



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

FIFTH SECTION

CASE OF YURYEVA AND YURYEV v. UKRAINE

(Application no. 3431/03)

JUDGMENT

STRASBOURG

31 July 2012

FINAL

17/12/2012

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

In the case of Yuryeva and Yuryev v. Ukraine,

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

Dean Spielmann, *President*,

Mark Villiger,

Karel Jungwiert,

Ann Power-Forde,

Ganna Yudkivska,

Angelika Nußberger,

André Potocki, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 10 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 3431/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Ms Olga Lvovna Yuryeva and Mr Denis Vladimirovich Yuryev (“the applicants”), on 14 January 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr N. Kulchytsky of the Ministry of Justice of Ukraine.

3. On 20 June 2008 the President of the Fifth Section decided to give notice of the application to the Government.

4. In accordance with Article 36 § 1 of the Convention, the Russian Government were invited to exercise their right to intervene in the proceedings, but they declined to do so.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1952 and 1978, respectively, and live in Tomsk, Russia. Mrs Olga Yuryeva (“the first applicant”) is the mother of Mr Denis Yuryev (“the second applicant”).

6. In 1988 the applicants and Y. (the first applicant’s former husband and the second applicant’s father) moved from Tomsk, Russia, to Sevastopol, Ukraine.

7. According to an agreement signed in February 1995 by Y. and his employer, a construction company M., Y. was to be provided with a two-room apartment upon payment of 5,000 United States dollars (USD). On an unidentified date the applicants and Y. moved to this apartment and were all registered there as of 29 March 1996.

8. On an unidentified date between April 1996 and September 1997 the applicants returned to Tomsk allegedly because the second applicant decided to study there. It is unclear whether the applicants visited Sevastopol between April 1996 and July 2000. In June 1999 the first applicant and Y. divorced.

9. In July 2000 the first applicant came back to Sevastopol but Y. did not let her enter the apartment.

10. According to a certificate issued on an unclear date of December 2000 by M., as at that date the first applicant was registered and permanently resided together with the second applicant and Y. in the apartment in question.

11. The first applicant states that between July 2000 and December 2004 she occasionally lived on the street. For the majority of time she worked as a housemaid or as a watchwoman in offices where she also slept at night. Between July 2001 and May 2003 the first applicant lived in a dormitory.

12. From the materials submitted by the applicants, it appears that the second applicant returned to Sevastopol in July 2001 and left in 2003. During this time he resided in a dormitory together with the first applicant.

13. Between December 2004 and March 2005 the applicants lived in Tomsk with the first applicant's father. Between March 2005, when the first applicant again returned to Sevastopol, and March 2006 the first applicant lived in a dormitory and in an utility room of a sport school where she worked. On an unidentified date the first applicant returned to Tomsk.

A. First set of proceedings

14. In August 2000 the applicants instituted proceedings in the Gagarinsky District Court of Sevastopol ("the District Court") seeking a ruling to oblige Y. not to hinder the applicants in their use of the apartment and claiming compensation for non-pecuniary damage. On 28 August 2000 Y. lodged a counterclaim requesting the court to rule that the applicants had lost their right to reside in the apartment. He stated that the applicants had not been residing in the apartment since April 1996 and he had divorced the first applicant in 1999. He also requested the court to inquire before the Russian authorities whether the applicants were registered in the town of Tomsk.

15. On 6 September 2000 the court decided to consider the above claims jointly. The court sent several requests to various institutions in Tomsk inquiring whether the second applicant was studying in Tomsk and whether

applicants were registered there. It also requested the Tomsk Town Court to question three witnesses. In December 2000 the Ministry of Justice of the Russian Federation returned the District Court's request to question witnesses and indicated that, in accordance with the Convention on Legal Assistance in Civil, Family and Criminal Cases signed between several ex-USSR states, including Russia and Ukraine on 22 January 1993 (*Конвенція про правову допомогу та правові відносини у цивільних, сімейних та кримінальних справах від 22 січня 1993 року*), all similar requests should be sent via central official bodies. In February 2001 the District Court submitted its request to the Ministry of Justice of Ukraine. The requested information was submitted by the Russian authorities by September 2001.

16. Between September 2000 and December 2001 no court hearings in the applicants' case were scheduled.

17. Between December 2001 and February 2002 there were no hearings since the parties were amending their claims.

18. Between February 2002 and March 2003 only four hearings took place. Nineteen hearings were cancelled or postponed because the defendant failed to appear (on seven occasions), the first applicant failed to appear (on four occasions) and because the judge was busy in another hearing, was on vacation etc (on eight occasions).

