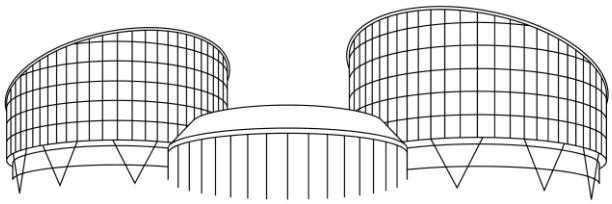

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VERSHININ v. RUSSIA

(Application no. 9311/05)

JUDGMENT

STRASBOURG

11 April 2013

This judgment is final but it may be subject to editorial revision.

In the case of Vershinin v. Russia,

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

Elisabeth Steiner, *President,*
Mirjana Lazarova Trajkovska,
Ksenija Turković, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 19 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 9311/05) 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, Mr Leonid Vladimirovich Vershinin ("the applicant"), on 18 February 2005.

2. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 25 February 2008 the application was communicated to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in Moscow.

5. The applicant inherited a house in the Moscow Region from Ms B.M. in her will. On an unspecified date he moved into it.

6. In 1990 B.S., the stepson of B.M., brought an action against the applicant for recovery of the property in issue, claiming that his inheritance rights had been breached and that the will was illegal.

7. The matter was considered repeatedly by the courts and on 23 May 1997 the Khimky Town Court ("the Town Court") granted B.S.'s claims. The applicant lodged a supervisory-review complaint.

8. On 23 June 1998 the Presidium of the Moscow Regional Court quashed the judgment of 23 May 1997 for breach of procedural law and

remitted the matter for fresh consideration. It appears the property was subject to an interim injunction which was still maintained by the court.

9. Three hearings fixed for between 7 October 1998 and 18 May 1999, were adjourned owing to both the applicant's and plaintiff's failure to appear.

10. Hearings scheduled for 9 July 1999 and 16 October 1999 were postponed owing to the applicant's failure to appear.

11. Seven hearings fixed for between 16 November 1999 and 11 July 2000 were adjourned owing to the third parties' and the plaintiff's failure to appear, and the need to collect additional evidence.

12. On 12 May 2000 the Town Court dismissed the applicant's applications for the civil proceedings to be discontinued and the interim injunction lifted. The applicant lodged an appeal against that decision which was upheld on 30 May 2000.

13. On 11 July 2000 the Town Court dismissed B.S.'s claims.

14. On 10 May 2001 the Moscow Regional Court ("the Regional Court") quashed the judgment of 11 July 2000 on appeal and remitted the matter for fresh consideration.

15. Three hearings fixed for between July and December 2002 did not take place owing to the applicant's failure to appear, and one was held as planned.

16. A hearing scheduled for 15 March 2002 was adjourned until 24 April 2002 owing to the applicant's failure to appear.

17. A hearing scheduled for 24 April 2002 was postponed until 4 June 2002 owing to the judge's involvement in other proceedings.

18. A hearing was held as planned on 4 June 2002. The court rejected the applicant's application for the discontinuation of the proceedings.

19. Of eleven hearings fixed for between September 2002 and August 2004, three were adjourned owing to the applicant's failure to appear.

20. On 4 August 2004 the trial court held a hearing in the applicant's absence and granted B.S.'s claims. According to the applicant, he had not been duly summoned to that hearing.

21. On 18 October 2004 the Moscow Regional Court upheld the judgment of 4 August 2004 on appeal. The applicant brought a supervisory-review complaint.

22. On 16 March 2005 the Presidium of the Moscow Regional Court quashed the judgments of 4 August and 18 October 2004 by way of supervisory review for breach of material and procedural law, and remitted the matter for fresh consideration. The hearing was listed for 30 May 2005.

23. The hearing of 30 May 2005 was adjourned owing to the third parties' failure to appear.

24. A hearing scheduled for 28 June 2005 was postponed until 1 August 2005 as the plaintiff was ill.

25. On 1 August 2005 the Town Court held a hearing and left B.S.'s action without examination owing to his failure to appear without valid reasons.

26. On the same date the applicant requested the trial court to lift the injunction. On 15 August 2005 his request was granted.

27. On 31 March 2006 B.S. informed the Town Court that he had failed to attend the hearing because of illness and asked it to quash the decision of 1 August 2005.

28. Of four hearings fixed for between May and July 2006, two were postponed owing to the applicant's failure to appear and two were held in his absence. According to the applicant, he was not duly summoned to those hearings.

29. On 29 June 2006 the Town Court quashed the decision of 1 August 2005.

30. On 27 July 2006 the Town Court decided to discontinue the civil proceedings. The court found that B.S. had no legal standing under domestic law to challenge the legality of B.M.'s will because his rights and interests had not been affected by the impugned will: he was not related by kinship to Ms B.M. and was not listed in her will.

