



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

FIRST SECTION

CASE OF KUPRINY v. RUSSIA

(Application no. 24827/06)

JUDGMENT

STRASBOURG

25 February 2010

FINAL

25/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kupriny v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 24827/06) 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 four Russian nationals, Mr Viktor Ivanovich Kuprin (“the first applicant”), Mrs Natalya Pavlovna Kuprina (“the second applicant”), Mr Dmitriy Viktorovich Kuprin (“the third applicant”) and Ms Darya Viktorovna Kuprina (“the fourth applicant”), on 5 June 2006.

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

3. On 26 March 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The first and the second applicants are spouses. They were both born in 1952. The third and the fourth applicants are their children. They were born in 1979 and 1983 respectively. The applicants live in the Tula region.

5. Since 1994 the applicants occupied a flat provided by the first applicant's employer (“the company”). In 1996 the first applicant was

dismissed. In 1997 the local administration provided the applicants with another flat. The second applicant moved there with the children and the first applicant continued to live in the first flat.

A. First examination of the case

6. On 29 October 1997 the company brought a court action for eviction of the applicants from the flat provided to them in 1994 before the Suворovskiy District Court of the Tula Region (“the District Court”).

7. On 6 March 1998 the applicants filed a counterclaim against the company for the provision of another flat and compensation for non-pecuniary damage. The case was assigned to Judge K.

8. Between May 1998 and March 1999 the District Court scheduled eight hearings. However, the hearings of 4 September, 15 October and 18 December 1998 did not take place because the applicants did not attend them. Four hearings were adjourned because the parties amended their claims. On one occasion the proceedings were postponed because the judge was on sick leave.

9. On 12 March 1999 the District Court granted the applicants' objection to Judge K. and reassigned the case to Judge B. The latter contested that decision before the Tula Regional Court (“the Regional Court”). On 11 November 1999 the Regional Court dismissed his complaint and referred the case to the District Court for examination on the merits.

10. On 31 March 2000 the company withdrew its claim for eviction of the applicants and the District Court discontinued the proceedings in that part.

11. On 3 April 2000 the District Court decided to examine the applicants' counter claims against the company in separate proceedings, adjourned the case on the applicants' request and scheduled the next hearing for 4 August 2000. The Government submitted that it had not been possible to schedule the hearing for an earlier date since the judge had been busy in unrelated proceedings.

12. The hearing of 4 August 2000 was adjourned on the parties' request and those of 8 September, 30 October and 27 November 2000 did not take place because the parties did not attend them.

13. On 10 April 2001 the Regional Court quashed the decision of 31 March 2000 to discontinue the proceedings in the part concerning the eviction of the applicants and remitted the matter for re-examination to the District Court.

14. In August 2001 the apartment building in which the disputed flat was situated burnt down.

15. On 24 August 2001 the case was adjourned because the parties to the proceedings did not appear.

16. On 26 September 2001, after a fresh examination, the District Court discontinued the eviction proceedings.

17. On 12 November 2001 the District Court dismissed the applicants' claims for the provision of housing and compensation for non-pecuniary damage. On 12 March 2002 it referred the case to the Regional Court for examination on appeal. The Regional Court set the examination of the case for 26 March 2002. However, on that date it had to refer the case back to the District Court in order to decide on the reinstatement of the time-limit for the applicants to lodge an appeal against the decision of 3 April 2000.

18. On 5 June 2002 the District Court dismissed the applicants' request for reinstatement of the time-limit for lodging an appeal against the decision of 3 April 2000.

19. On 19 September 2002 the Regional Court upheld the decision of 26 September 2001 to discontinue the proceedings in part relating to eviction and that of 5 June 2002.

20. On the same date the Regional Court quashed the judgment of 12 November 2001 on the ground that the District Court had failed to establish all relevant facts of the case and remitted the case for re-examination to the District Court.

B. Second examination of the case

21. On 18 October 2002 the case was remitted to the District Court and was assigned to Judge Ka.

22. In March 2003 the applicants applied to the Regional Court for supervisory review of the decisions of 3 April 2000, 26 September 2001 and 5 June 2002.

23. The hearing of 29 May 2003 did not take place because the applicants did not attend it.

24. On 9 June 2003 the case was referred to the Regional Court in order to decide on the applicants' request for supervisory review of the decisions of 3 April 2000, 26 September 2001 and 5 June 2002. By a decision of 30 September 2003 the Regional Court refused to refer those decisions for examination on the merits to the supervisory review court and on 9 October 2003 it sent the case back to the District Court.

25. The District Court scheduled the next hearing for 3 December 2003. However, on that date the case was adjourned on the applicants' request in order to have additional time to prepare for the hearing.

26. The hearings scheduled between January 2004 and September 2005 were adjourned for various reasons. In particular, on 20 January 2005 the case was adjourned until 9 March 2005 because the applicants did not appear and that of 15 April 2005 was adjourned because the applicants requested additional time to amend their claims. Four hearings were

adjourned on the requests by the parties to the proceedings. The hearings of 12 September 2005 did not take place because the parties did not appear.