19. Between March 2002 and April 2006 the applicants requested on numerous occasions to disjoin their claim and the counterclaim as they believed that separately their claim against Y. would be considered quicker. These requests were rejected by the court. The applicants appealed against these decisions although they were not subject to appeal. These appeals were also rejected. In particular, between June 2003 and June 2005 no hearings were scheduled since the applicants' appeal against one of such decisions (the decision of 27 January 2003 by which the District Court refused to accept the applicant's appeal against its refusal of 29 December 2002 to disjoin the claims) was examined by the courts of appeal and cassation and was rejected.

20. On 7 June 2005 Y. requested to postpone the hearing since he was absent.

21. In August 2005 the applicants requested to postpone hearings until October.

22. Between October 2005 and April 2006 eight hearings were scheduled. According to the Government, four of them did not take place "for technical reasons". Y.'s representative requested to postpone the next hearing. Next three hearings were adjourned since the parties failed to appear.

23. On 5 April 2006 the court considered the merits of the case and found against the applicants. The case was considered in the applicants' absence. The court found that Y. and his parents but not the applicants had

signed an apartment construction agreement with M. The court further found that between August 1997 and June 1999 the second applicant was studying in Tomsk. The first applicant was working in Tomsk between September 1996 and April 2000. According to other evidence, the first applicant was living in Tomsk since summer 1997. The court disregarded the witnesses' statements *inter alia* since "they had been given on the territory of another State by the first applicant's close friends". Since "there were no serious reasons for the applicants to be absent in the apartment for more than six months", the court concluded that the applicants had lost their right to reside in this apartment.

24. On 18 May 2006 the court rejected the applicants' request that the judgment of 5 April 2006 be reconsidered as the applicants had been informed in a proper manner about the hearings in their case.

25. On 30 October 2006 the Sevastopol Court of Appeal left an appeal by the applicants against the judgment of 5 April 2006 unexamined on the ground that they had failed to pay the fee to lodge their appeal.

B. Second set of proceedings

26. On 30 January 2001 the first applicant instituted proceedings in the District Court against the Leninsky District Bailiffs' Service, M., and Y., claiming her property right to the apartment and challenging the Bailiffs' Service's decision to attach it. In particular, the first applicant claimed that she had a property right for the apartment in question since she had been married to Y. when he had bought this apartment.

27. On 22 February 2001 the District Court allowed a request by the first applicant to delay payment of the fee for bringing her claim.

28. By letter of 29 May 2001 the District Court noted that the second applicant was also a claimant in this case.

29. On 20 September 2002 the court found that the apartment was owned by the enterprise M. since Y. had failed to pay the amount specified in the construction agreement in full and he had lived in the apartment in question as a tenant. Therefore the first applicant had no property rights to this apartment. Moreover, the Bailiffs' Service had not taken any action in respect of the apartment.

30. On 12 February 2004 the Sevastopol Court of Appeal upheld the judgment of 20 September 2002. In a court hearing Y. stated that he was a tenant, that it was his father who had paid 2,200 USD under the construction agreement and that he had failed to pay the rest.

31. On 23 May 2006 the Supreme Court of Ukraine rejected the first applicant's appeal in cassation.

C. Third set of proceedings

32. In October 2000 the applicants instituted proceedings in the court against Y., seeking division of the marital property.

33. On 18 January 2001 the court left the applicants' claim unexamined on the ground that the applicants had failed to pay the fee for bringing their claim. The applicants appealed against this ruling, stating that they could not pay the fee since they had no means. On 6 March 2001 the Sevastopol City Court dismissed the applicants' appeal as the applicants had failed to prove their statement about lack of means.

34. In June 2002 the applicants re-lodged their claim with the court, seeking division of the marital property. On 9 July 2002 the court left the claim unexamined and returned it to the applicants since the applicants had failed to comply with procedural formalities; *inter alia*, they had failed to pay the fee for bringing their claim.

35. In September 2002 the applicants lodged their claim again. On 17 October 2002 the court left the claim unexamined since the applicants had failed to pay the fee for bringing it.

