



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

FIRST SECTION

CASE OF KURBATOV v. RUSSIA

(Application no. 44436/06)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

02/01/2009

This judgment may be subject to editorial revision.

In the case of Kurbatov v. Russia,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 44436/06) 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 Mikhail Anatolyevich Kurbatov (“the applicant”), on 1 October 2006.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 18 January 2007 the President of the First Section decided to communicate the complaint concerning the length of the proceedings to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1974 and lives in Moscow.

5. The applicant occupied a flat under a tenancy agreement.

6. On 9 December 1992 the Lyublinskiy District Court of Moscow convicted the applicant and sentenced him to a term of imprisonment.

7. The applicant served his sentence from 28 May 1992 to 25 May 2001.

8. As soon as he was released from prison the applicant returned to his flat to discover that on 12 October 1992, during the pre-trial investigation of

his criminal case and his detention, A., acting on the applicant's behalf in accordance with an allegedly false power of attorney, privatised the above flat and on 18 November 1992 sold it to I.

9. On 17 December 2001 the applicant brought proceedings against A., I., the Moscow City Justice Department, the Municipal Housing Department of Moscow, and the State-owned maintenance company (*Государственное унитарное предприятие Дирекция единого заказчика района "Печатники" г. Москвы* – "the maintenance company") seeking to challenge the power of attorney, the privatisation agreement and the sale contract, and to recover the flat. A. was subsequently excluded from the defendants as he had died on 12 August 1994.

10. Eight hearings fixed between 21 February 2002 and 21 November 2002 were adjourned, mostly due to the necessity to obtain the applicant's criminal file and to make inquiries with the maintenance company, the Municipal Housing Department of Moscow, the Savings Bank, the Bureau of Technical Inventory and the Moscow City Notary Chamber (*Московская городская нотариальная палата*). Some of the hearings were adjourned because the defendants failed to appear.

11. On 17 December 2002 the proceedings were suspended in order to conduct a handwriting examination at the applicant's request. The documents were submitted to the expert body on 13 March 2003.

12. The examination started on 13 April 2003 after the applicant made an advance payment and was terminated by 16 May 2003.

13. On 11 June 2003 the results of the expert examination were submitted to the District Court, and on 16 June the proceedings were resumed.

14. On 24 June 2003 the Lyublinskiy District Court of Moscow dismissed the applicant's claims. The final text of the judgment was prepared and sent to the applicant in August 2003, following which the applicant lodged an appeal against it.

15. On 2 October 2003 the Moscow City Court quashed the judgment and remitted the case for a fresh examination.

16. Of seven hearings fixed between 3 February 2004 and 24 August 2004 one was adjourned because the parties failed to appear; two because the applicant could not attend; and three hearings were adjourned on the initiative of the District Court due to the necessity to obtain, once more, the applicant's criminal file and to make inquiries with the maintenance company, the notary who certified the disputed documents, the Moscow City Notary Chamber and the Municipal Housing Department of the South-East Administrative Circuit of Moscow; and one hearing was adjourned because the judge was involved in a different set of proceedings.

17. On 17 September 2004 the Lyublinskiy District Court suspended the proceedings following the defendants' request to conduct another

handwriting examination. However, following an appeal by the applicant, on 26 November 2004 the Moscow City Court cancelled the suspension.

18. The seven hearings fixed between 31 January 2005 and 4 July 2005 were all adjourned on the initiative of the District Court due to the necessity to obtain, for the third time, the applicant's criminal file, to make further inquiries with the Federal Forensic Examinations Centre (*Российский федеральный центр судебной экспертизы при Министерстве юстиции Российской Федерации*), the maintenance company and the Moscow City Notary Chamber, and subsequently due to the failure of the above bodies to supply the court with the replies to the above requests.

19. On 25 July 2005 the Lyublinskiy District Court again dismissed the applicant's claims. The final text of the judgment was prepared in October 2005, following which the applicant lodged his appeal.

20. Being initially fixed for 19 January 2006, the appeal hearing was adjourned until 4 April 2006, because the court had failed to inform the defendants in due time of the contents of the applicant's appeal. On 4 April 2006 the Moscow City Court upheld the judgment on appeal.

THE LAW

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

21. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down 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 ..."

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

A. Admissibility

23. The Court reiterates that the proceedings commenced on 17 December 2001, when the applicant submitted his statement of claim to the Lyublinskiy District Court of Moscow and ended on 4 April 2006 with the final judgment of the Moscow City Court. The proceedings thus lasted for approximately four years and three months. During this period the case was determined by courts at two levels.

24. 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

1. Submissions by the parties

25. The Government submitted that the proceedings in the applicant's case were complex for the following reasons. First of all, a significant number of persons and authorities were involved in the proceedings, including A., I., the Moscow City Justice Department, the Municipal Housing Department of Moscow and the maintenance company. Secondly, the examination of the case required verification of the genuineness of the applicant's signature on the disputed power of attorney. In particular, on 17 December 2002 the proceedings were suspended due to a handwriting examination following the applicant's request. The examination started as soon as the applicant made an advance payment on 13 April 2003 and was completed by 11 June 2003. Thirdly, the domestic courts took active measures to obtain the information necessary for the establishment of all the circumstances of the case. The Government further submitted that the applicant contributed to the length of the proceedings by lodging appeals against the decisions of the District Court, and that by contrast there were no substantial periods of inactivity attributable to the domestic authorities.

