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

FIRST SECTION

CASE OF IGNATYEVA v. RUSSIA

(Application no. 10277/05)

JUDGMENT

STRASBOURG

3 April 2008

FINAL

03/07/2008

This judgment may be subject to editorial revision.

In the case of Ignatyeva v. Russia,

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

Christos Rozakis, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 10277/05) 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, Ms Vera Pavlovna Ignatyeva ("the applicant"), on 22 June 2003.

2. The applicant was represented by the Centre of Assistance to International Protection, a Moscow-based human rights organisation. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. On 16 June 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1940 and lives in Moscow.

5. In 1990 the applicant's mother was allegedly tricked into selling her house. On 19 February 1996 the local administration seized the plot of land on which the house was situated from the applicant's mother, and on 20 February 1996 allocated it to the buyer of the house, Mr L.

Subsequently, Mr L. sold the house to Mr Ch., and the title to the plot of land was transferred to him.

A. First examination of the case

6. On 18 April 1996 the applicant, on behalf of her incapable mother, challenged the decision of 20 February 1996 before a court claiming that the title to the plot of land in question belonged to her mother. However, on 29 April 1996 the proceedings were suspended until the outcome of another set of proceedings to which the applicant was a party.

7. On 5 July 1996 the proceedings were resumed.

8. On 11 July 1996 the Novosilskiy District Court of the Orel Region dismissed the applicant's claim. On 19 August 1996 the Orel Regional Court quashed the judgment on appeal and remitted the case for a new examination.

9. In the meantime the applicant's mother died, and on 11 November 1996 the proceedings were suspended pending the determination of her legal successor. On 8 September 1997 the court designated the applicant as her mother's legal successor and resumed the proceedings.

10. On 19 November 1997 the Korsakovskiy District Court of the Orel Region dismissed the applicant's claim. The judgment was not appealed against and became final.

B. Supervisory review and further proceedings

11. At the request of the Prosecutor of the Orel Region submitted in the interests of the applicant, on 25 February 1999 the Presidium of the Orel Regional Court quashed the judgment of 19 November 1997 by way of supervisory review, because of numerous violations of the procedural rules set out in the domestic legislation, and remitted the case for a new examination.

12. As regards the four hearings scheduled between 6 April 1999 and 8 July 1999 two were adjourned due to the absence of the defendants, one was adjourned because the applicant did not attend and one was adjourned at the latter's request.

13. On 8 July 1999 the hearing was adjourned until 24 September 1999 due to the parties' absence.

14. On 24 September 1999 the Korsakovskiy District Court disallowed the action, because the applicant had repeatedly defaulted. However, on 8 December 1999 the Orel Regional Court quashed the above decision on appeal, having found that the applicant had not been duly summoned for the hearings of 8 July and 24 September 1999, and remitted the case for a new examination.

15. On 29 March 2000 the Korsakovskiy District Court dismissed the applicant's claim. On 21 June 2000 the Orel Regional Court quashed the judgment on appeal and remitted the case for a new examination.

16. As regards the five hearings scheduled between 11 September 2000 and 17 April 2001 three were adjourned because the defendants did not attend, one was adjourned because one of the defendants had not been notified of the hearing and one was adjourned because the court considered it necessary to examine additional evidence.

17. On 3 May 2001 the Korsakovskiy District Court granted the applicant's claim in part and annulled the decision of 20 February 1996 concerning the allocation of the plot of land to Mr L., the registration of the latter's title to the disputed plot of land, the sale contract between Mr L. and Mr Ch. and the registration of the latter's title to the plot of land at issue. On 14 May 2001 the District Court delivered an additional judgment by which it annulled the decision of the local administration concerning the land seizure. No appeal was lodged against the judgments, and on 24 May 2001 they became final and binding.

