CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KUTSENKO v. RUSSIA

(Application no. 12049/02)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Kutsenko v. Russia,

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

Mr L. LOUCAIDES, *President*,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 12049/02) 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, Ms Lyusya Ivanovna Kutsenko, on 20 February 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 24 May 2004 the Court decided to communicate the complaint concerning the length of the proceedings 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 1937 and lives in in the village of Novoselye, the Leningradskiy Region.

5. In 1995 the applicant entered into a contract with a joint-stock company "Energomashstroy" (*ОАО «Энергомашстрой»*). The contract stipulated that the applicant was under an obligation to transfer a sum of money to the company, whilst the latter undertook to build a flat for the

applicant. Having moved into the new flat in January 1998, the applicant detected a number of constructional defects.

6. On 15 September 1998 the applicant brought an action against the company before the Lomonosovskiy District Court of the Leningradskiy Region ("the District Court"), seeking elimination of the above defects. Thereafter on 16 November 1998, 1 April and 17 September 1999, 26 April 2001, 21 July, 14 August and 15 December 2003 she supplemented and modified her claims, seeking the recovery of the money she had paid under the contract and damages.

7. On 10 December and 15 December 1998 the applicant requested the District Court to commence proceedings in her case. She received no responses to these requests.

8. On 1 March 1999 the applicant complained about delay in her case to the Court Administration Department at the Supreme Court of Russia (*Управление Судебного департамента при Верховном Суде РФ*, "the Court Department"). On 23 March 1999 the Court Department informed the applicant that the hearing in her case would be held on 26 March 1999.

9. On 26 March 1999 the District Court postponed the hearing until 14 May 1999 due to the parties' failure to appear. The applicant submitted a request for examination of the case in her absence, whilst the defendant company requested the court to adjourn the hearing by reference to the belated delivery of the court summons.

10. On 14 May 1999 the hearing was postponed until 10 September 1999 because the judge was engaged in unrelated proceedings.

11. On 1 August 1999 the applicant requested the District Court to expedite the proceedings in her action.

12. On 10 September 1999 the hearing was adjourned until 8 October 1999 on the ground that the defendant's representative was unable to appear as he was attending a hearing in an unrelated case, and then until 19 November 1999, as the court ordered the parties to submit certain documents. On the last mentioned date the hearing was postponed until 14 January 2000 and then until 25 January 2000 in view of the participation of the judge in unrelated proceedings.

13. On 23 November 1999 the applicant lodged a complaint about delays in her case with the Office of the President of Russia. In response, in a letter of 25 January 2000 the District Court notified the applicant that the hearing would take place on 26 January 2000.

14. On 26 January 2000 the District Court held a hearing and, upon the defendant's request, ordered an expert examination of the applicant's flat so as to ascertain its compliance with building standards. By the same decision the court suspended the proceedings pending the outcome of the examination. The applicant objected to the examination on the ground that such examination had already been performed by another expert body, and

that she had already furnished its results with the court. According to the applicant, the District Court ignored her objection.

15. The applicant appealed against the above decision, and the case-file was transmitted to the Civil Section of the Leningradskiy Regional Court ("the Regional Court"). On 27 April 2000 the latter dismissed the applicant's interlocutory appeal, thus upholding the decision of 26 January 2000.

16. On 6 June 2000 the case-file was returned to the District Court and sent to the experts to enable them to carry out the requisite examination.

17. On 8 December 2000 the experts declined to undertake the examination and returned the case-file to the District Court, stating that the defendant company refused to bear the expenses for the examination.

18. On 9 January 2001 the District Court resumed the proceedings and fixed a hearing for 24 April 2001.

19. On 24 April 2001 the District Court postponed the hearing until 4 July 2001 and, upon the applicant's request, ordered the defendant company to provide certain documents.

20. On 4 July 2001 the court adjourned a hearing until 4 September 2001 as the defendant had failed to submit the requested documents, and then until 28 September 2001, having ordered the parties to submit the original of the contract between them. On the last mentioned date the hearing was postponed until 19 October 2001, as the District Court invited to the expert body to submit a calculation of the expenses for the examination and ordered the reimbursement of those expenses.