27. On 28 September 2005 the District Court dismissed the applicants' claims for provision of housing and compensation for non-pecuniary damage as lodged against an improper defendant and held that it was open to the applicants to bring their claims against a proper defendant.

28. On 15 December 2005 the Regional Court upheld that judgment.

C. The applicants' complaints about the length of the proceedings

29. The applicants complained about the length of the proceedings to different domestic authorities.

30. On 6 September 2001 the Judiciary Qualification Board of the Tula Region replied to the applicants that the examination of the case had been delayed because they or their representative had failed to appear at the hearings, because the judge had been on sick leave and also because the court had summonsed additional witnesses.

31. On 3 December 2004 the President of the District Court replied to the applicants that the case had been adjourned several times due to their failure to appear or because they needed additional time to prepare for the hearings.

32. On 19 January 2005 the Judiciary Department of the Supreme Court of the Russian Federation replied to the applicants that their case had been scheduled for examination several times. However, the hearings had been adjourned either because the applicants needed more time to prepare for the hearings or because they had not attended them.

33. On 5 June 2005 the applicants requested the Regional Court to take disciplinary measures in respect of Judge Ka. for the lengthy examination of their case. On 9 August 2005 the Regional Court replied that the verification which had been carried out on the applicants' complaints established that the District Court had failed to comply with the procedural time-limits in examination of their case. However, the Regional Court noted that Judge Ka. had taken measures to examine the applicants' case on the merits. In particular, she had scheduled hearings, summonsed the parties to the hearings and had collected additional evidence for the case. Having regard to the above, the Regional Court considered that there had been no grounds to take disciplinary measures in respect of Judge Ka.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicants complained under Article 6 of the Convention that the length of the civil proceedings had been excessive. Article 6 of the Convention, in so far as relevant, provides as follows:

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

A. Admissibility

35. The Court observes that on 29 October 1997 the company brought a court action for eviction of the applicants from the flat provided to them in 1994 and on 6 March 1998 the applicants lodged a counterclaim against the company for provision of another flat and compensation for non-pecuniary damage. By a final decision of 19 September 2002 the domestic courts discontinued the proceedings relating to the eviction of the applicants. The applicant lodged their application to the Court on 5 June 2006. Therefore, in so far as the applicants may be understood to complain about the length of the proceedings concerning their eviction, they lodged this complaint more than six months after the final decision in those proceedings was taken. Therefore, this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

36. The Court further notes that the applicants' complaint about the length of the proceedings instituted by them against the company for provision of housing and compensation for non-pecuniary damage 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. *Period to be considered*

37. The proceedings commenced on 6 March 1998, when the applicants lodged their claim against the company with the District Court. However, the Court only has competence *ratione temporis* to examine the period after 5 May 1998, when the Convention entered into force in respect of Russia. In assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the proceedings at the time. In the present case the proceedings were pending until 15 December 2005, when the Regional

Court delivered a final decision in the case. Taking into account the above, the period to be considered is approximately seven years and seven months. During that period the case was examined two times at two levels of jurisdiction.

2. Reasonableness of the length of proceedings

38. The Government submitted that the length of the proceedings in the present case had been reasonable. The case had been particularly complex. The domestic courts had examined the case in several rounds of proceedings. The applicants had delayed the proceedings by amending their claims, lodging motions and appeals. The proceedings had been adjourned several times because either the applicants or their representatives had not attended the hearings. The domestic authorities had taken all measures to examine the case within a reasonable time.

39. The applicants maintained their claims.

40. 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). In addition, only delays attributable to the State may justify a finding of a failure to comply with the “reasonable time” requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

41. The Court agrees with the Government that the proceedings at issue were of a certain complexity. However, it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings.

42. As to the applicants' conduct, the Court does not accept the Government's argument that the applicants should be held responsible for amending their claims and lodging motions and appeals. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by the national law in the defence of his interests (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, Series A no. 319-A, § 66). On the other hand, it was not disputed that at least five hearings did not take place because the applicants did not attend them (see paragraphs 8, 23 and 26 above) and five more hearings were adjourned because the applicants and the defendants did not appear (see paragraphs 12, 15 and 26 above). In this respect the Court reiterates that the applicants are required to show diligence in carrying out the procedural steps relating to them in the domestic proceedings, to refrain from using delaying tactics and to avail themselves of the scope afforded by domestic law for shortening the proceedings (see, for instance *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, § 35, Series A no. 157, and *Humen v.*

Poland [GC], no. 26614/95, § 66, 15 October 1999). In the present case the applicants failed to appear at several hearings without providing any justification for their absences. Therefore, the resulting delays are attributable to the applicants.