18. On 5 August 2002 the applicant's title to the plot of land was registered in the real estate register.

C. Subsequent supervisory review and further proceedings

19. On 28 January 2003 the President of the Orel Regional Court introduced an application for supervisory review of the judgments of 3 May and 14 May 2001.

20. On 13 February 2003 the Presidium of the Orel Regional Court quashed the judgments of 3 May and 14 May 2001 by way of supervisory review and remitted the case for a new examination. The reason for quashing was the alleged breach of the provisions of substantive law by the lower courts.

21. As regards the subsequent five hearings scheduled between 6 May 2003 and 28 August 2003 one was adjourned because the applicant did not appear, one was adjourned in order to obtain the attendance of additional witnesses, one was adjourned due to the examination of the request to suspend the proceedings filed by the applicant, one was adjourned because the applicant had submitted additional claims and one was adjourned at the request of the defendants in order to complete the preparation of their counterclaims.

22. On 9 September 2003 the defendants requested a transfer of the case to another court. By decision of 18 September 2003 the Korsakovskiy District Court granted their request and transferred the case to the Novosilskiy District Court. However, on 29 October 2003 the Orel Regional Court quashed this decision on appeal.

23. As regards the three hearings fixed between 26 November 2003 and 25 December 2003 one was adjourned because the applicant did not attend and two were adjourned because the defendants did not attend.

24. On 28 January 2004 the Korsakovskiy District Court dismissed the applicant's claims. However, on 12 May 2004 the Orel Regional Court quashed the decision on appeal and remitted the case for a new examination.

25. On 31 May 2004 the Korsakovskiy District Court suspended the proceedings until the outcome of other proceedings to which the applicant was a party. Those proceedings concerned the issue as to whether or not the applicant's mother had been the proper owner of the plot of land. By judgment of 17 November 2004, as upheld on appeal on 19 January 2005, the court held that the title of the applicant's now deceased mother to the plot of land was to be annulled. Thereafter the proceedings of the present case were resumed on 27 January 2005.

26. On 15 February 2005 the Korsakovskiy District Court dismissed the applicant's claim. The court held that since by the judgment of 17 November 2004, as upheld on appeal on 19 January 2005, the title of the applicant's mother to the plot of land at issue was annulled, the applicant's claims were unsubstantiated. On 27 April 2005 the Orel Regional Court upheld the judgment on appeal. Accordingly, the applicant's title to the plot of land of 5 August 2002 was invalidated.

II. RELEVANT DOMESTIC LAW

27. For relevant provisions of Russian law on the supervisory review proceedings applicable at the material time see *Ryabykh v. Russia* (no. 52854/99, §§ 31-42, ECHR 2003-IX).

THE LAW

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

28. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, 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..."

29. The Government submitted that the case had been of some complexity as it required the determination of a number of questions concerning the persons whose property rights could have been affected by the proceedings at issue; it also involved the assessment of intricate factual

circumstances and had been complicated by the fact that the applicant on several occasions amended her claims and had been involved in other proceedings closely related to the dispute in question. In this respect the applicant submitted, first of all, that the essence of her complaint was to challenge the decisions of the local administration and the lawfulness of the sale contract, which did not represent any particular complexity from the standpoint of legal analysis. The case did not call for any lengthy process of establishing the factual circumstances, examination of witnesses or performing complex expert examinations. Secondly, the parties to the proceedings were determined as early as 25 February 1999, and no modifications in this regard were made by the end of the proceedings. The proceedings relating to other claims filed by the applicant did not obstruct the proceedings in question as they were not directly linked to the merits of the complaint at issue. Thirdly, neither the issue of succession after the decease of the applicant's mother could impede the proceedings, given that it had been settled as early as 1996-97. Since then the applicant had been acting on her own behalf. Finally, after the judgment of 19 November 1997 had been quashed by way of supervisory review it took the domestic courts one or two hearings to decide on the merits of the case.

