CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF BABURIN v. RUSSIA

(Application no. 55520/00)

JUDGMENT

STRASBOURG

24 March 2005

FINAL

24/06/2005

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 Baburin v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 55520/00) 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 a Russian national, Mr Aleksey Vladimirovich Baburin, on 12 November 1999.

2. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 24 May 2004 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 applicant was born in 1968 and lives in St. Petersburg.

5. On 1 March 1994 a State-owned construction company "Lengidroenergospetsstroy" (*промышленное строительно-монтажное объединение «Ленгидроэнергоспецстрой»*, hereinafter "LenGESS") and a private investment company "Severo-Zapadniy Soyuz" (*АОЗТ ТПК «Северо-Западный Союз»*, hereinafter "SZS") signed a contract, pursuant to which the LenGESS undertook to build a block of flats in St. Petersburg and the SZS was to finance the construction in part. By way of consideration, the SZS was to receive title to a certain number of flats in the completed construction. In order to raise funds, the SZS collected money from private investors who were to become the eventual owners of the flats.

6. In February 1996 the applicant signed a contract for the purchase of a flat with the SZS and paid the stipulated price in full.

7. It appears that, once the block of flats had been built, the LenGESS refused to transfer the stipulated number of flats to the SZS, claiming that the funding raised by the latter had been insufficient. In December 1997, the SZS sued the LenGESS before the Kuybyshevskiy District Court of St. Petersburg, seeking enforcement of the 1994 contract.

8. On an unspecified date the applicant lodged two statements of claim against the LenGESS with the Vyborgskiy and the Primorskiy district courts of St. Petersburg, seeking a court order upholding his title to a flat.

9. On 19 November 1998 the Primorskiy District Court, on a request by the applicant, stayed the proceedings pending the judgment of the Vyborgskiy District Court. It appears that these proceedings have not been resumed yet.

10. On 24 December 1998 the applicant entered the proceedings before the Kuybyshevskiy District Court as a co-plaintiff against the LenGESS, seeking to obtain title to the flat for which he had paid the stipulated price.

11. On 23 February 1999 the Vyborgskiy District Court, on a request by the applicant, stayed the proceedings pending completion of the proceedings before the Kuybyshevskiy District Court. It appears that these proceedings have not been resumed yet.

12. As hearings before the Kuybyshevskiy Court were repeatedly adjourned, on 25 May 1999 the applicant complained about delays to the president of the St. Petersburg City Court. By a letter of 4 June 1999, the president of the St. Petersburg City Court replied that hearings were adjourned because of a substantial backlog of cases and because the judge to which the case had been assigned had gone on vacation. The president advised the applicant to ask the president of the Kuybyshevskiy District Court to transfer the case to another judge.

13. On 21 June 1999 the applicant requested the president of the Kuybyshevskiy District Court to transfer the case to another judge. On 24 June 1999 the president responded that reassignment was not feasible because of a large number of pending cases and the court's light schedule during the summer.

14. On 30 June 1999 the applicant complained about delays to the Supreme Court of the Russian Federation, which forwarded the complaint to the St. Petersburg City Court for consideration. On 24 August 1999 a deputy president of the St. Petersburg City Court dismissed the complaint, noting that the problem of delays had to be solved by the Kuybyshevskiy District Court.

15. On an unspecified date the Kuybyshevskiy District Court fixed a hearing for 24 December 1999, it was subsequently adjourned until 28 February 2000.

16. On 10 May 2000 the Kuybyshevskiy District Court discontinued the proceedings, finding that it had no jurisdiction to entertain the claim and that the dispute was to be adjudicated by commercial courts.

17. On 29 June 2000 the St. Petersburg City Court granted appeals by the SZS, the applicant and other co-plaintiffs, quashed the decision of 10 May 2000 and remitted the matter to the Kuybyshevskiy District Court for examination on the merits. It also issued a "special finding" (*частное определение*) concerning the judge of the Kuybyshevskiy District Court to whom the case had been assigned, in which it noted her manifest failure to observe the rules of civil procedure as regards compliance with procedural time-limits.

18. On 17 November 2000, 7 February, 23 March and 1 June 2001 hearings before the Kyubyshevskiy District Court were held.

19. On 28 September 2001 the Kuybyshevskiy District Court of St. Petersburg delivered the judgment. The claims of all plaintiffs were dismissed on the ground that they had never paid any sums directly to the LenGESS.

20. On 9 October 2001 the applicant, among others, appealed against the judgment of 28 September 2001.

21. On an unspecified date the Kuybyshevskiy District Court listed an appeal hearing for 13 November 2001 and sent the case-file to the city court. It appears that the district court had not determined certain issues concerning court fees by 13 November 2001 and for that reason the city court had to adjourn the appeal hearing and send the case-file back to the district court. A new appeal hearing was fixed for 21 March 2002.

