of the "reasonable time" requirement. She further complains about the lack of an effective remedy against the delays in the review of her cassation appeal.

2. The applicant also complains under Article 1 of Protocol No. 1 that her property right has been violated.

THE LAW

1. The applicant complains of the length of civil proceedings to which she is a party. She alleges a violation of Article 6 § 1 of the Convention which, in so far as relevant, provides:

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant also complains that she has no effective remedy against the delays in the cassation procedure. The Court has examined this complaint under Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in this 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. "

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant complains that her right for peaceful enjoyment of property has been violated by the refusal to return the house. She complains under Article 1 of Protocol No. 1, which, in so far as relevant, provides:

"Every natural ... person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The Court recalls that Article 1 of Protocol No. 1 guarantees the peaceful enjoyment of possessions. However, it does not guarantee the right to acquire property (*Van der Mussele v. Belgium*, judgment of 23 November 1983, § 48, Series A no. 70). It is not intended to create new possessions.

The Court recalls that the confiscation has occurred prior to 5 May 1998, which is the date of entry into force of the Convention in respect of Russia. The Court can not therefore consider the confiscation as such because it falls outside the Court's competence *ratione temporis*.

As to the applicant's property rights since that date, the Court notes that the domestic proceedings concerning her request to have the family house returned to her are still pending. It is therefore too early to determine the extent of the applicant's property rights, or whether there has been any interference with them.

It follows that this part of the application is premature and therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be rejected in accordance with paragraph 4 of this provision.

For these reasons, the Court, unanimously

DECIDES TO ADJOURN the examination of the applicant's complaints about the length of civil proceedings and about absence of an effective remedy.

DECLARES INADMISSIBLE the remainder of the application.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President