CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KUZIN v. RUSSIA

(Application no. 22118/02)

JUDGMENT

STRASBOURG

9 June 2005

FINAL

09/09/2005

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 Kuzin 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 19 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 22118/02) 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 Sergey Kuzin ("the applicant"), on 12 May 2002.

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 30 October 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. On 7 September 2004 the Court requested the Government to submit additional observations on the admissibility and merits of the application.

THE FACTS

4. The applicant was born in 1960 and lives in Moscow.

First set of proceedings

5. On 15 June 1998 the applicant brought proceedings against four publishing houses seeking recognition of his copyright and an award of damages. The claim was lodged with the Ostankinskiy District Court of Moscow.

6. On 5 November 1998 the claim was rejected on the ground that, according to the rules governing jurisdiction, it should have been filed with another court. On 15 November 1998 the applicant filed a complaint with the Moscow City Court.

7. The Moscow City Court on 10 December 1998 quashed the ruling of 5 November 1998 and remitted the case to the Ostankinskiy District Court for consideration on the merits.

8. On 22 April 1999 the Ostankinskiy District Court ruled that the case should be remitted to the Meschanskiy District Court of Moscow. On 5 May 1999 the applicant filed a complaint with the Moscow City Court.

9. The Moscow City Court on 30 July 1999 quashed the ruling of 22 April 1999 and remitted the case to the Ostankinskiy District Court for consideration on the merits.

10. On 11 November 1999 a preliminary hearing was fixed for 6 December 1999. However, the preparation of the case was initially extended to 31 January 2000 because of the defendants' failure to appear and subsequently extended to 14 February 2000 because of the judge's holiday leave.

11. On 14 February 2000 a hearing on the merits was fixed for 16 March 2000. That hearing did not take place because the case had been transferred to another judge.

12. On 10 August 2000 a hearing was fixed for 21 August 2000. It was initially postponed to 20 November 2000 because the judge was engaged in unrelated proceedings, and then to 18 December 2000 because of the defendants' failure to appear.

13. The Ostankinskiy District Court on 18 December 2000 again ruled that the case should be remitted to the Meschanskiy District Court. On 12 February 2001 the applicant filed a complaint with the Moscow City Court.

14. The Moscow City Court on 14 March 2001 quashed the ruling of 18 December 2000 and remitted the case to the Ostankinskiy District Court for consideration on the merits.

15. On 27 August 2001 a hearing on the merits was fixed for 29 November 2001. However, it was first postponed to 28 December 2001 and then to 4 January 2002 because the judge was engaged in unrelated proceedings.

16. On 4 January 2002 the hearing was postponed to 7 February 2002 because of the parties' failure to appear. The applicant did not appear on account of illness.

17. On 7 February 2002 the applicant's claim was left without consideration on account of his second failure to appear at the hearing.

18. The Ostankinskiy District Court on 2 September 2002 quashed its ruling of 7 February 2002 on the grounds that the applicant had not been notified about the hearing in due course. The court fixed a new hearing on

the merits for 23 September 2002. It appears that the hearing did not take place.

19. On 21 October 2002 the applicant received notification that the hearing was fixed for 5 November 2002. The applicant could not appear on account of his illness and informed the court accordingly.

20. On an unspecified date the case was transferred to another judge, on account of the dismissal of the judge who had been dealing with the case. A preliminary hearing was fixed for 17 April 2003.

21. The applicant attended the hearing on the last mentioned date. However, the judge informed him that she did not have his case file and did not know where it was. Following an unsuccessful two-hour search for the case file the applicant was advised to leave. It later transpired that one of the clerks in the court's registry was in possession of the case file as he had been preparing a reply to a complaint lodged by the applicant.

22. On 24 June 2003 a preliminary hearing was fixed for 18 August 2003. However, preparation of the case was extended to 22 September 2003 because of the judge's sick leave.

23. On 22 September 2003 a preliminary hearing was fixed for 23 October 2003.

24. On 23 October 2003 the applicant's claims against each defendant were divided into four different sets of proceedings. Hearings on the merits of all four claims were fixed for 26 December 2003.

25. The Ostankinskiy District Court partially granted the applicant's claim against the first defendant on 26 December 2003. As the court received no confirmation that the other defendants had been properly notified of the hearings, the hearings on the claims against them were postponed to 30 January 2004, 4 and 5 February 2004. By three judgments delivered on the aforementioned dates, the court partially granted the applicant's claims. The judgments were not appealed against and entered into force.

Second set of proceedings

26. On 27 January 2002 the applicant filed two applications with the Supreme Court of Russia and the Moscow City Court respectively, seeking authorisation to study case files related to previously lodged applications for supervisory review of certain judgments concerning his civil claims. The applications were refused on the ground that the legislation in force did not provide for the possibility of studying case files related to applications for supervisory review, since it was an extraordinary remedy. However, a reasoned reply would be sent to the applicant after delivery of a decision.

27. On 3 March 2002 the applicant filed two complaints concerning the refusals with the court. His complaints were rejected by a final ruling of the Moscow City Court of 14 June 2002.

THE LAW

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

28. The applicant complained that the length of the first set of 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..."

29. The period to be taken into consideration began on 15 June 1998 and ended on 5 February 2004, when the last judgment concerning the applicant's claim was delivered. It thus lasted 5 years, 7 months and 20 days.