22. On 21 March 2002 the St. Petersburg City Court quashed the judgment of 28 September 2001 and remitted the case to the Kuybyshevskiy District Court.

23. On 29 May, 27 June and 14 September 2002 the Kuybyshevskiy District Court held further hearings.

24. Meanwhile, on 10 September 2002 the St. Petersburg Commercial Court opened bankruptcy proceedings in respect of the SZS.

25. On 24 September 2002 the Kuybyshevskiy District Court referred the claim against the LenGESS to the St. Petersburg Commercial Court. It held that the dispute involving legal entities was to be adjudicated by a commercial court.

26. On 3 December 2002 the St. Petersburg Commercial Court discontinued the proceedings, holding that the matter was to be examined in the bankruptcy proceedings initiated on 10 September 2002.

27. On 11 March 2003 the Appeals Division of the St. Petersburg Commercial Court quashed the decision of 3 December 2002 and remitted the case to the first instance division for examination on the merits.

28. On 26 May 2003 the St. Petersburg Commercial Court referred the case to the Kuybyshevskiy District Court, noting that the dispute involved

individuals and that it was therefore appropriate for determination by court of general jurisdiction.

29. On 18 August 2003 the Kuybyshevskiy District Court received the case-file. On 6 October and 23 December 2003 hearings were held.

30. On 23 December 2003 the court fixed a new hearing date for 2 March 2004. On the same date the applicant complained about further delays to the president of the Kuybyshevskiy District Court.

31. Between 2 March and 24 December 2004 the Kyubyshevskiy District Court scheduled eight hearings, at least half of them were adjourned for various reasons.

32. The proceedings are still pending before the district court.

THE LAW

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

33. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided 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..."

34. Although the examination of the claim by the Kuybyshevskiy District Court began in 1997, the period to be taken into consideration started only on 24 December 1998 when the applicant entered the proceedings (see paragraph 10 above). It has not yet ended because the matter is still pending before the district court. The period has so far lasted more than six years and two months.

A. Admissibility

35. The Government submit that the proceedings are still pending before the domestic courts, and the applicant's complaints are inadmissible because they are premature.

36. The Court reiterates that according to the Convention organs' constant case-law complaints concerning length of procedure can be brought before it, before the final termination of the proceedings in question, if at least the applicant has made use of those remedies which concerned the length of procedure (see *Plaksin v. Russia*, no. 14949/02, §§ 34-36, 30 April 2004; *Panchenko v. Russia* (dec.), no. 45100/98, 16 March 2004; *Rokhlina v. Russia* (dec.), no. 54071/00, 9 September 2004; and *Adelmanné Kertész v. Hungary*, no. 27131/95, Commission decision of

2 July 1997). As regards the exhaustion of remedies concerning the length of procedure, the Court recalls its finding made in the context of a complaint under Article 13 of the Convention that in Russia there has been no domestic remedies whereby an applicant could enforce his or her right to a "hearing within a reasonable time" (see *Kormacheva v. Russia*, no. 53084/99, §§ 58-64, 29 January 2004; *Plaksin v. Russia*, cited above, §§ 49-50). In any event, it notes that the applicant in the present case repeatedly complained to various judicial officials about excessive delays in the proceedings (see paragraphs 12, 14 and 30 above) and that the Government did not point to any other venues of appeal that he could have used. Accordingly, the Government's objection must be dismissed.

37. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

38. The applicant maintained that the proceedings had been excessively long and that the merits of the claim had not yet been examined. The proceedings were plagued with many delays, none of which was attributable to his conduct, and his attempts to expedite the proceedings proved to be futile.

39. The Government did not make any comments on the merits.

40. 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).

41. 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).

42. Turning to the present case, the Court observes substantial delays caused by the divergent rulings on the courts' competence to hear matters involving both commercial companies and private individuals. These rulings caused unnecessary repetitive referrals of the claim from courts of general jurisdiction to commercial courts and vice versa (see paragraphs 16, 25, 27 and 28 above). The Court also notes that the failure to comply with domestic time-limits was acknowledged by a "special finding" of the St. Petersburg City Court. However, five years after that finding the matter is still before the first-instance court.

43. Having examined all the material submitted to it, 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 30,000 euros (EUR) in respect of compensation for non-pecuniary damage.

46. The Government contested the claim as excessive and unsubstantiated.

47. The Court considers that the applicant must have sustained non-pecuniary damage because of the excessive length of proceedings. Ruling on an equitable basis, it awards award him EUR 3,000 under that head, plus any tax that may be chargeable.

B. Costs and expenses

48. The applicant also claimed 397 Russian roubles ("RUR") for the costs and expenses incurred in domestic and Strasbourg proceedings.

49. The Government contested the claim.

50. According to the Court's case-law, an applicant is entitled to 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 100 under this head, plus any tax that may be chargeable.

C. Default interest

51. 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 UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,100 (three thousand one hundred euros) in respect of non-pecuniary damage and costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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 24 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President