36. The applicants missed time-limits for lodging appeals against the rulings of 9 July and 17 October 2002. Subsequently, on several occasions the applicants unsuccessfully sought domestic courts to renew time-limits for lodging appeals against the rulings of 9 July and 17 October 2002. The court and the Sevastopol Court of Appeal refused to renew the time-limits on several occasions and rejected subsequent appeals against these refusals. The last relevant decision in this respect submitted by the applicants is the ruling of the court of 11 March 2005.

D. Other proceedings

37. The applicants state that they unsuccessfully attempted to institute several administrative proceedings against the judges of the Gagarinsky District Court of Sevastopol who considered their cases (see the above proceedings). The applicants failed to provide this Court with precise information concerning these claims and eventual appeals. The only court rulings they submitted are the ruling of the Sevastopol Court of Appeal of 10 March 2006 and the ruling of the Balaklava District Court of Sevastopol of 10 May 2006. By these rulings the courts refused to consider the applicants' claims since they had no jurisdiction to consider them.

38. The first applicant further states that in November 2001 she lodged a complaint with the court seeking to institute criminal proceedings against Y., who had allegedly inflicted physical injuries on her. The first applicant states that the court rejected her claim and she did not appeal against this ruling.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE FIRST AND SECOND SETS OF PROCEEDINGS

39. The applicants complained that the length of the first and second sets of 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...”

A. Admissibility

1. First set of proceedings

40. The period to be taken into consideration began in August 2000 and ended on 30 October 2006. The proceedings thus lasted for about six years and nearly three months before two levels of jurisdiction including five years and eight months before the first instance court.

41. 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.

2. Second set of proceedings

42. The Court notes that it is unclear from the parties’ submissions whether the second applicant was a party to the second set of proceedings and therefore whether he can claim to be a victim of an alleged violation. However, the Court will not examine this issue since the complaint is in any event inadmissible for the following reason.

43. The proceedings in question lasted from 30 January 2001 till 23 May 2006 for five years and nearly four months before three levels of jurisdiction. The Court considers that such length of the proceedings complained of did not exceed the “reasonable time” requirement referred to in Article 6 § 1 of the Convention.

44. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

45. The Government submitted that the national authorities were not responsible for any delays in the proceedings. The Government stated that the subject matter of the dispute had been a complex one, since it concerned the applicants' right to live in the apartment and the applicants had had no other place to live in Ukraine. Therefore, the court needed time to carefully examine all the circumstances of the case and to obtain information from the Russian authorities. Also the court had to obtain explanations from the parties therefore it postponed hearings when the parties had failed to appear. The consideration of the case was also protracted since the applicants lodged appeals against various decisions, in particular, against those which were no subject to appeal.

46. The applicants submitted that the domestic courts had had enough materials to consider the case without requesting information from another State which protracted the consideration. According to them, between June and December 2001 there were no hearings in the case and between December 2001 and February 2003 the court hearings were postponed on twenty three occasions. The first applicant also stated that she had not attended some of the hearings since she had been in the hospital.

47. 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).

48. The Court notes that the proceedings in the applicants' case lasted for six years and nearly three months before two instances – during which time the applicants' requests and appeals of refusal covered three levels of jurisdiction (see paragraph 19). The applicants' appeal against the first instance decision on the merits was rejected for the applicants' failure to pay the court fee, so the proceedings were mainly limited to consideration of their case on the merits by the first instance court which took five years and eight months.

49. The Court disagrees with the Government's argument that the applicants' case was a complex one. The fact that its subject matter concerned the applicants' sole place of residence in Ukraine reflects the importance of the case to the applicants but does not confirm that the case was complex. It did not involve numerous witnesses to be questioned or voluminous evidence to be assessed and was limited to one episode. Therefore, in the Court's view the circumstances of the case were not complicated and cannot justify the length of the proceedings at the first instance.

50. The Court notes that the applicants had themselves contributed to the length of proceedings, in particular, by being absent at a number of hearings (see paragraphs 18 and 22) and by lodging appeals against decisions which were not subjected to appeals and by lodging further appeals against refusals to consider the initial appeal. However, it took the national courts two years to consider appeals which were manifestly inadmissible (see paragraph 19).

51. The Court further notes that the protraction of the proceedings was also caused by the request for information and questioning of witnesses in Russia and by the repeated adjournments of the hearings which were not attributable to the applicants (see paragraphs 15, 18 and 22). Although it is not this Court's task to rule on the necessity to collect particular evidence in the domestic court proceedings, the Court notes that the request for information was initially not done in accordance with the prescribed procedure which protracted the proceedings.

