CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF AVAKOVA v. RUSSIA

(Application no. 30395/04)

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 Avakova v. Russia,

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

Mr C.L. ROZAKIS, *President,*
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
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. 30395/04) 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 Tamara Tigranovna Avakova ("the applicant"), on 31 July 2004.

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 4 March 2005 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 1937 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. On 21 November 1994 the applicant signed a contract for the purchase of a flat with the SZS.

7. On 8 December 1995 the applicant paid the stipulated price in full.

8. 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.

9. On 5 May 1999, according to the applicant, or on 19 October 1999, according to the Government, 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 she had paid.

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

11. 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 the commercial courts.

12. On 29 June 2000 the St. Petersburg City Court accepted the appeals by the SZS, the applicant and the 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.

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

14. 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.

15. The applicant, among others, appealed against the judgment of 28 September 2001.

16. 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.

17. 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.

18. On an unspecified date the Kuybyshevskiy District Court invited a private company ZAO "Unikom" (*закрытое акционерное общество*

«Уником», hereinafter – "Unikom") to enter as a co-defendant to the proceedings.

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

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

21. 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.

22. 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.

23. 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.

24. 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 a court of general jurisdiction.

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

26. On 23 December 2003 the court fixed a new hearing date for 2 March 2004.

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

28. On 27 May 2005 the Kuybyshevskiy District Court ordered that the "Unikom" company should pay the applicant USD 26,985.50 and dismissed the remainder of her claims.

29. On 10 August 2005 the St. Petersburg City Court upheld the judgment of 27 May 2005 on appeal.

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 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 claimed that the proceedings had been very complex because many companies and individuals had been involved. There had been valid reasons for the adjournment of the proceedings: judges' sick leaves, courts' orders for obtaining additional evidence, the parties' failure to attend, etc. The length of the proceedings was accounted for by the courts' aspiration to examine the case thoroughly.

32. The Court notes that the parties disagreed on the date when the applicant became a party to the proceedings before the Kuybyshevskiy District Court. The Court observes that the applicant did not provide a copy of her statement of claim or any other document confirming her assertion that she had entered the proceedings on 5 May 1999. On the other hand, the Government produced a detailed chronology of the proceedings, from which it appears that the applicant entered the proceedings on 19 October 1999. The Court considers that the period to be taken into consideration began on that date and ended on 10 August 2005 with the final judgment of the St. Petersburg City Court. It thus lasted for five years and almost ten months.

A. Admissibility

33. 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

34. 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).

35. The Court has found a violation of Article 6 § 1 of the Convention in a case, which concerned the same proceedings finding as follows:

> "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... 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." (see *Baburin v. Russia*, no. 55520/00, § 42, 24 March 2005)

36. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

37. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. In her observations of 20 September 2005 the applicant finally complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the above court proceedings had been unfair as the courts had misinterpreted domestic law and that the judgment of 27 May 2005, in all probabilities, could not be enforced due to the "Unikom" company's financial situation. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they 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

39. 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

40. The applicant claimed 41,000 US dollars (USD) in respect of compensation for pecuniary damage and 50,000 euros (EUR) for non-pecuniary damage.

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

42. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. 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 3,000 under that head, plus any tax that may be chargeable.

B. Costs and expenses

43. Relying on documentary evidence, the applicant also claimed 47,525 Russian roubles for the costs and expenses incurred in the domestic and Strasbourg proceedings.

44. The Government contested the claim.

45. 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 under this head, plus any tax that may be chargeable.

C. Default interest

46. 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 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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of the settlement:
      (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 200 (two hundred euros) in respect of costs and expenses;
      (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;

4. *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