



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

FIRST SECTION

CASE OF KIRSANOVA v. RUSSIA

(Application no. 76964/01)

JUDGMENT

STRASBOURG

22 June 2006

FINAL

22/09/2006

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 Kirsanova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

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 1 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 76964/01) 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, Mrs Alla Zakharovna Kirsanova (“the applicant”), on 17 October 2001.

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 16 November 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, Mrs Alla Zakharovna Kirsanova, is a Russian national, who was born in 1955 and lives in the village of Novoselye of the Lomonosovskiy District of the Leningradskiy Region.

1. Background of the case

5. On 28 May 1997 the St-Petersburg City Council (“the City Council”, *Администрация Санкт-Петербурга*) took a decision to grant the applicant’s family the right to reside in a flat situated in the village of Novoselye. It appears that soon after the applicant moved in, she discovered that the flat had been built with constructional defects.

6. On 14 September 1998 the applicant and her family members filed a civil claim against a private company which had built the flat in question in the Lomonosovskiy District Court of the Leningradskiy Region, (“the Lomonosovskiy District Court”, *Ломоносовский районный суд Ленинградской области*). They demanded compensation for pecuniary and non-pecuniary losses allegedly caused by the faulty construction of the applicant’s flat.

7. The application and supporting documents reached the Lomonosovskiy District Court on 16 September 1998.

2. First instance hearings at the Lomonosovskiy District Court of the Leningradskiy Region

8. The date of the first hearing in the case was fixed on 16 February 1999. The applicant submits that the hearing did not take place as the Lomonosovskiy District Court registrar had mailed the summons to the parties only on 15 February 1999 and, as a result, the summons arrived too late. The summons and postal envelopes were submitted to the Court by the applicant. From the postal stamps it follows that the summons were indeed dispatched on 15 February 1999.

9. According to the Government, the hearing of 16 February 1999 did not take place due to the parties’ failure to appear. They further submitted that the parties had not excused their absence and that the hearing had been postponed accordingly.

10. The hearings scheduled for 2 April, 25 June, 15 October, 19 November 1999 and 14 January 2000 did not take place either.

11. The Government submitted that the hearing of 2 April 1999 had not taken place due to the absence of a judge and the hearing of 25 June 1999 had been adjourned because of the non-attendance of the respondents. As regards the hearing of 15 October 1999, the Government submitted that it had been adjourned by reference to decision to change procedural status of the respondents, whilst the hearings of 19 November 1999 and 14 January 2000 had not taken place because of the judge’s involvement in another set of proceedings.

12. According to the applicant, the hearings of 19 January and 8 February 2000 were conducted in the absence of the defendant who failed to appear.

13. According to the Government, these hearings did not take place due to the parties’ failure to appear.

14. On 21 February 2000 the applicant amended her claims to the effect that the City Council became a principal defendant in the case whereas the private company which had built a flat became a third party. The applicant now also demanded the court to annul the City Council decision of 28 May 1997.

15. Since the defendant in the case changed, on 3 March 2000 the case was transferred for examination to the Admiralteyskiy District Oktyabrskiy Federal Court of St-Petersburg (“the Admiralteyskiy District Court”, *Октябрьский федеральный суд Адмиралтейского района Санкт-Петербурга*).

3. First instance hearings at the Admiralteyskiy District Oktyabrskiy Federal Court of St Petersburg

16. The case reached the Admiralteyskiy District Court on 24 March 2000.

17. On 24 May 2000 the applicant amended her claim again; her family now demanded a new flat instead of the old one and more damages.

18. It appears that the applicant simultaneously lodged a number of complaints in connection with her housing problem with various State bodies. On an unspecified date a local Prosecutor’s Office responded to the applicant’s complaint and requested the case-file from the Admiralteyskiy District Court for examination. It appears that between June and October 2000 the hearings in the case could not go on as the case-file was under examination at the local Prosecutor’s Office.

19. The hearing scheduled for 7 December 2000 was adjourned until 5 February 2001 because the new defendant, the City Council, had not been properly notified of the case. On 5 February 2001 the court adjourned the hearing on the motion of the parties as certain documents were lacking. The hearings of 27 February and 23 May 2001 did not take place for the same reason.

20. According to the Government, at the hearing of 5 February 2001 the applicant invited the court to request a number of documents from various organisations. The hearings of 27 February and 23 May 2001 could have taken place if not for the applicant’s request and the failure of the above organisations to respond.

21. On 10 August 2001 the applicant failed to appear due to illness and the hearing was re-scheduled. On 15 November 2001 the applicant once again amended the claim; she increased the amount of damages sought. The hearing was adjourned for the parties to be able to prepare accordingly.

22. Upon the defendants’ motion, on 29 November 2001 the court ordered a technical expert examination of the applicant’s flat. Once the examination was terminated, the proceedings resumed. The hearing of 8 April 2002 was adjourned on the defendant’s motion and the next hearing did not take place until 22 October 2002.

23. On 22 October 2002 the Admiralteyskiy District Court rendered the judgment in which it partly granted the applicant’s claim. The court quashed the decision of 28 May 1997, ordered the City Council to grant the applicant’s family another flat, recovered the applicant’s legal costs and dismissed the remainder of the claims.

