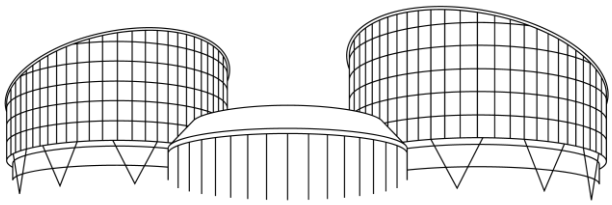

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ABORINA v. RUSSIA

(Application no. 28222/06)

JUDGMENT

STRASBOURG

11 April 2013

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

In the case of Aborina v. Russia,

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

Elisabeth Steiner, *President,*
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos, *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. 28222/06) 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 Valentina Alekseyevna Aborina ("the applicant"), on 1 July 2006.

2. The applicant was represented by Ms S.V. Davydova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 12 February 2009 the application was communicated to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1936 and lives in Lytkarino.

5. The applicant has been involved in a series of disputes in connection with division of the property she used to own jointly with Mr S., her brother.

A. Division of joint property

6. In 1995 the applicant filed a claim concerning the division of a house and a plot of land.

7. On 14 September 1995 the Vidnoye Town Court of the Moscow Region (the Town Court) granted her claim in part.

8. On 15 December 1999 the Presidium of the Moscow Regional Court quashed the judgment by way of supervisory review and remitted the matter for fresh consideration.

9. On 23 October 2003 the Town Court granted the applicant's claim in part.

B. Reconstruction of the house

10. On 25 February 1997 the Town Court granted S.'s claim against the applicant concerning her objections to the reconstruction of the house.

C. Allegedly unauthorised construction

11. On 3 October 1997 the applicant brought another claim against S. seeking the demolition of the structures he allegedly built without a relevant permit.

12. It appears that the consideration of the claims was adjourned on numerous occasions, mostly because of the conduct of various expert examinations. In particular, on 8 December 2000 the Town Court ordered to conduct two expert examinations and stayed the proceedings pending their outcome. The proceedings were resumed on 1 August 2002 when the expert opinions were sent to the court and a hearing was scheduled for 2 October 2002.

13. On 17 May 2007 the Town Court dismissed the applicant's claim.

14. On 13 September 2007 the Moscow Regional Court (the Regional Court) upheld the judgment on appeal.

D. Claim for damages

15. On an unspecified date the applicant brought a claim against S. for damages.

16. On 12 December 2005 the Town Court dismissed the applicant's claims.

17. On 6 March 2006 the Regional Court upheld the judgment on appeal.

E. Demolition of the fence

18. On an unspecified date S. brought an action against the applicant, who had dismantled the fence he had constructed.

19. On 19 December 2007 the Town Court found for S.

20. On 13 March 2008 the Regional Court upheld the judgment on appeal.

F. Title to newly constructed property

21. On an unspecified date the applicant brought a claim against S. seeking recognition of her property rights to the newly constructed buildings on the plot of land.

22. On 12 May 2008 the Town Court dismissed the applicant's claims.

23. On 2 September 2008 the Moscow Regional Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW

24. Federal Law No. 68-FZ of 30 April 2010, which entered into force on 4 May 2010, provides that in case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, Russian citizens are entitled to seek compensation for non-pecuniary damage. Federal Law No. 69-FZ, adopted on the same date, introduced the pertinent changes into Russian legislation.

25. Section 6.2 of Federal Law No. 68-FZ provides that everyone who has a pending application before the European Court of Human Rights concerning a complaint of the type described in that Law has six months to bring the complaint before the domestic courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

26. The applicant complained that the length of the proceedings in her case which ended on 13 September 2007 had breached the "reasonable time" requirement of 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 ..."

27. The Court observes that the proceedings in question commenced on 3 October 1997 and ended on 13 September 2007. However, the period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. Thus, the aggregate length of the proceedings within the Court's competence *ratione temporis* amounts approximately to nine years and four months when the applicant's case was considered twice at two levels of jurisdiction.

A. Admissibility

28. The Court notes that the application 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

29. The Government submitted that the length of the proceedings in the present case complied with the "reasonable time" requirement of Article 6.