31. On 26 October 2006 the Regional Court upheld that decision on appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant complained that the length of the proceedings in his case had breached the "reasonable time" requirement as provided in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

33. The Court observes that the proceedings consisting commenced on unspecified date in 1990 and ended on 27 July 2006. The part of the proceedings that occurred before 5 May 1998, the date of entry of the Convention into force in respect of Russia, has to be excluded from the overall length. The periods from 5 May 1998 to 23 June 1998 and from 18 October 2004 to 16 March 2005 have to be also excluded from the overall length as the case was being examined on application for supervisory review and not pending. Thus, the aggregate length of the proceedings within the Court's competence *ratione temporis* amounts approximately to seven years when the applicant's case was considered

three times by the first-instance and the appeal courts and twice by the supervisory review court.

A. Admissibility

34. 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.

B. Merits

35. The Government disagreed with the complaint. In particular, they argued that the applicant's case had been complex and required participation of experts, witnesses and third parties. The complexity of the case was evidenced by the fact that the courts had had to consider it on several occasions. According to the Government, the domestic courts had not displayed any negligence or procrastination. They further noted that the applicant was responsible for the significant part of the delay caused by his failure to attend numerous hearings.

36. The applicant maintained his complaint.

37. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000VII).

38. The Court considers that even though the applicant's case involved participation of experts, witnesses and third parties, as argued by the Government, it was not particularly complex. Notably, the Court observes that the proceedings were ultimately discontinued owing to the finding that plaintiff lacked legal standing under domestic law because he was not related by kinship to his stepmother, Ms B.M., and was not listed in her will. The Court does not consider that this question of fact was so complex to determine as to justify the overall length of the proceedings.

39. As to the applicant's conduct, the Court accepts that during the proceedings he defaulted on numerous occasions, which thwarted the progress of the case to a certain extent.

40. Turning to the conduct of the authorities, while the Court it does not detect any obvious procrastination on the part of the courts in scheduling the hearings and resolving the parties' motions, it takes cognisance of the fact that the first-instance judgments were set aside three times either by the appeal or by the supervisory-review courts for breaches of the law. In this respect the Court reiterates that the Convention and its Protocols must be

interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory. The right to have one's claim examined within a reasonable time would be devoid of all sense if domestic courts examined a case endlessly, even if at the end the length of proceedings per instance did not appear particularly excessive (see, *mutatis mutandis*, *Svetlana Orlova v. Russia*, no. 4487/04, § 47, 30 July 2009).

41. Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that multiple repetition of re-examination orders within one set of proceedings may disclose a deficiency in the judicial system (see *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008). This is all the more true in the present case where the proceedings were subsequently discontinued due to the simple fact that they had been initiated by a party that had had no legal standing. The Court therefore arrives at the conclusion that the repeated referrals of the case to the first instance significantly contributed to the length at hand.

42. While the Court acknowledges that the applicant delayed the proceedings to a certain extent by defaulting on numerous occasions, it considers that the above mentioned defects in the authorities' handling of the case were serious enough to lead to a breach of the "reasonable time" requirement.

43. There has accordingly been a violation of Article 6 § 1 of the Convention on account of unreasonable length of proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. The applicant also complained that that the domestic courts had delivered judgments on the basis of inadmissible evidence and in contradiction with the applicable rules of territorial jurisdiction and their failure to decide the case on the merits for over fifteen years amounted to inhuman treatment.

45. Having regard to all the materials in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in these provisions in that respect. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. In respect of pecuniary damage the applicant claimed 1,676,623 Russian roubles (RUB) and 463,500 United States Dollars (USD) which represented his income and property loss and property tax payments. The applicant also claimed RUB 10,000,000 in respect of non-pecuniary damage.

48. The Government contested the amounts as excessive and unfounded.

49. In respect of the claim for pecuniary damage, the Court does not discern any causal link between the violation found and the damage alleged; it therefore rejects this claim.

50. In respect of the claim for non-pecuniary damage, the Court accepts that the applicant suffered some distress and frustration caused by the unreasonable length of the proceedings. Deciding on an equitable basis, the Court awards 2,100 euros (EUR).

B. Costs and expenses

51. The applicant also claimed RUB 5,118 and USD 11,500 for the costs and expenses incurred in the domestic proceedings.

52. The Government disputed the amount as unsubstantiated

53. Regard being had to the documents in its possession and to its case-law, the Court rejects the applicant's claim for costs and expenses as there is no indication that they were incurred in seeking redress in respect of the violation found.

C. Default interest

54. 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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,100 (two thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at 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

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

Done in English, and notified in writing on 11 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Elisabeth Steiner
Deputy Registrar	President