A. Admissibility

30. In their first submissions before the Court the Government maintained that the complaint was premature because the proceedings were still pending.

31. Leaving aside the fact that the proceedings have now come to an end, the Court recalls that according to the Convention organs' constant case-law, complaints concerning length of procedure may be lodged before the final termination of the proceedings in question (see, *e.g.*, *Todorov v. Bulgaria* (dec.), no. 39832/98, 6 November 2003).

32. The Court finds 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

33. The Government submitted that the delays in the examination of the applicant's claims were caused by the defendants' failure to appear at the hearings, for which the authorities could not be held responsible. Other delays had been caused by the judges' participation in unrelated proceedings and the transfer of the case from one judge to another.

34. The applicant contested the Government's statement. He contended that the civil proceedings were unreasonably long because the domestic courts had failed to deal with his claims diligently.

35. 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 criteria established by its case-law, particularly 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).

36. The Court considers that the case was not particularly difficult to determine. Consequently, it takes the view that an overall period of more than five and a half years in one court instance could not, in itself, be deemed to satisfy the "reasonable time" requirement in Article 6 § 1 of the Convention.

37. As regards the conduct of the applicant and the defendants the Court notes that between 15 June 1998 and 26 December 2003 no hearing on the merits of the applicant's claims was held. During this period the preliminary hearing fixed for 6 December 1999 was postponed for about two months because of the defendants' failure to appear. For the same reason the hearing on the merits fixed for 20 November 2000 was postponed for about one month. The hearing fixed for 4 January 2002 was also postponed for about one month on account of the parties' failure to appear, which in the applicant's case was caused by illness. In these circumstances the Court does not find it established that the applicant's conduct delayed the proceedings in any significant way.

38. As regards the conduct of the authorities the Court recalls that the case was repeatedly adjourned due to the judges' participation in other proceedings and the transfer of the case from one judge to another. Furthermore, delays occurred while the national courts settled disputes of jurisdiction. The Court recalls that it is the States' duty to organise their judicial systems in such a way that their courts can meet the requirement of Article 6 § 1 (see *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15). In these circumstances the Court finds that the significant delays which occurred in the present case are attributable to the State.

39. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicant further complained of the fact that there was no court in Russia to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention, which provides:

> "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."

A. Admissibility

41. 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

42. The Government submitted that the applicant had had an effective remedy against the length of proceedings in the present case. In particular, after examining the applicant's complaints the Moscow City Court quashed a number of rulings by the Ostankinskiy District Court which had left the applicant's claim without consideration. They further contended that the Ostankinskiy District Court had taken appropriate measures to examine the applicant's claim, which had resulted in favourable judgments.

43. The applicant challenged the Government's arguments. He submitted that his complaints against the aforementioned rulings had been directed at having his claims considered by a proper court, and that quashing of the rulings had been of no relevance to the length of the proceedings. He further contended that the Government had failed to indicate an effective remedy that he had had at his disposal.

44. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland,* no. 30210/96, § 156, ECHR 2000-XI). Furthermore, the Court recalls that an effective remedy required by Article 13 of the Convention is intended to be capable of either expediting the proceedings or providing the applicant with adequate redress for delays that have already occurred (see *Kudła v. Poland* cited above, §§ 157-159).

45. The Court finds that the quashing of rulings on various procedural issues following complaints by the applicant was irrelevant for, let alone capable of, expediting the proceedings or providing him with redress for the delays occurred. Furthermore, the favourable outcome of the proceedings as such cannot be considered to constitute adequate redress for their length (see, *mutatis mutandis*, *Byrn v. Denmark*, no. 13156/87, Commission decision of 1 July 1992, Decisions and Reports (DR) 74, p. 5). The Court notes that the Government did not indicate any other remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, 29 January 2004, § 64).

46. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a

ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. The applicant made a number of complaints in respect of the second set of proceedings. He complained under Articles 9 and 10 of the Convention about the refusal to grant him an opportunity to study case files. Invoking Articles 6 § 1 and 13 of the Convention, he also complained about the dismissal of his subsequent complaints.

48. However, 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 or its Protocols.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 6,000 euros (EUR) in compensation for non-pecuniary damage.

52. The Government considered this claim excessive and unreasonable. They noted that, in contrast to the *Kormacheva* case where the Court had awarded EUR 3,000 (see *Kormacheva v. Russia*, cited above, §§ 66-71), the proceedings in the present case did not concern matters of vital importance for the applicant, lengthy consideration of which could seriously aggravate his situation.

53. The Court accepts that the applicant suffered distress, anxiety and frustration caused by the unreasonable length of the proceedings. Making its assessment on an equitable basis, the Court awards EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

54. The applicant also claimed EUR 200 for the costs and expenses incurred before the domestic courts and the Court. The applicant did not adduce any invoices supporting the claim. He explained that the expenses consisted of payment for postal, fax and e-mail services, printing and copying of documents.

55. The Government made no specific comment in this regard.

56. 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 sum of EUR 200 covering costs under all heads.

C. Default interest

57. 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 complaints concerning the length of the first set of proceedings and the lack of an effective remedy admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *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, the following amounts:
   (i) EUR 3,000 (three thousand euros) in compensation for non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (ii) EUR 200 (two hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (iii) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President