24. The parties appealed against the judgment of 22 October 2002 to the St-Petersburg City Court (“the City Court”, *Судебная коллегия по гражданским делам Санкт-Петербургского городского суда*).

4. Appeal proceedings before the St Petersburg City Court

25. On 14 May 2003 the City Court examined the parties’ appeals and overturned the first instance judgment in part, dismissing the applicant’s claims in full.

26. The court noted that the City Council was under no obligation whatsoever to provide a flat to the applicant’s family, let alone a flat of a particular quality. It further found that there was nothing to suggest that the applicant’s family had been unaware of the defects of flat in question from the outset and that they could not have rejected the offer made to them in 1997.

27. Furthermore, the court also suggested that the proper remedy in respect of the applicant’s housing problem was an action for elimination of defects, and not a claim for another flat.

28. Thereafter the applicant challenged the City Court decision of 14 May 2003 by way of supervisory review, but to no avail. Her respective applications were rejected by the City Court and the Supreme Court on 4 July 2003 and on 21 May 2004 accordingly.

5. The applicant’s complaint in respect of the allegedly excessive length of proceedings

29. On several occasions, between 1997 and 2002, the applicant complained about the excessive length of the case to the prosecutors and higher courts, requesting them to speed up the proceedings. It appears that these applications were to no avail.

THE LAW

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

30. 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...”

31. The Government contested that argument and submitted that the proceedings had not breached the reasonable time requirement of Article 6.

32. The applicant maintained her complaints.

33. The period to be taken into consideration began on 16 September 1998 when the applicant filed her court claim and ended on 14 May 2003 with the delivery of the appeal decision in the applicant's case. Therefore, the total length of proceedings was of four years, seven months and twenty-eight days.

A. Admissibility

34. 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

35. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII)

36. The Court observes that the proceedings relating to the housing dispute between the applicant and a number of third persons were of a certain complexity. It furthermore considers that the applicant's conduct, at least to a certain extent, contributed to the length of the proceedings as she amended her claims three times which on one occasion resulted in the transfer of the case to a different court, unintentionally produced an interruption in court hearings between June and October 2000 when the case-file was under examination at the prosecutor's office and once fell ill which resulted in an adjournment of the hearing of 10 August 2001.

37. As regards the conduct of the judicial authorities, the Court notes that it led to substantial delays in the proceedings at first instance. Thus, not only did it take more than six months (between 16 September 1998 and 2 April 1999) for the Lomonosovskiy District Court to schedule hearings of the case but also during the period of three months and four days (between 15 October 1999 and 19 January 2000) the proceedings could not go on due to the judge's involvement in another set of proceedings. In addition, there were no hearings in the applicant's case at all during six months and fourteen days between 8 April 2002 and 22 October 2002 and the Government have failed to submit any explanations in this respect. Finally, the Court notes that the respondents in the case did not attend the hearings at least on three occasions on 25 June 1999, 19 January and 8 February 2000 respectively and did not excuse themselves by reference to a good

reason, whilst the District Court could have reacted to such conduct but failed to do so. Overall, it can be concluded that out of four years, one month and six days during which the case was pending at first instance (from 16 September 1998 to 22 October 2002), the delay in proceedings clearly attributable to the authorities was of one and a half years.

38. Having regard to the foregoing, the Court considers that the length of the proceedings did not satisfy the “reasonable-time” requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

39. The applicant complained also that the domestic legal system had failed to afford her an effective remedy against the excessive length of proceedings. She relied on Article 13 of the Convention, which reads as follows:

“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

40. 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

41. The Government submitted that when the applicant had complained to higher judicial authorities, the authorities urged the District Court to speed up the proceedings.

42. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

43. The Court notes that the Government did not, however, indicate whether and, if so, how the applicant could obtain relief – either preventive or compensatory – by having recourse to the higher judicial and other authorities. It was not suggested that this remedy could have expedited the determination of the applicant’s case or provided her with adequate redress for delays that had already occurred. Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such a relief (see *Kudla*,

cited above, § 159, *Kormacheva v. Russia*, no. 53084/99, §§ 61-62, 29 January 2004 and *Kuzin v. Russia*, no. 22118/02, §§ 42-46, 9 June 2005).

44. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby she could enforce her right to a “hearing within a reasonable time” as guaranteed by Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. Insofar as the applicant is dissatisfied with the unsuccessful outcome of proceedings in her case, the Court observes 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 by the applicant, 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. Furthermore according to the domestic courts, the proper remedy in respect of the applicant’s problem was an action for elimination of defects, and not a claim for another flat. It does not appear that the applicant has availed herself of this remedy or having done so was unsuccessful.

46. Accordingly, this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 137,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

49. The Government considered these claims excessive.

50. The Court does not discern any causal link between the violation found and the extensive amount of pecuniary damage alleged; it therefore

rejects this aspect of the claim. However, on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant did not claim reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

52. 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 excessive length of the proceedings and the lack of 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 in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable on 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President