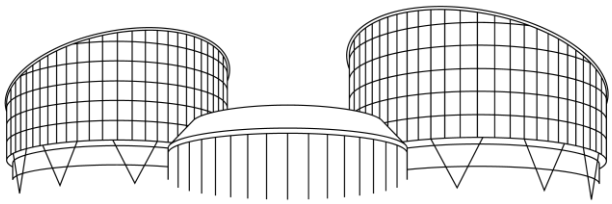

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF CHELIKIDI v. RUSSIA

(Application no. 35368/04)

JUDGMENT

STRASBOURG

10 May 2012

FINAL

10/08/2012

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

In the case of Chelikidi v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 35368/04) 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 Larisa Dmitriyevna Chelikidi ("the applicant"), on 5 September 2004.

2. The applicant was represented by Mr N. Gasparyan, a lawyer practising in Georgiyevsk in the Stavropol Region. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that she had been denied access to a court.

4. On 28 September 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Georgiyevsk.

A. Litigation against a private company

6. On 17 September 2001 the applicant brought civil proceedings against the joint stock company "Nov" (*акционерное общество "Новь"*), subsequently known as the collective farm "Nov" *(сельскохозяйственная артель "Новь"),* seeking recovery of 100 tons of sunflower seeds under a supply agreement.

7. On 17 October 2001 the Georgiyevskiy Town Court granted the applicant's claim. The defendant was absent from the hearing.

8. On 24 December 2001 the writ of execution was returned to the Georgiyevskiy Town Court as it had not been possible to enforce it.

9. On 13 March 2002, following a request by the defendant, the Georgiyevskiy Town Court quashed the judgment of 17 October 2001 and resumed the proceedings.

10. On 22 October 2002 the applicant modified her claims and asked the court to order the defendant to pay her 800,000 Russian roubles.

11. On 17 December 2002 the Georgiyevskiy Town Court granted the applicant's claim. The judgment was not appealed against and became final.

12. The judgment could not be enforced because the defendant had insufficient funds.

B. Action for compensation for the allegedly excessive length of proceedings

13. On an unspecified date in June 2003 the applicant lodged a claim against the Ministry of Finance seeking compensation for damages incurred through the inappropriate administration of justice, notably the excessive length of proceedings in respect of her claims against the company. She argued that the courts had failed to observe the time-limits prescribed by the Russian Code of Civil Procedure, which had undermined the possibility of enforcement of the final judgment in her favour.

14. On 21 July 2003 the Basmannyj District Court of Moscow dismissed the applicant's claim without consideration on the merits. Referring to Ruling no. 1-P, adopted by the Constitutional Court on 25 January 2001 (see paragraph 18 below), the District Court noted that current laws did not determine the grounds or procedure for adjudicating a claim for damages on account of failure by the courts to comply with statutory time-limits. In particular, the court noted as follows:

> "According to Article 1 of the Code of Civil Procedure of the Russian Federation, the rules of civil procedure in federal courts of general jurisdiction are determined by the Russian Constitution, the Judicial System Act, the Code of Civil Procedure and other federal laws.
>
> The law has not determined the territorial and subject-matter jurisdiction over civil claims for compensation for damage incurred in civil proceedings in cases where a

dispute has not been heard on the merits as a consequence of unlawful acts (or failure to act) of a court (a judge), including breach of a reasonable-time guarantee.

Pursuant to Article 134 § 1 (1) of the Code of Civil Procedure of the Russian Federation, the judge shall dismiss a statement of claim if the claim is subject to examination not in civil proceedings but in another judicial procedure."

15. On 10 March 2004 the Moscow City Court upheld the decision of 21 July 2003 on appeal, finding as follows:

"In dismissing the claim with reference to Ruling no. 1-P of 25 January 2001 of the Constitutional Court of the Russian Federation, the court came to the correct conclusion that its examination by a district court of general jurisdiction would only be possible if a federal law determined that the district court of general jurisdiction had territorial and subject-matter jurisdiction over such claims.

At the present time, however, neither the Code of Civil Procedure of the Russian Federation nor any other federal law ... determines the territorial and subject-matter jurisdiction over claims concerning compensation for damage caused by judicial acts not touching upon the merits of the case."

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. Article 1064 of the Civil Code contains general provisions on liability for the infliction of damage. It establishes that damage inflicted on the person or property of an individual must be reimbursed in full by the person who inflicted the damage (Article 1064 § 1).

17. Article 1070 of the Civil Code determines liability for damage caused by the unlawful actions of law-enforcement authorities or courts. In particular, it establishes that the federal or regional treasury shall be liable for damage sustained by an individual in the framework of the administration of justice provided that the judge's guilt has been established by a final criminal conviction (Article 1070 § 2).

18. By Ruling no. 1-P of 25 January 2001, the Constitutional Court found that Article 1070 § 2 of the Civil Code was compatible with the Constitution in so far as it provided for special conditions in respect of State liability for damage caused in the framework of the administration of justice. It clarified, nevertheless, that the term "administration of justice" did not cover judicial proceedings in their entirety, but only extended to judicial acts touching upon the merits of a case. Other judicial acts – mainly of a procedural nature – fell outside the scope of the notion "administration of justice". State liability for damage caused by such procedural acts or failures to act, such as a breach of the "reasonable length" requirement of court proceedings, could arise even in the absence of a final criminal conviction of a judge if the fault of the judge had been established in civil proceedings. The Constitutional Court emphasised, moreover, that the constitutional right to compensation by the State for damage should not be

tied in with the personal fault of a judge. An individual should be able to obtain compensation for any damage incurred through a violation by a court of his or her right to a fair trial within the meaning of Article 6 of the Convention. The Constitutional Court held that Parliament should legislate on the grounds and procedure for compensation by the State for damage caused by the unlawful acts or failure to act of a court or judge and determine territorial and subject-matter jurisdiction over such claims.

