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

THIRD SECTION

DECISION

Application no. 55098/10
Anastasiya Gerasimovna ZVEREVA and Svetlana Viktorovna ZVEREVA
against Russia

The European Court of Human Rights (Third Section), sitting on 5 January 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 15 August 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, Ms Anastasiya Gerasimovna Zvereva, is a Russian national who was born in 1917 and died on 2 July 2014. The second applicant, Ms Svetlana Viktorovna Zvereva, is also a Russian national, who was born in 1953 and lives in Velikiy Novgorod. She is the daughter of the first applicant. The applicants were represented before the Court by Mr K.V. Pakin, a lawyer practising in Velikiy Novgorod.

2. On 11 October 2014 the second applicant expressed her wish to pursue the proceedings lodged with the Court by the first applicant.

3. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

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

A. Background to the case

5. Between 1966 and 1993 several members of the applicants' family died (the first applicant's mother, two sisters and a nephew, K.) and were buried in the same plot in the municipal cemetery in Gagarin, a town in the Smolensk region. The applicants' family placed a cross over each grave bearing the names of the deceased and placed a fence around the plot.

6. In 1996 the cemetery was closed for any new burials.

7. In 2002 the first applicant visited the cemetery and saw that the grave of her mother and sister had been dug up and the cross had disappeared. She learnt that earlier in 2002 the remains of a certain A.Zh. had been buried in that grave.

8. In 2003 the grave of the first applicant's other sister had been dug up and the remains of a certain T.Zh. had been interred there.

9. The applicants found out that the burials of A.Zh. and T.Zh. had been arranged by A., the former wife of the first applicant's nephew K. A.Zh. and T.Zh. were A.'s brother and mother respectively.

B. Complaints to the Prosecutor's Office brought by the second applicant

10. In 2004 and 2005 the second applicant complained to the Gagarinskiy Interdistrict Prosecutor's office about the allegedly unlawful burials in her family's interment plot of the remains of persons who were not members of her family.

11. In August 2004, and November and December 2005 the Prosecutor's office dismissed her complaints as unsubstantiated. The Prosecutor's decisions stated that the second applicant was entitled to appeal against them before a court. The applicant did not lodge any judicial appeal against the prosecutor's decisions.

C. Proceedings brought by the second applicant

12. In November 2005 the second applicant brought court proceedings against A. and the town administration. She claimed that A.'s relatives, who had been buried in the graves of her (the second applicant's) relatives, were

not members of her family and their remains should therefore be re-interred elsewhere.

13. On 21 April 2006 the Justice of the Peace of the Gagarinskiy District of the Smolensk region ("the Justice of the Peace") dismissed her claim.

14. The second applicant did not appeal against that decision to the Gagarinskiy Town Court of the Smolensk Region ("the Town Court") and it entered into force on 2 May 2006. According to her, she deliberately did not appeal against the decision of 21 April 2006 since A. had promised not to make any changes to the plot in the future without consulting her.

15. In December 2006 the second applicant lodged an application for supervisory review of the decision of 21 April 2006.

16. On 23 January 2007 the Smolensk Regional Court ("the Regional Court") refused to refer the case to the supervisory review court for examination on the merits.

D. Proceedings brought by the first applicant

17. In 2009 the first applicant brought court proceedings against A., the local authorities, and company D., which was a provider of burial services. The second applicant represented her in those proceedings.

18. The first applicant claimed that the plot in which her relatives had been buried was her family interment plot and that it had been unlawful to bury other persons there. She asked the court to award her compensation in respect of the pecuniary damage sustained as a result of those burials, to order the re-interment of the remains of A.'s relatives in a different plot and to prohibit any other burials in the family interment plot.

19. On 7 December 2009 the Town Court dismissed the first applicant's claims in full, having found that the burials of A.'s relatives had been carried out in accordance with the law.

20. On 16 February 2010 the Regional Court examined and dismissed the first applicant's appeal. The first applicant submitted that neither she nor the second applicant, who had represented her in those proceedings, had been duly notified of the hearing and they had therefore been unable to attend it.

COMPLAINTS

A. Complaints lodged by the first applicant

21. The first applicant complained under Article 8 of the Convention that the competent domestic authorities and companies providing burial

services had violated her right to respect for private and family life. In particular, they had authorised and carried out the burial, in her family's interment plot, of the remains of persons who were not members of her family. Furthermore, the State authorities had failed to regulate or supervise burials in the public cemetery where the plot in question was situated. The first applicant also complained that the domestic courts had dismissed her claims against those responsible for the unlawful burials without lawful grounds or sufficient reasons, and had refused to arrange for the re-interment of the unlawfully buried remains.

22. She complained under Article 13 that she had not had an effective remedy for her complaints under Article 8.

23. She complained under Article 3 that such a lengthy violation of her right to private and family life had amounted to torture or inhuman and degrading treatment.

24. The first applicant complained under Article 6 that the domestic courts had not duly notified either her or her representative (the second applicant) of the examination of her appeal against the judgment of 7 December 2009 and had examined it in her and her representative's absence.

B. Complaints lodged by the second applicant

25. The second applicant complained under Article 8 of the Convention of the violation of her right to respect for private and family life, referring to the same arguments as the first applicant.

26. She complained under Article 13 that she had not had an effective remedy for her complaints under Article 8.

27. She complained under Article 3 that such a lengthy violation of her right to private and family life had amounted to torture or inhuman and degrading treatment.

