CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF LEVSHINY v. RUSSIA

(Application no. 63527/00)

JUDGMENT

STRASBOURG

9 November 2004

FINAL

30/03/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Levshiny v. Russia,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE,
Mr A. KOVLER,
Mrs A. MULARONI, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 19 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 63527/00) 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 Russian nationals, Nikolay Grigoryevich Levshin and Nikolay Nikolayevich Levshin ("the applicants"), on 30 June 2000.

2. The applicants were represented by Mr P. A. Lepshin, a lawyer practising in Saint-Petersburg. The Russian Government ("the Government") were represented by Mr P. A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 16 May 2003 the Court decided to communicate the application. 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

4. The applicants were born in 1935 and 1968 respectively and live in Saint-Petersburg.

5. The applicants invested money in the construction of a block of flats. The contractors failed to provide the applicants with a flat in time.

6. On 26 August 1996 the applicants brought an action against the contractors before the Primorskiy District Court of Saint-Petersburg ("the district court").

7. The district court initiated proceedings in the case on 6 December 1996, after the applicants had paid a court fee.

8. On 10 February 1998 the district court refused to entertain the application because of the applicants' alleged failure to attend hearings. This decision was not served on the applicants.

9. On 23 June 1998 the applicants, who claimed that they had never been summoned, appealed and asked for the restoration of the relevant time limit.

10. On 26 November 1998 the Saint-Petersburg City Court quashed the district court's decision of 10 February 1998 as unlawful in view of the lack of evidence that the applicants had ever been summoned to the hearings. It ordered the district court to examine the case.

11. On 31 December 1998 the district court scheduled a hearing for 31 March 1999.

12. The hearing was adjourned on 31 March 1999 to 8 July 1999 and on 8 July 1999 to 8 December 1999 on the ground of the defendants' failure to appear.

13. On 8 December 1999 the hearing was adjourned to 3 May 2000 as the judge was ill.

14. On 3 May 2000 the hearing was adjourned to 30 November 2000 because of the failure of the defendants to appear.

15. During 1999-2000 the applicants filed a number of complaints with the district court, the Saint-Petersburg City Court and the Supreme Court requesting the acceleration of the examination of their case.

16. On 30 November 2000 the hearing was adjourned to 9 March 2001 as the judge was ill.

17. Between 9 March 2001 and 31 October 2001 the hearing was adjourned twice at the request of both parties.

18. On 31 October 2001 the hearing was adjourned to 11 February 2002 because the defendant failed to appear.

19. On 11 April 2002 the district court examined the case and rejected the applicants' claim for a flat on the ground that all the flats in the block in question had already been distributed among other investors. The court noted that as regards the investments made, the applicants' interests were protected in the framework of ongoing bankruptcy proceedings against the contractors.

20. On 15 April 2002 the applicants appealed.

21. On 14 November 2002 the Saint-Petersburg City Court upheld the judgment.

THE LAW

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

22. The applicants complained that the length of the proceedings had exceeded the "reasonable time" requirement of 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..."

23. The Government acknowledged that the first-instance court had not been prompt in deciding the case.

24. For Convention purposes, the period to be taken into consideration began on 5 May 1998, when the recognition by Russia of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the proceedings previously. The Court notes that by that date the proceedings had already been pending over a year and eight months.

The period in question ended on 14 November 2002. It thus lasted another four years, six months and nine days after Russia's ratification of the Convention, for two levels of jurisdiction, each seeing the case twice.

A. Admissibility

25. The Court notes 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

26. The Government stated that the Primorskiy District Court of Saint-Petersburg had not been prompt in examining the applicants' case. The Government noted that the court itself had explained that the protracted examination of the applicants' case had been caused by understaffing and the work overload.

27. The applicants submitted that the prolonged proceedings in their case were caused by the lack of expedition and breaches of the procedural law by the courts, as well as the failure of the defendants to appear at the hearings.

28. 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).

29. The Court notes that the applicants' suit concerned a contractual dispute between private persons. It considers that the case was not factually or legally complex.

30. As to the applicants' conduct, the Court does not find that it contributed any noticeably to the length of the proceedings.

31. As to the conduct of the judicial authorities, the Court notes that, before 26 November 1998, the proceedings in the case had been delayed by the decision of the Primorskiy District Court of Saint-Petersburg which refused to entertain the applicants' action because of their alleged failure to attend hearings although they had never been summoned. After that date, it took the first-instance court three years and four months to examine the case. During this period the hearing of the case was adjourned four times for periods of three (twice), five and seven months on account of the failure of the defendants to appear. During eight months the judge was ill. The Court considers that the delay in the conduct of the hearing thus created could have been minimised. The Government acknowledged that the first-instance court had not acted diligently. As regards the Government's explanation that the court was understaffed and overworked, the Court recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his or her civil rights and obligations (see *Frydlender*, cited above, § 45).

32. The foregoing considerations are sufficient to enable the Court to conclude 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 VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

33. The applicants complained that the courts erred in deciding their case and that the outcome of the proceedings violated their property rights.

34. The Court has examined the applicants' allegations as submitted by them. However, having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

36. The applicants claimed, in respect of pecuniary damage, 32,309 euros (EUR) based on the cost of a flat which they allegedly lost as a result of the proceedings. Each applicant also claimed EUR 5,000 in respect of non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this aspect of the claim. However, on an equitable basis, it awards each applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicants also claimed 2,984 Russian roubles (RUR)[1] for the costs and expenses incurred before the domestic courts and the Court.

40. The Government did not express an opinion on the matter.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Moreover, at the domestic level, the expenses incurred must have been related to the efforts deployed to avoid or minimise the violation of the Convention subsequently found by the Court. In this connection, the Court notes that the applicants requested the domestic courts, on several occasions, to accelerate the proceedings (paragraph 15 above), a matter clearly related to the Court's finding of a violation of Article 6 § 1 of the Convention (paragraph 32 above). Taking into account also expenses incurred in connection with the proceedings before the Court, the Court considers it reasonable to award the sum of EUR 52, equivalent to RUR 1,824, jointly, in respect of the whole claim.

[1] Around 86 euros

C. Default interest

42. The Court considers it appropriate that the default interest 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 concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* by five votes to two:
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:
   (i) 2,400 EUR (two thousand four hundred euros) to each applicant, separately, in respect of non-pecuniary damage;
   (ii) 52 EUR (fifty-two euros), jointly, in respect of costs and expenses;
   (iii) plus any tax that may be chargeable on the above amounts;
   (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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President