26. The applicant drew the Court's attention to the following periods when the domestic courts remained inactive. Firstly, after the commencement of the handwriting examination on 17 December 2002 it took the domestic court three months to send the case to an expert body. The advance payment was made by the applicant as soon as he was informed about this requirement. Secondly, it took the domestic court almost three months to prepare the final text of the judgment of 24 June 2003 which prevented the applicant from lodging his appeal earlier. Further, after the quashing of the judgment of 24 June 2003 on appeal on 2 October 2003 it took the domestic court four months (until 3 February 2004) to fix the new hearing of the case. Thirdly, the final text of the subsequent judgment of 25 July 2005 was prepared only in October 2005, and the applicant could not lodge his appeal until then. Further, the appeal hearing against the judgment of 25 July 2005 initially scheduled for 19 January 2006 did not take place until 4 April 2006 due to the failure on the part of the domestic court to inform the defendants of the contents of his appeal. Therefore, over eight months elapsed before the appeal hearing did take place. Finally, in reply to the Government's argument about the fact that the applicant appealed against the decisions of the District Court and thus contributed to the prolongation of the proceedings, the applicant submitted

that he was free to exercise his procedural rights. Besides, as a result of his appeal the judgment of 24 June 2003 was found unlawful.

2. The Court's assessment

27. 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).

28. The Court observes that the proceedings at issue were of some complexity, given that the domestic court was confronted with facts dating back to the beginning of the nineties, and that they required expert examinations. However, 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.

29. The Court observes that the applicant's conduct did not noticeably contribute to the length of the proceedings. In particular, the applicant's belated advance payment for the expert examination appointed on 17 December 2002 amounted to a one-month delay, since the case was transmitted to the expert body only on 13 March 2003. As to the Government's argument that the applicant contributed to the delay in the proceedings by appealing against the judgments of the District Court, the Court reiterates that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see *Angelova v. Russia*, no. 33820/04, § 44, 13 December 2007).

30. Turning to the conduct of the domestic authorities, the Court notes that it led to some substantial delays in the proceedings. The Court observes that between 21 February 2002 and 21 November 2002, 3 February 2004 and 24 August 2004, 31 January 2005 and 4 July 2005 the hearings were repeatedly adjourned, mostly due to the necessity to make inquiries with various State bodies. The Court notes, however, that on many occasions the inquiries were made with the same bodies (some of them having defendant status in the proceedings) on the same subject, both when the case was examined by the District Court for the first time and for the second time after its quashing on appeal by the City Court. The Court also notes that the State bodies in question were not particularly diligent in supplying the domestic court with the requested information, and the domestic court did not avail itself of the measures available to it under national law to discipline the participants to the proceedings and to ensure that the case was heard within a reasonable time (see *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005).

31. The Court further observes several other delays attributable to the domestic authorities. In particular, it took the domestic court three months

to transfer the case to the expert body when the court ordered the handwriting examination on 17 December 2002 and ordered the suspension of the proceedings. Further, it took the domestic court three months to prepare the final text of the judgment of 24 June 2003 and another three months to prepare the final text of the subsequent judgment of 25 July 2005, the first judgment being two pages long and the second four pages long. After the quashing of the judgment of 24 June 2003 on appeal on 2 October 2003 it took the domestic court four months (until 3 February 2004) to fix the new hearing of the case. Besides, a four-month delay occurred from 17 September 2004, when the domestic court again suspended the proceedings until 26 November 2004 when following the applicant's request the above decision was found unlawful. Finally, six months elapsed from October 2005 when the applicant appealed against the judgment of 25 July 2005 until the examination of the case on appeal on 4 April 2006. The delay of all of the above amounted to almost three and a half years.

32. Having examined all the material submitted to it and taking into account what was at stake for the applicant, 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

33. The applicant further complained under Article 6 § 1 of the Convention that the domestic court had failed to investigate the circumstances of the issuing of the power of attorney. He further alleged that the domestic court had violated the principle of procedural parity because the burden of proof had been shifted to him.

34. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, 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 should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government considered this claim excessive.

38. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

39. The applicant also claimed EUR 1,795 for the costs and expenses incurred before the domestic courts and the Court.

40. The Government considered this claim excessive and unreasonable. In any event, they considered that only EUR 425 should be paid to the applicant since the remaining expenses related to the proceedings before the domestic courts.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the applicant's claim in so far as it relates to the costs incurred in the domestic proceedings because there is no causal link between the violation found and those expenses. As regards the Strasbourg proceedings, the Court considers it reasonable to award the sum of EUR 425 for the proceedings before the Court.

C. Default interest

42. 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 settlement:

(i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;

(ii) EUR 425 (four hundred and twenty-five euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

(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 2 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President