52. The Court finally notes that the applicants had resided in the apartment in question only for a very limited period of time. Furthermore, it was one year after divorcing Y. that the first applicant sought to return to live in this apartment. However, it considers that the subject matter of the dispute was apparently important for the applicants since they did not have another place of residence in Ukraine, which is confirmed by the Government. Given that for the majority of time between July 2000 and December 2004 the first applicant was practically homeless, however, she did not return to Tomsk, it could be concluded that she did not have where to live in Russia either. Therefore, the Court considers that the subject matter of the case required some promptness.

53. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above; *Makarenko v. Ukraine*, no. 43482/02, 1 February 2007).

54. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

55. The applicants allege that a lengthy consideration of their claim, in the first set of proceedings apart from an alleged violation of Article 6 § 1 of the Convention, might have infringed their right to a home as guaranteed by Article 8 of the Convention, which 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.”

Admissibility

56. The Government did not submit any observations on the admissibility of this complaint.

57. The applicants submitted that they had a right to reside in the disputed apartment since they had been registered there and they had their personal belongings there.

58. The Court notes that in some circumstances the protracted court proceedings may raise an issue not only under Article 6 of the Convention but also under Article 8 (see, among other authorities, case on child custody proceedings, *V.A.M. v. Serbia*, no. 39177/05, § 146, 13 March 2007).

59. In the present case the subject matter of the proceedings in question was the applicants’ right to reside in a particular apartment which they considered their property and home.

60. The national courts later found that the apartment in question belonged to a private enterprise M. and the Court recalls that the Convention does not guarantee an absolute right to live in a particular property not owned by the applicants (see *J.L.S. v. Spain* (dec.), n° 41917/98, 27 April 1999; *Kovalenok v. Latvia* (dec.), n° 54264/00, 15 February 2001).

61. However, the Court further recalls that whether or not a particular habitation constitutes a “home” which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see the following authorities: *Buckley v. the United Kingdom*, judgment of 25 September 1996, Reports of Judgments and Decisions 1996-IV, §§ 52-54, and Commission’s report of 11 January 1995, § 63; *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, § 46; *Wiggins v. the United Kingdom*, no. 7456/76, Commission decision of 8 February 1978, Decisions and Reports (DR) 13, p. 40).

62. In the present case it appears that the applicants moved from Tomsk, Russia, to Sevastopol, Ukraine, in 1988 and lived in Sevastopol at least for seven years before returning back to Tomsk since the second applicant decided to study there. Approximately one year before leaving for Tomsk they moved to a rented apartment which Y., who was the first applicant’s husband at the material time, planned to purchase later. From the available

materials it is unclear when exactly the applicants had moved into this apartment, for how long they lived there and when exactly they moved back to Tomsk. It is also unclear whether the applicants planned to return back to Sevastopol permanently and whether they visited Sevastopol for any short periods of time between 1996 and 2000.

63. Therefore, even assuming that, despite the fact that the applicants resided in the apartment in question only during limited period of time and claimed their right to return there after nearly four years of absence, this apartment still can be considered their home, the Court cannot conclude that in such circumstances the applicants have made out an arguable claim under Article 8 of the Convention in respect of the lengthy consideration by the national courts of their claims.

64. It follows that this aspect of the application must be rejected in accordance with Article 34 §§ 3 (a) and 4 of the Convention.

III. REMAINING COMPLAINTS

65. The applicants also complained under Article 6 § 1 of the Convention of unfair hearings in their cases.

66. They further alleged that the judges who had considered their numerous claims lacked impartiality. They further complained about refusal to institute criminal proceedings against Y.

67. Finally, they relied on Articles 3, 13, 14 and 17 of the Convention, Article 1 of Protocol No. 1, and Article 5 of Protocol No. 7, referring to the same facts.

68. Having carefully examined the applicants' submissions in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

69. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicants claimed 83,000 US dollars¹ and 100,000 euros (EUR) each in respect of pecuniary and non-pecuniary damage.

72. The Government contested these claims.

73. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 1,400 under that head.

B. Costs and expenses

74. The applicants also claimed 343 US dollars² for the costs and expenses incurred before the Court.

75. The Government contested this claim.

76. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 256 for costs and expenses in the proceedings before the Court.