30. The Government further claimed that the applicant herself had contributed to the length of the proceedings: at least six hearings were adjourned due to the applicant's failure to appear and one hearing was adjourned following the applicant's motion. Besides, from 23 May to 15 August 2003 the proceedings were suspended at the applicant's request and from 25 August to 27 January 2005 they were suspended in the applicant's interests pending the outcome of a related dispute to which the applicant was a party. The applicant disagreed with the Government and argued that she had regularly attended the hearings with the exception of those of which she had not been duly notified. Furthermore, she contested the Government's argument as regards the alleged suspension of the proceedings from 23 May to 15 August 2003 upon her request. In this respect the applicant relied on the decision of 23 May 2003 concerning the dismissal of her request to suspend the proceedings.

31. The Government finally submitted that no substantial periods of the courts' inactivity, save for the aforementioned periods when the proceedings were suspended in the applicant's interests, can be attributable to the domestic authorities: the hearings were scheduled at regular intervals and the parties' requests were examined promptly. Moreover, nine hearings were adjourned due to the failure of the defendants to appear, and the domestic authorities cannot be blamed for these delays. Finally, the Government noted that the courts of three levels of jurisdiction were actively involved in the applicant's case and examined the case four times, which demonstrates that the domestic courts did not stay idle. In reply the applicant submitted that the proceedings several times spanned three levels

of jurisdiction, including the supervisory review, which shows that the courts delayed the proceedings by committing numerous violations of substantive and procedural provisions of the domestic law. Furthermore, the applicant pointed out several instances of unjustified delays caused by the domestic authorities. In particular, from 25 February 1999 to 29 March 2000 six hearings were scheduled, of which only one took place. From 21 June 2000 to 3 May 2001 six hearings were scheduled and only one of them took place. On many occasions the hearings were postponed due to the absence of the defendants. Besides, several times the domestic court had failed to summon the applicant for the hearings. In particular, the applicant had not been notified of the hearings of 8 July 1999 and 24 September 1999, which had been confirmed by the decision of the regional court of 8 December 1999. The delay incurred therefrom amounted to eight months and twenty-one days. She further claimed not to have been notified of the hearings of 6 May and 26 November 2003, 14 January 2004. A delay of almost two months was caused by the decision of the district court of 18 September to transfer the case to another court.

32. Regard being had to the above circumstances, the Government concluded that, although the proceedings in the applicant's case were rather lengthy, the requirement of the reasonableness of the length of the proceedings enshrined in Article 6 § 1 of the Convention was nevertheless complied with by the domestic authorities. The applicant disagreed with the Government and maintained her complaint.

A. Period to be considered

33. The Court observes that the applicant, on behalf of her mother, introduced her claim on 18 April 1996, however, it only has competence *ratione temporis* to examine the period after 5 May 1998 when the Convention entered into force in respect of Russia.

34. The Court further observes that only those periods should be taken in to account when the case was actually pending before the courts, i.e. the periods when there was no effective judgment in the determination of the merits of the applicant's dispute and when the authorities were under an obligation to pass such a judgment. The periods during which the domestic courts decided whether or not to re-open the case should also be excluded since Article 6 does not apply to such proceedings (see, for example, *Skorobogatova v. Russia*, no. 33914/02, § 39, 1 December 2005, with further references).

35. It follows that after 5 May 1998 the proceedings were pending during two periods. The first period commenced on 25 February 1999 with the supervisory-review decision and ended on 24 May 2001 when the judgments of 3 May and 14 May 2001 became final. The second period commenced on 13 February 2003 with another supervisory-review decision

and ended on 27 April 2005 when the judgment of 15 February 2005 became final. Therefore, in post-ratification period the proceedings lasted for four years five months and ten days.

B. Reasonableness of the length of proceedings

36. 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 2000-VII).