43. Regarding the conduct of the judicial authorities, the Court notes the Government's argument that during the period under consideration the domestic authorities examined the case in two rounds of proceedings. The Court observes in this respect that the need for the second round of the proceedings was attributable to the District Court's failure to properly establish important circumstances of the case. In any event the fact that the domestic courts heard the case several times did not absolve them from complying with the reasonable time requirement of Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

44. Furthermore, the Court does not agree with the Government that the domestic courts conducted the proceedings properly. The Court observes that on 12 March 1999 the District Court allowed the applicants' objection to Judge K. and reassigned the case to Judge B. The latter contested that decision before the Regional Court. It was not until November 1999 that the Regional Court dismissed his request and referred the case to the District Court for examination on the merits. As a result the proceedings were delayed by seven months. The proceedings were delayed by another four months when on 3 April 2000 they were adjourned until 4 August 2000. According to the Government, it had not been possible to schedule the hearing for an earlier date because the judge was busy in unrelated proceedings. Furthermore, another delay of four months occurred during the transfer of the case from the District Court to the Regional Court for examination on appeal in the first round of proceedings. The Court reiterates that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision within a reasonable time (see, for instance, *Löffler v. Austria*, no. 30546/96, § 21, 3 October 2000). The manner in which a State provides for mechanisms to comply with this requirement – whether by increasing the numbers of judges, or by automatic time-limits and directions, or by some other method – is for the State to decide. If a State lets proceedings continue beyond the “reasonable time” prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003). The Court finds that in the present case the authorities did not take due measures to speed up the proceedings. The Court therefore considers that the domestic courts were responsible for the most significant delays in the proceedings.

45. In the light of the criteria laid down in its case-law, and having regard to all the circumstances of the case, 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 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicants complained under Article 13 of the Convention that they had not had an effective remedy against the length of the proceedings. Article 13 of the Convention provides 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

47. 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

48. The Government submitted that the applicants had had at their disposal domestic remedies to complain about the length of the proceedings. They had applied to the Judiciary Qualification Board of the Tula Region and to the Supreme Court of the Russian Federation.

49. The applicants maintained their complaint.

50. The Court reiterates that Article 13 of the Convention 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 *Kudła v. Poland*, no. 30210/96, § 156, ECHR 2000-XI). Furthermore, an effective remedy required by Article 13 is intended to be capable of either expediting the proceedings or providing the applicant with adequate redress for delays that have already occurred (see *Kudła*, cited above, §§ 157-159).

51. The Court finds that even if the verifications carried out by the Judiciary Qualification Board and the Supreme Court of the Russian Federation (see paragraphs 30 and 32 above) may be considered as having expedited proceedings in the applicants' case, they did not provide the applicants with adequate redress for delays that had already occurred. The Court notes that the Government did not indicate any other remedy that could have expedited the determination of the applicants' case or provided them with adequate redress for delays that had already occurred (see *Klyakhin v. Russia*, no. 46082/99, §§ 101-102, 30 November 2004, and *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007).

52. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention in that the applicants had no domestic remedy under domestic law whereby they could enforce their right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

1. *Pecuniary damage*

54. Each of the applicants claimed 1,200,000 Russian roubles (RUB) for the loss of the flat and loss of their right to acquire that flat by way of privatisation; RUB 63,000 in respect of the salary which they could have received if they had not spent their time in courts and RUB 42,000 for their belongings which had burnt in the flat.

55. The Government contested those claims.

56. The Court does not discern any causal link between the violation found and the pecuniary damage alleged for the loss of the flat and loss of right to acquire it by way of privatisation, as well as the loss of the applicants' belongings in the fire. Regarding the applicants' claim for the loss of salary, the Court notes that the applicants have not provided the Court with any document confirming their salary rates on which they had based their calculations. Having regard to the above, the Court rejects the totality of the applicants' claims for pecuniary damage.

2. *Non-pecuniary damage*

57. The first applicant claimed RUB 800,000 in respect of non-pecuniary damage, the second and the third applicants claimed RUB 600,000 for each of them and the fourth applicant claimed RUB 500,000.

58. The Government contested those claims.

59. The Court considers that the applicants must have sustained non-pecuniary damage as a result of the unreasonably long examination of their claims by domestic courts and absence of an effective domestic remedy in this respect. However, the amounts claimed appear to be excessive. Ruling

on an equitable basis, the Court awards the applicants jointly 2,800 euros under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

60. The applicants claimed RUB 54,650 for the costs and expenses incurred before the domestic courts and before the Court. They did not submit any receipts in respect of those claims.

61. The Government contested those claims.

62. 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 were reasonable as to quantum. The Court observes that the applicants had not provided any receipts in respect of their claims. Therefore, their claims under that head should be rejected.

C. Default interest

63. 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 applicants' complaint about the length of the civil proceedings which ended on 15 December 2005 as well as the complaint under Article 13 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention in respect of the unreasonable length of the civil proceedings which ended on 15 December 2005;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of absence of an effective remedy against the unreasonable length of civil proceedings;
4. *Holds*
 - (a) that the respondent State is to pay to the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,800 (two thousand eight hundred euros), plus any tax that may be chargeable on

that amount, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 25 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President