21. On 19 October 2001 the hearing was postponed until 19 November 2001 because the judge was engaged in unrelated proceedings.

22. On 19 November 2001 the Lomonosovskiy District Court again stayed the proceedings and reaffirmed the order of 26 January 2000, as the defendant had agreed to reimburse the costs of the expert examination. On 23 January 2002 the Regional Court rejected the applicant's interlocutory appeal against this decision.

23. On 27 February 2002 the case-filed was remitted to the District Court and sent to the experts. The latter examined the applicant's flat on 25 July 2002 and returned the case-file to the District Court on 3 September 2002.

24. By letter of 4 September 2002 the Lomonosovskiy District Court notified the applicant that the hearing would take place on 11 October 2002. On 11 October 2002 the District Court adjourned the hearing until 1 November 2002 for an unspecified reason, and then until 6 December 2002 on account of the judge's illness. The applicant objected, but the District Court did not address her objections. On 6 December 2002 the hearing was adjourned until 10 January 2003 upon the applicant's request.

25. During 2002 the applicant lodged a number of complaints about the excessive length of the proceedings in her case with various administrative bodies. Mostly she received formal responses that her complaints had been forwarded to the District Court.

26. Between 10 and 15 January 2003 the hearing was repeatedly interrupted for various reasons, in particular for the failure of one of the lay assessors to appear.

27. On 15 January 2003 the Lomonosovskiy District Court delivered a judgment, dismissing the applicant's claims and ordering her to reimburse the costs for the examination of the flat to the company.

28. On 14 May 2003 the Regional Court quashed the above judgment and remitted the case for a new examination.

29. The case-file was sent back to the District Court on 17 June 2003, and a hearing was scheduled for 14 August 2003.

30. Between 14 and 29 August 2003 the hearing was interrupted and resumed on several occasions, in particular because the applicant supplemented her claims and twice requested the court to obtain certain documents. On 29 August 2003 the hearing was postponed until 2 October 2003 upon the applicant's request to obtain certain documents, and thereafter until 20 November 2003, as the judge was ill. The proceedings were resumed on 24 November 2003, but the hearing was adjourned until 5 December 2003, as the representative of the defendant company had failed to appear on account of his illness. On the last mentioned date the proceedings resumed.

31. By judgment of 17 December 2003 the Lomonosovskiy District Court rejected the applicant's claims and ordered her to reimburse the costs of the expert examination to the defendant company.

32. On 10 March 2004 the Regional Court set aside the first instance judgment and remitted the case for a fresh consideration. On 13 April 2004 the case-file was remitted to the District Court, and on 20 April 2004 a hearing was fixed for 9 June 2004.

33. On 9 June 2004 the hearing was postponed until 28 July 2004 pending the outcome of friendly settlement negotiations between the parties. It appears that on 28 July 2004 the proceedings were recommenced.

34. By judgment of 9 August 2004 the District Court granted the applicant's claims in part and awarded her damages against the defendant company.

35. On 3 November 2004 the Regional Court overturned the judgment of 9 August 2004 and remitted the case to the first instance for a new examination.

36. On 1 February 2005 the District Court granted the applicant's claims in part and ordered the defendant company to pay her 409,724.2 Russian roubles.

37. On 13 April 2005 the Regional Court upheld the above judgment on appeal.

II. RELEVANT DOMESTIC LAW

38. Article 99 of the Code of Civil Procedure of 1964, as in force at the relevant time, provided that civil cases were to be prepared for a hearing no later than seven days after the action had been filed in the court. In exceptional cases, this period could be extended for up to twenty days. Civil cases were to be examined no later than one month after the preparation for the hearing had been completed.

39. Article 74 of the Code provided that in cases where it was impossible to carry out an expert examination without the involvement of one of the parties to the proceedings and this party evaded participation, the court may establish, ascertain or refute the relevant fact to this party's detriment.