19. Article 134 § 1 (1) of the Russian Code of Civil Procedure provides that a civil claim must be dismissed by a judge, in particular, if it is amenable to examination not in civil proceedings but in another judicial procedure.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

20. The applicant complained, with reference to Articles 6 § 1 and 13 of the Convention, that she had been denied access to a court in that the Moscow courts had refused to examine her claim against the Ministry of Finance. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

Article 13 of the Convention 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. Submissions by the parties

1. The Government

21. The Government submitted that the applicant had failed to exhaust domestic remedies. The Government stated, in particular, that prior to bringing her claim against the Ministry of Finance the applicant was required to seek the establishment of the guilt of the judge who had examined her claim against the company by a court's sentence or by some other appropriate judicial decision. She should also have sought prior assessment of the length of the proceedings against the company by "some judicial body or by a qualified judicial panel".

22. In the Government's view, there had been no violation of the applicant's right to a court. The domestic courts had dismissed the applicant's statement of claim because it contained defects and fell short of the requirements of substantive and procedural law. The Government maintained that the applicant had not attempted to correct these defects.

2. The applicant

23. The applicant averred that compliance of the domestic court with the reasonable-time requirement in examining her case against the company could only have been established by the proceedings against the Ministry of Finance which she had sought to initiate. However, in breach of Article 6 of the Convention, the Russian courts had refused to examine her claim, relying on the fact that the domestic law had not determined territorial and subject-matter jurisdiction over such claims.

B. Admissibility

24. In so far as the Government argue that the applicant did not exhaust domestic remedies, the Court observes that there was no allegation of criminally reprehensible conduct on the part of the judge who examined the applicant's claim against the company, and that the institution of criminal proceedings was not a prerequisite for the examination of the applicant's claim in respect of damage caused by the allegedly excessive length of the civil proceedings. The Court further notes that the existence and extent of any such damage, along with the fault of the judge, were precisely the issues to be determined in the proceedings which the applicant had unsuccessfully sought to institute. It follows that the Government's objection is without merit and that it must be dismissed (see, for similar reasoning, *Chernichkin v. Russia*, no. 39874/03, § 23, 16 September 2010).

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

26. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see *Sergey Smirnov v. Russia*,

no. 14085/04, § 25, 22 December 2009, and *Teltronic-CATV v. Poland*, no. 48140/99, § 45, 10 January 2006).

27. The "right to a court" is not absolute, but may be subject to limitations. The Court must be satisfied that the limitations applied do not restrict or reduce the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired. Furthermore, the Court underlines that a limitation will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see *Sergey Smirnov*, cited above, §§ 26-27; *Jedamski and Jedamska v. Poland*, no. 73547/01, § 58, 26 July 200; and *Kreuz v. Poland*, 19 June 2001, no. 28249/95, §§ 54 and 55, ECHR 2001-VI).

28. Finally, the Court further reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Société Anonyme Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, § 17, ECHR 2000-XII).

29. In the instant case the applicant attempted to sue the Ministry of Finance for damage incurred by the allegedly excessive length of the civil proceedings in her dispute with a private company. The possibility of lodging such claims was provided for in Articles 1064 and 1070 of the Civil Code of the Russian Federation (see paragraphs 16 and 17 above). The Constitutional Court clarified that State liability for damage caused by any violations of the litigant's right to a fair trial, including a breach of the reasonable-time guarantee, would arise even if the fault of the judge was established in civil – rather than criminal – proceedings, and that the right to compensation by the State for the damage should not be tied in with the personal fault of a judge (see paragraph 18 above). It also held that an individual should be able to obtain compensation for any damage incurred through a violation of his or her right to a fair trial within the meaning of Article 6 of the Convention. It follows that the applicant's claim concerning her civil rights of a pecuniary nature should have been amenable to examination in civil proceedings.

30. The domestic courts dismissed the applicant's claim on the ground that the legislature had not yet determined jurisdiction over such claims. This limitation on the right to a court excluded any possibility of having such a claim examined and, accordingly, undermined the essence of the applicant's right of access to a court. The Government did not offer any justification for the lack of legislation governing the procedure for examination of such claims.

31. The Court has previously found a violation of Article 6 § 1 of the Convention on account of the State's prolonged and unexplained failure to provide a legislative framework, which deprived the applicant of a procedural opportunity to bring a similar claim for compensation, and to obtain its examination on the merits (see *Chernichkin*, cited above, §§ 28-30, 16 September 2010, and, most recently, *Ryabikina v. Russia*, no. 44150/04, §§ 28-30, 7 June 2011).

32. Having regard to its case-law on the subject, and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

33. Accordingly, the Court finds that the applicant was denied the right of access to a court and that there has been a violation of Article 6 § 1 of the Convention in that regard.

34. The Court further notes that the applicant's complaint under Article 13 of the Convention concerns the same facts as those examined under Article 6 of the Convention. Having regard to its findings under the latter provision, the Court considers that it is unnecessary to examine the Article 13 complaint separately.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government considered that the applicant's claim was excessive.

38. The Court considers that the applicant must have suffered distress and frustration as a result of the refusal of the domestic courts to entertain her claim. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated by a mere finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 for non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

39. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

40. The Court considers it appropriate that the default interest rate 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;

3. *Holds* that the complaint under Article 13 of the Convention raises no separate issue;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six 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 on the date of settlement;
   (b) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President