C. Default interest

77. 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

1. *Declares* unanimously the complaint under Article 6 § 1 of the Convention concerning the excessive length of the first set of proceedings admissible and the remainder of the application inadmissible;

1. Around 62,000 euros

2. Around 256 euros

2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 1,400 (one thousand four hundred euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 256 (two hundred fifty-six euros), plus any tax that may be chargeable to the applicants, 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;
4. *Dismisses* by six votes to one the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 31 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Ann Power-Forde is annexed to this judgment.

D.S.
J.S.P.

DISSENTING OPINION OF JUDGE POWER-FORDE

1. I disagree with the majority's finding of a violation of Article 6 § 1 in this case. This case mainly concerns the length of one of a number of sets of civil proceedings which the applicants instituted before the Ukrainian courts. The proceedings in question relate to a dispute between the first applicant, her son and her former husband concerning an alleged right to reside in an apartment. The known facts would appear to disclose that they had lived together in this apartment for approximately one year (see §§ 6 and 7) prior to the first applicant's divorce from her husband in 1999.

2. The total length was 6 years 3 months over two levels of jurisdiction with the longest 'delay' occurring at first instance. Although it has been the practice of this Court to find violations in cases of similar duration, it is a 'practice' which I cannot endorse unless I am satisfied that there is a clear want of diligence on the part of the domestic authorities. The mere 'length' is not, in itself, determinative of 'reasonableness'. Each case requires a thorough examination of what, in fact, transpired while the proceedings were pending before the national courts.

3. An international court, removed as it is from the 'cut and thrust' of contentious litigation, must not lose sight of the practical realities that confront national judges. Parties fail to appear. Additional evidence may need to be directed. Judges get delayed when cases run over their estimated time. Such happenings are not, necessarily, indicative of a system's failure. They are the practical realities of life. That is not to say that I accept that long delays are endemic in every legal system and have to be tolerated. I do not. Justice ought to be administered as promptly and as efficiently as possible. Applicants are entitled to have a trial within reasonable time, not within perfect time. In my view, when one examines what actually occurred in this case, the disposal of proceedings within the given time frame over the various levels of jurisdiction is not so obviously unreasonable as to constitute a breach of a 'fundamental' right under Article 6 § 1 of the Convention.

4. My assessment differs from that of the majority. I find it difficult to discern any significant period of inactivity attributable to the Ukrainian authorities. It is true that there was no hearing for just over a year (§ 16). However, this was because the Ukrainian authorities were liaising with the Russian authorities to investigate whether the applicants had been resident in Russia. The majority considered that the protraction of proceedings was caused, *inter alia*, by 'the request for information and the questioning of witnesses in Russia'. The first applicant had spent most of her life there – both before and after her divorce from Y – and it was thought that the second may have been studying there. It is not this Court's role to 'second guess' the necessity for the evidence which the domestic court directs. In my view, the national court cannot be criticised for seeking to establish the

facts with foreign authorities, since those facts were, in its view, necessary for the determination of whether, through their absence, the applicants had lost their alleged right to reside as tenants in the said property. The fact that one procedural error occurred in that, initially, the Court's requests were not directed through the correct channel is not sufficient, in my view, to form a basis for the Court's finding of a violation of Article 6 § 1.

5. The prolongation of proceedings caused as a result of adjournments within the year 2002 to 2003 cannot be attributable entirely to the State as most of them were necessitated by the non-availability of the parties to these civil proceedings. It seems to me that, thereafter, much of the responsibility for the subsequent delays from 2003 to 2005 rests with the applicants. Repeatedly, they lodged appeals against court decisions which were not, in fact, subject to appeal. These ill-founded appeals still required to be dealt with by the courts before which they were brought. They spanned three levels of jurisdiction and contributed significantly to the overall 'length' at first instance.

6. Finally, the majority regards the allegation that the first applicant was 'homeless' as being an important factor which required 'promptness' before the domestic courts. As the applicant was not claiming a right to live 'rent-free' in the apartment, it is difficult to see why living on the street became her only other option. Furthermore, she had spent most of her life in Russia and had lived in the apartment for a very short period of time many years prior to her divorce from her husband. She did not make any claim to the apartment as her 'home' until three to four years after she had left it. In such circumstances, it is difficult to see why the domestic courts should have regarded the apartment in question as the first applicant's 'home' such as would require particular diligence on their part in expediting the proceedings in issue.