THE LAW

A. Complaints lodged by the first applicant

1. The submissions by the parties

28. The Government contended that the second applicant had no standing to pursue the proceedings in respect of the complaints originally lodged by the first applicant. They referred to the following arguments: (1) under both the Russian Civil Code and the Court's case-law, a deceased's estate includes his or her property and pecuniary rights and

claims, but does not include rights and obligations intrinsically linked to the deceased person himself or herself; (2) under the Court's case-law, rights guaranteed under Article 8 are not of a transferrable nature (3) the second applicant had herself submitted complaints concerning the same events and she had therefore not been deprived of a protection of her rights.

29. The second applicant stated that she had legal standing to pursue the proceedings before the Court lodged by her mother. She relied on her mother's will dated 31 March 1995, by which she had been appointed as her mother's universal legatee.

2. The Court's assessment

30. The Court reiterates that in a number of cases in which an applicant has died in the course of the proceedings it has taken into account statements from the applicant's heirs or close family members expressing the wish to pursue the proceedings before the Court (see, for example, *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, and *Kovačić and Others v. Slovenia* [GC], nos. 44574/98 et al., §§ 189-192, 3 October 2008). In this connection, the Court has considered firstly whether or not the persons wishing to pursue the proceedings were the applicant's close relatives (see *Thévenon v. France* (dec.), no. 2476/02, ECHR 2006-III) and, as a second criterion, whether the rights concerned were transferable (see *Vääri v. Estonia* (dec.), no. 8702/04, 8 July 2008). On the one hand, the Court has continued the examination of cases involving pecuniary claims that were transferable to the deceased applicant's heirs (see, for example, *Ahmet Sadık v. Greece*, 15 November 1996, § 26, *Reports of Judgments and Decisions* 1996-V). On the other hand, the Court has found that certain other rights, such as those guaranteed by Articles 2, 3, 5, 8, 9 and 14 were of an eminently personal and non-transferable nature (see, for instance, *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI, and *Angelov and Angelova v. Bulgaria* (dec.), no. 16510/06, 7 December 2010). However, the transferability of the applicant's claim is not always decisive. Cases before the Court generally also have a moral or principled dimension and persons close to an applicant may thus have a legitimate interest in obtaining a ruling even after the applicant's death. This has been applied in cases that concerns the application of the most fundamental provisions in the Convention system (see *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 73, ECHR 2012 (extracts)).

31. Turning to the present case, the Court observes that the first applicant died in 2014 in the course of the proceedings before it. Her daughter, who is the second applicant in the present case, expressed her wish to pursue the proceedings lodged before the Court by her mother. Thus, the first condition of close kinship is met. The Court further observes that even though the first applicant relied on various provisions of the Convention, the main thrust of her complaints was in fact related to the

allegedly unlawful burial in her family's interment plot of the remains of persons who were not members of her family. The Court finds that these issues – falling primarily under Article 8 of the Convention – are closely linked to the applicant's person and cannot be regarded as transferable. Therefore, the Court finds that the second applicant has no legal standing to pursue the proceedings lodged by the first applicant.

32. Moreover, the Court considers that the moral and principled dimensions of the issue at hand do not necessitate proceeding with the examination of the complaints raised by the first applicant. Consequently, the Court finds that the conditions in which the application, in so far as it concerns the complaints lodged by the first applicant, may be struck out of its list, as provided by Article 37 § 1 of the Convention, are satisfied.

B. Complaints lodged by the second applicant

33. The second applicant complained under Article 8 of the Convection of a violation of her right to respect to private and family life. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

She also complained that she had not had effective domestic remedies for her complaint under Article 8 of the Convention. She referred to Article 13 of the Convention which reads:

> "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."

Finally, she complained that the lengthy violation of her rights under Article 8 had amounted to treatment prohibited by Article 3 of the Convention. Article 3 reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

34. The Government submitted that, among the remedies available within the Russian legal system, a civil court action was the most effective remedy to deal with the second applicant's complaint under Article 8. However, she had not pursued that remedy in order to obtain a final decision in her case within the meaning of Article 35 of the Convention. In particular, she had not appealed against the decision of 21 April 2006 of the Justice of the Peace to the Town Court. Instead, she had attempted to apply

for a supervisory review of that decision. Such applications, as in force at the material time, were regarded as extraordinary remedies by the Court. In sum, the Government considered that the second applicant's complaint under Article 8 was inadmissible on account of her failure to exhaust the effective domestic remedies which were available to her.

35. The second applicant maintained her complaint. She submitted that the Justice of the Peace had dismissed her complaint without taking into account her arguments and that therefore, the proceedings before the Justice of the Peace had been ineffective.

36. The Court observes that the second applicant had not contested that domestic law was capable of providing her with the possibility of obtaining redress in respect of the alleged violations of her rights by bringing a civil action against A. and the municipal authorities. She did indeed lodge such an action in November 2005, but deliberately decided not to appeal against the decision of 21 April 2006 of the Justice of the Peace to the Town Court (see paragraph 14 above). Instead, she lodged applications for supervisory review of that decision. However, the Court has previously held that applications for supervisory review exercised under the supervisory review procedure in force between 1 February 2003 and 7 January 2008 were not effective for the purpose of Article 35 of the Convention (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004, and *Martynets v. Russia* (dec.), no. 29612/09, 12 December 2008). Furthermore, assuming that the complaints to the Prosecutor's office could be regarded as an effective remedy through which to deal with the second applicant's complaints, she had failed to lodge a judicial appeal against the decisions of the Prosecutor's office (see paragraph 11 above).

37. Having regard to the above, the Court concludes that the Russian legal system afforded the second applicant effective remedies, which she has failed to use. Accordingly, her complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention and her complaints under Articles 3 and 8 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, by a majority,

Decides to strike the application out of its list of cases in so far as it concerns the complaints lodged by the first applicant;

Declares the complaints lodged by the second applicant inadmissible.

Done in English and notified in writing on 28 January 2016.

Stephen Phillips
Registrar

Luis López Guerra
President