30. The applicant maintained her complaint.

31. 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 of 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 2000-VII). The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, among many other authorities, *Frydlender v. France*, cited above). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of justifying such a lengthy period of the proceedings and, thus, persuading it to reach a different conclusion in the present circumstances.

32. The Court notes indeed that this length cannot be explained by either complexity of the case or the applicant's conduct in the proceedings. It should be recalled that in assessing the reasonableness of the length of the proceedings account must be taken of the state of the proceedings on the date of entry of the Convention into force in respect of the Contracting State (see, among other authorities, *Billi v. Italy*, judgment of 26 February 1993, Series A no. 257-G, § 16). In this respect, the Court observes that overall the proceedings had been pending for more than eight years before the Town Court. Moreover, a specific deficiency that occurred in the course of these proceedings consisted of unexplained procrastination in carrying out of the expert examinations which caused a delay of almost two years (see paragraph 12). The Government did not provide any explanation in this regard. Nevertheless, the Court recalls that the principal responsibility for the delay due to the expert opinions rests ultimately with the State (see *Capuano v. Italy*, 25 June 1987, § 32, Series A no. 119). It is up to the courts to use the measures available to them under domestic law to maintain control over the proceedings. The Court considers therefore that in the circumstances of the present case the above defect in the authorities'

handling of the case at hand were serious enough to lead to a breach of the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

34. The applicant complained under Article 13 that she had not had an effective remedy in respect of the length of the proceedings in her case. The relevant provision 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."

35. The Court takes cognisance of the existence of a new remedy introduced by the federal laws № 68-*ФЗ* and № 69-*ФЗ* in the wake of the pilot judgment adopted in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009-...). These statutes, which entered into force on 4 May 2010, set up a new remedy which enables those concerned to seek compensation for the damage sustained as a result of unreasonable length of the proceedings or delayed enforcement of court judgments (see paragraph 24 above).

36. The Court observes that in the present case the parties' observations in respect of Article 13 arrived before 4 May 2010 and did not contain any references to the new legislative development. However, it accepts that as of 4 May 2010 the applicant has had a right to use the new remedy (see paragraph 25 above).

37. The Court recalls that in the pilot judgment cited above it stated that it would be unfair to request the applicants whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court to bring again their claims before domestic tribunals (*Burdov (no. 2)*, cited above, § 144). In line with this principle, the Court decided to examine the present application on its merits and found a violation of the substantive provision of the Convention.

38. Having regard to these special circumstances, the Court does not find it necessary to separately examine the applicant's complaint under Article 13 (see *Utyuzhnikova v. Russia*, no. 25957/03, § 52, 7 October 2010).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant also complained under Articles 6 and 14 of the Convention about the unfairness of the civil proceedings in which she was a party, bias of the judges and deprivation of her property.

40. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. In respect of pecuniary damage the applicant claimed 95 euros (EUR) which represented damage caused to her health as a result of lengthy proceedings. She submitted copies of receipts showing that she had paid for medicine. The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

43. The Government did not provide any comments on the claims.

44. 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.

45. In respect of non-pecuniary damage, the Court accepts that the applicant suffered some distress and frustration caused by the length of the proceedings. Deciding on an equitable basis, the Court awards EUR 4,000.

B. Costs and expenses

46. The applicant claimed EUR 2,256 for the costs and expenses incurred in the domestic proceedings.

47. She also claimed EUR 28 for postal expenses incurred before the Court. She submitted copies of several receipts for postal expenses for a total sum of 700 Russian roubles (RUB).

48. The Government disputed the amount as unsubstantiated

49. 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 incurred in the domestic proceedings as there is no indication that they were incurred in seeking redress in respect of the violation found. At the same time, the Court considers it reasonable to award the applicant an amount equivalent to the postal expenses which have been incurred in her

correspondence and proved by postal receipts (RUB 700). The Court accordingly awards the sum of EUR 16 for the expenses incurred by the applicant in the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

50. 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 civil proceedings which ended on 13 September 2007 admissible and the remainder of the application inadmissible;

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

3. *Holds* that there is no need for a separate examination of the complaint under Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 16 (sixteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 11 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Elisabeth Steiner
Deputy Registrar	President