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

FIRST SECTION

CASE OF MOKRUSHINA v. RUSSIA

(Application no. 23377/02)

JUDGMENT

STRASBOURG

5 October 2006

FINAL

12/02/2007

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 Mokrushina 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,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges,*
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 23377/02) 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 Valentina Sergeyevna Mokrushina (“the applicant”), on 1 October 2001.

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

3. On 4 April 2005 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.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and lives in Moscow.

A. Proceedings for annulment of the contract

5. On 22 November 1994 the applicant and her husband bought a flat. In addition, they agreed to lend a certain sum to the seller. After the applicant

had paid for the flat, the seller refused to transfer the title and move out. The applicant and her husband sued her for eviction. The seller counterclaimed and requested a court to annul the contract and to order *restitutio in integrum*.

6. On 4 June 1997 the Moscow City Court, in the final instance, found for the seller.

B. Proceedings concerning compensation for damage and repayment of the loan

7. In June 1999 the applicant sued the seller for return of the purchase price, repayment of the loan and interest on the amounts outstanding.

8. On 5 March 2001 the Timiryazevskiy District Court partly accepted the action.

9. The applicant's representative, Mr Martyanov, appealed to the Moscow City Court. He complained that the judgment was unfair and that the District Court had not given the applicant's arguments due consideration.

10. The Moscow City Court listed an appeal hearing for 2 August 2001 and sent summonses to the applicant and her representative by post. The representative received the summons on 23 July 2001. The summons was not delivered to the applicant.

11. The appeal hearing of 2 August 2001 was adjourned until 20 August 2001 because the parties defaulted. According to the Government, summonses for the hearing listed for 20 August 2001 were mailed to the parties on 13 August 2001. According to the postmark on the envelope, the summons were dispatched on 17 August 2001 and received at the applicant's local post office on 11 September 2001.

12. On 20 August 2001 the Moscow City Court adjourned the hearing until 4 September 2001 because the parties did not attend. According to the Government, the Moscow City Court sent summonses to the parties by post on 21 August 2001.

13. On 4 September 2001 the Moscow City Court examined the appeal and rejected it. Neither party was present.

14. On 4 October 2001 the applicant received a summons for the hearing that had taken place on 4 September 2001. According to the postmark on the envelope, the summons was dispatched on 24 August 2001 and received at the applicant's local post office on 4 October 2001.

15. It appears that the judgment of 5 March 2001, as upheld on appeal on 4 September 2001, has remained unenforced because the seller left Moscow and her current place of residence is unknown.

THE LAW

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

16. The applicant complained that the examination of the appeal without giving her an effective opportunity to attend, had violated her right to a fair hearing under Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

17. 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

18. The Government claimed that the applicant had been notified of the appeal hearings in good time. In any event, the applicant's presence was not necessary as the appeal court could decide on the basis of the case-file and the applicant's written submissions.

19. The applicant averred that the Moscow City Court had failed in its duty to inform her of the appeal hearings and the Government did not present any evidence to the contrary.

20. The Court is not satisfied with the accuracy of the Government's factual submissions which have not been corroborated with any evidence, such as summonses, acknowledgments of receipt, envelopes bearing postmarks, etc. (see, by contrast, *Belan v. Russia* (dec.), no. 56786/00, 2 September 2004; and *Bogonos v. Russia* (dec.), no. 68798/01, 5 February 2004).

21. The Court observes that the Moscow City Court fixed three appeal hearings: on 2 and 20 August and 4 September 2001. The hearings of 2 and 20 August 2000 were adjourned because the parties defaulted. As it appears from the list of the procedural events enclosed with the Government's memorandum, the only acknowledgment of receipt which had returned to the Moscow City Court indicated that the summons for the hearing of 2 August 2001 had not been delivered to the applicant. The summons for the hearing of 20 August 2001 reached the applicant on 11 September 2001 (according to the postmark). The Government also claimed that the summons for the hearing of 4 September 2001 had been dispatched on

21 August 2001. However, the postmark on the envelope showed that it had been mailed on 24 August 2001 and reached the applicant on 4 October 2001. In these circumstances, the Court is not persuaded that the Moscow City Court had notified the applicant of the appeal hearings in such a way as to provide her with an opportunity to attend them.

22. 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 *Yakovlev v. Russia*, no. 72701/01, § 19 et seq., 15 March 2005; and *Groshev v. Russia*, no. 69889/01, § 27 et seq., 20 October 2005).

23. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court has established that owing to belated notification the applicant has been deprived of an opportunity to attend the appeal hearings. The Court also notes that there is nothing in the appeal judgment to suggest that the appeal court examined the question whether the applicant had been duly summoned and, if she had not, whether the examination of the appeal should have been adjourned.

24. It follows that there was a violation of the applicant's right to a fair hearing enshrined in Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. Lastly, the applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 that the proceedings in 1997 and 2001 were excessively long, that the judicial formation included lay assessors, that the courts were not independent, that they misdirected themselves in law and that the judgment of 5 March 2001 remained unenforced. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence *ratione temporis*, 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

26. 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

27. The applicant claimed 38,400,000 Russian roubles (RUR), 53,000 US dollars (USD) and 30,000 euros (EUR) in respect of pecuniary damage, representing the value of the flat, her loan to the seller, and interest thereon. The applicant also claimed compensation in respect of non-pecuniary damage, leaving determination of the award to the discretion of the Court.

28. The Government submitted that the applicant's claims were excessive, unsubstantial and unreasonable.

29. 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 suffered frustration and a feeling of injustice as a consequence of the domestic authorities' failure to apprise her of the appeal hearing in good time. The Court finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. Accordingly, making its assessment on an equitable basis, it awards the applicant EUR 1,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter which the Court has to examine on its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

31. 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 domestic authorities' failure to apprise the applicant of the appeal hearings in good time 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 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the 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 5 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President