THE LAW

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

40. 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 read, as follows:

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

41. The period to be taken into consideration began on 15 September 1998, when the applicant lodged her action, and ended on 13 April 2005, when the last court decision determining the applicant's claim was given. It thus lasted six years, six months and twenty-nine days, during which time the applicant's claim was examined in four rounds of proceedings at two levels of jurisdiction.

A. Admissibility

42. In their observations dated 14 September 2004 the Government contended that the complaint was premature since the proceedings in the applicant's case were still pending.

43. 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, among many other authorities, *Kuzin v. Russia*, no. 22118/02, § 31, 9 June 2005).

44. 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

45. The Government argued that the delays in the examination of the applicant's case were caused by the applicant's conduct, and in particular by her failure to appear before the Court on 26 March 1999 and the fact that she had repeatedly supplemented and amended her claims as well as requested the court to obtain new evidence. Furthermore, the applicant's case was rather complex because of the need to carry out an expert examination on building standards, and the first instance court's decisions to that effect were twice quashed by a higher court. As regards the expert opinion submitted by the applicant, the Government stated that it had not met the requirements of national procedural law, and therefore could not be admitted as evidence in the case.

46. The applicant disagreed with the Government and maintained her complaint. She stated that the first instance court breached the time-limits for examination of her case provided for in national law. In particular, six months and eleven days elapsed between the date on which she applied to court and the date for which the first hearing was fixed, and the expert examination was only ordered more than a year after she had applied to court. Furthermore, the court had made no attempt to reprimand the defendant company for evading that examination, but instead reaffirmed its order and stayed the proceedings for an overall period of more than two years. The applicant further contended that she had never contributed to any delays in the proceedings and always complied with the statutory time-limits, that she had modified her claims because of the delays in the proceedings, and that, in any event, on most occasions she had merely increased the amount of the damages she had sought to obtain which in no way protracted the proceedings. The applicant also argued that she had requested the first instance court to obtain evidence because the defendant company had not submitted any evidence during the first three years of the proceedings, and the court had made no attempts to obtain it. Finally, she disputed the Government's statement that she had not attended a hearing on 26 March 1999 and stated that she had arrived at the court and talked to the judge.

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 considers that the proceedings in the present case were of a certain complexity as they required the taking of an expert opinion and because the applicant amended and supplemented her claims on several occasions. While admitting that the task of the courts was rendered more difficult by these factors, the Court 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).

49. The Court next observes that the proceedings were mostly protracted during the first examination of the applicant's case, and in particular between 15 September 1998, when the applicant filed her action, and 15 January 2003, when the judgment on the merits of the applicant's case was delivered. After it was quashed on appeal on 14 May 2003, the proceedings were expedited noticeably, the case being examined three times at two levels of jurisdiction during the next twenty-three months.

50. Having regard to the period between 15 September 1998 and 15 January 2003, the Court notes that the hearing was postponed twice, as the applicant had amended her claims and asked the court to obtain additional evidence. It reiterates in this respect 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). In any event, the aggregate delay resulting from the applicant's requests did not exceed four months. In these circumstances the Court cannot conclude that the applicant's conduct delayed the proceedings in any significant way.

51. As to the conduct of the authorities, the Court first notes that it is not convinced by the Government's argument that the hearing scheduled for 26 March 1999 was postponed because of the applicant's failure to appear. It notes in this respect that as it follows from a report on the developments in the applicant's civil case submitted by the Government, even though the applicant did not attend the hearing in question, she requested the court to examine the case in her absence, while the defendant company, for its part, requested the court to adjourn the proceedings by reference to the belated delivery of the court summons. In such circumstances the Court considers that the ensuing delay is imputable to the authorities rather than to the applicant. It further notes that while the applicant's claim was registered on 15 September 1998, it took the District Court over six months to fix a hearing for 26 March 1999. On the latter date the hearing was postponed for another month and nineteen days, this delay being imputed to the authorities. Moreover, on five occasions the proceedings were adjourned for an overall period of eight months and seventeen days on account of the

judge's involvement in other proceedings. In this respect the Court recalls that it is the States' duty to organise their judicial systems in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria*, no. 30546/96, § 21, 3 October 2000).