37. The Court considers that the applicant's civil case was a relatively complex one. The domestic courts were confronted with claims of several parties who sought a confirmation of their title to the contested plot of land. On several occasions the parties changed and amended their claims. The Court finds that the task of the courts was rendered more difficult by these factors, although it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings (see *Malinin v. Russia* (dec.), no. 58391/00, 8 July 2004, and *Antonov v. Russia* (dec.), no. 38020/03, 3 November 2005).

38. The Court notes that the parties disagreed on certain factual matters concerning the applicant's attendance of the hearings. While the Government claimed that the applicant had been absent from at least six hearings, the applicant submitted that she had attended all hearings save for those few hearings of which she had not been notified. The Court does not consider it necessary to examine the matter in detail because the delay incurred through the applicant's absence was negligible. The Government's statement concerning the suspension of the proceedings from 23 May to 15 August 2003 pursuant to the applicant's request is not supported by the material provided by the parties. As to the Government's argument that the applicant contributed to the delay by changing and amending her claims, the Court reiterates that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of her interest (see, *mutatis mutandis, Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

39. The Court discerns certain delays of the proceedings attributable to the domestic authorities. Some eight months elapsed from 8 July 1999 when the domestic court had failed to summon the applicant for the hearing until 29 March 2000 when the judicial errors committed as a result of the applicant's non-notification were rectified and the court renewed the examination of the case. A delay of approximately two months occurred from 18 September 2003 when the case had been transferred from the Korsakovskiy District Court to the Novosilskiy District Court until

26 November 2003 when the Korsakovskiy District Court renewed the examination of the applicant's case. Finally, the proceedings were suspended for approximately eight months, from 31 May 2004 until 27 January 2005, pending the outcome of the other set of the proceedings to which the applicant was a party.

40. Apart from these periods, however, the hearings were scheduled at regular intervals and the parties' requests were examined in the same or in the following hearing. In four years five months and ten days the case was examined four times by the first instance court and three times by the court of appeal. The Court recalls that in principle the involvement of numerous instances does not absolve the judicial authorities of complying with the reasonable time requirement of Article 6 § 1 (see *Kuznetsov v. Russia* (dec.), no. 73994/01, 17 June 2004). However, a period of four years five months and ten days when different judicial authorities were constantly dealing with the case does not necessarily offend the guarantees of Article 6 § 1 (see *Kravchuk v. Russia* (dec.), no. 72749/01, 1 February 2005, and *Pronina v. Russia* (dec.), no. 65167/01, 30 June 2005).

41. The Court does not lose sight of the fact that on many occasions the hearings were adjourned because the defendants or the applicant failed to appear, and for other reasons related to proper administration of justice. In this respect the Court recalls that only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Des Fours Walderode v. the Czech Republic* (dec.), no. 40057/98, 4 March 2003).

42. Having regard to the above, the Court considers that in so far as it falls within its competence *ratione temporis* the complaint does not disclose any appearance of a violation of the applicant's right to a determination of her civil rights within a reasonable time. It follows, therefore, that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention (see, *a contrario*, *Kormacheva v. Russia*, no 53084/99, 21 January 2004).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENTS IN THE APPLICANT'S FAVOUR

43. The applicant further complained that the quashing, on 13 February 2003, of the final judgments of 3 May and 14 May 2001 by way of supervisory-review proceedings had violated her "right to a court" under Article 6 § 1 of the Convention and her right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1. The relevant parts of these provisions read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"Every natural or legal 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..."

A. Admissibility

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

B. Merits

1. Alleged violation of Article 6 of the Convention

45. The Government submitted that the quashing of the judgments of the Korsakovskiy District Court of 3 May and 14 May 2001 by way of supervisory review did not breach the guarantees of a fair trial set forth in Article 6 § 1 of the Convention since the reason for quashing had been the failure on behalf of the lower court to establish certain factual circumstances significant for the examination of the case and the failure to correctly apply the domestic law.

46. The applicant averred that the quashing of the final judgments in her case had irremediably impaired the principle of legal certainty.

47. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania*, judgment of 28 October 1999, *Reports of Judgments and Decisions* 1999-VII, § 61).

48. This principle insists that no party is entitled to seek re-opening of the proceedings merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power to quash or alter binding and enforceable

judicial decisions should be exercised for correction of fundamental defects. The mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see, *mutatis mutandis*, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-X, and *Pravednaya v. Russia*, no. 69529/01, § 25, 18 November 2004).

49. 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 it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final and binding judicial decision to be quashed by a higher court on an application made by a State official whose power to lodge such an application is not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see *Ryabykh*, cited above, §§ 54-56).

50. The Court observes that on 3 May and 14 May 2001 the Korsakovskiy District Court partly accepted the applicant's claims and annulled the decision of 20 February 1996 concerning the allocation of the plot of land to Mr L., as well as registration of the latter's title to the disputed plot of land, the sale contract between Mr L. and Mr Ch. and the registration of the latter's title to the plot of land at issue. No appeal was lodged against the judgments, and they became binding and enforceable. On 13 February 2003, that is more than twenty months later, the judgments of 3 May and 14 May 2001 were quashed in the framework of the supervisory-review procedure initiated by the President of the Orel Regional Court who was a State official and was not a party to the proceedings (see paragraph 19 above).

51. The Court has found a violation of an applicant's "right to a court" guaranteed by Article 6 § 1 of the Convention in many cases in which a judicial decision that had become final and binding, was subsequently quashed by a higher court on an application by a State official whose power to intervene was not subject to any time-limit (see *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; and *Ryabykh*, cited above, §§ 51-56).

52. Having examined the material submitted to it, the Court observes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

53. The Court finds, therefore, that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the judgments given in the applicant's case by way of supervisory-review proceedings.

2. Alleged violation of Article 1 of Protocol No. 1

54. The Government advanced no argument in respect of this Article.

55. The applicant maintained her complaint.

56. The Court recalls that Article 1 of Protocol No. 1 enshrines the right of everyone to the peaceful enjoyment of his possessions. Where a person actually possessed a property and was considered its owner for all legal purposes he or she can be said to have had a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Zhigalev v. Russia*, no. 54891/00, § 131, 6 July 2006). Turning to the circumstances of the present case, the Court observes that following the judgments of 3 May and 14 May 2001 the applicant obtained registration of her title to the disputed plot of land. The quashing of those judgments in supervisory-review procedure on 13 February 2003 led to invalidation of the applicant's title. Regard being had to its findings as to the compatibility of the above decision with the guarantees of Article 6 § 1 of the Convention (see paragraph 53 above), the Court finds that the setting aside of the final and binding judgments in the applicant's favour in supervisory review proceedings for the sake of correcting alleged factual and judicial errors constituted an unjustified interference with the applicant's possessions, protected by virtue of Article 1 of Protocol No. 1 to the Convention. Therefore, there has been a violation of this Convention provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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."

58. In respect of pecuniary damage, the applicant claimed 86,843 euros (EUR). This sum represents the money which the applicant believed to have been able to recover from the disputed plot of land had her title to it not been contested. She further claimed EUR 12,000 in respect of the non-pecuniary damage. Lastly, the applicant claimed EUR 609 for costs and expenses incurred in the national courts.

59. The Government argued that there was no causal link between the violation found and the damage alleged. In any event, the applicant's claims were unreasonable and excessive. The Government further argued that no compensation of costs and expenses should be awarded to the applicant since she had failed to substantiate her claim with any receipts or vouchers on the basis of which the amount claimed could be established.

60. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the Government and the applicant (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the quashing of the final judgments of 3 May and 14 May 2001 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the quashing of the final judgments of 3 May and 14 May 2001 by way of supervisory review;

3. *Holds* that the question of the application of Article 41 is not ready for decision; accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicant to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber power to fix the same if need be.

Done in English, and notified in writing on 3 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President