52. The Court next observes that from 26 January 2000 to 9 January 2001 the District Court stayed the proceedings pending the outcome of the expert examination which was requested by the defendant company. Even though the latter then refused to bear the expenses for that examination with the result that the experts declined to carry it out, there is no indication that the court reacted in any way to such behaviour. Instead, on 19 November 2001 the court re-ordered the examination, which protracted the proceedings for over nine months. In such circumstances the Court is not convinced that the domestic court availed itself of the measures available to it under national law, e.g. under Article 74 of the Code of Civil Procedure then in force, to discipline the defendant so as to ensure that the case be heard within reasonable time (see, in a somewhat similar context, *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005).

53. In the light of the criteria laid down in its case-law and having regard to the circumstances of the present case, and in particular to the fact that during the first examination of the applicant's case the proceedings were pending for four years and four months before the first instance court, out of which at least four years directly imputable to the authorities, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

54. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. In her letter of 24 May 2005 the applicant complained under Article 6 of the Convention, taken alone and in conjunction with Article 14, that the domestic courts were biased in favour of the defendant, incorrectly established the facts and based the judgment of 1 February 2005 and decision of 13 April 2005 on inadmissible evidence. She averred that the aforementioned violations of her right to a fair trial occurred because the defendant was a large building company while she was a pensioner, which, in her view, constituted discrimination against her on the ground of her property status.

56. The Court first notes that the applicant has submitted no evidence of an objective or subjective bias on the part of the national courts. It further recalls that it is not called upon to examine alleged errors of fact and law committed by the domestic judicial authorities, provided that there is no indication of unfairness in the proceedings and provided the decisions

reached cannot be considered arbitrary. On the basis of the materials submitted by the applicant, the Court notes that she was able to present her arguments as she wished, and the judicial authorities gave them due consideration. Having regard to the facts, as submitted, the Court has not found any reason to believe that the proceedings did not comply with the fairness requirement of Article 6 of the Convention. Finally, the Court observes that there is no indication that the applicant has ever brought the issue of the alleged discrimination before the domestic authorities, and that, in any event, she has not furnished it with any evidence confirming that she was treated differently from a person in a comparable position.

57. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

58. The applicant also referred to Article 1 of Protocol No. 1 to the Convention in that on account of the defects that had not been eliminated by the defendant, the flat was unfit for habitation, and that the domestic courts had refused to award her the full amount of damages she had claimed, which infringed her right to the peaceful enjoyment of her possessions.

59. The Court recalls that the fact that one of the contracting parties did not perform the agreements and that the domestic judicial authorities provided a forum for the determination of a private dispute concerning those parties' contractual arrangements, in which the applicant was unsuccessful, does not give rise to an interference by the State with property rights under Article 1 of Protocol No. 1 to the Convention, since it is the function of the courts to determine disputes between parties, with the inevitable consequence that one party may ultimately be unsuccessful in the litigation in question (see *Kuchař and Štis v. the Czech Republic* (dec.), no. 37527/97, 21 October 1998). The Court further notes that there is nothing on the facts of the instant case which would enable it to reach a different conclusion.

60. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

61. Lastly, the applicant complained under Article 2 of Protocol No. 4 to the Convention about the infringement of her freedom to choose her residence, alleging that she had no sufficient means to purchase housing in another region of Russia, as the compensation awarded her by the domestic courts had been clearly insufficient.

62. The Court notes that Article 2 of Protocol No. 4 to the Convention cannot be interpreted as obliging the State to provide financial support for an individual to purchase housing of his choosing.

63. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of

Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 70,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

66. The Government contested these claims. They considered that there was no causal link between the alleged violation of the applicant's right to have her claims examined within a reasonable time, and that a token amount would constitute equitable compensation for the non-pecuniary damage suffered by the applicant.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged, it therefore rejects the applicant's claim in so far as it concerns the compensation for pecuniary damage. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 1,500 under that head.

B. Costs and expenses

68. The applicant did not claim reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

69. 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 complaint concerning the length of the proceedings 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*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Registrar	Loukis LOUCAIDES President