

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

THIRD SECTION

CASE OF KRAVCHENKO v. RUSSIA

(Application no. 23137/04)

JUDGMENT

STRASBOURG

13 June 2017

This judgment is final but it may be subject to editorial revision.



In the case of Kravchenko v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 23 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 23137/04) 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 Galina Pavlovna Kravchenko ("the applicant"), on 30 April 2004.

2. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 10 September 2008 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in Taganrog.

5. In 1978 the applicant and her sister inherited a house.

6. In 2001 the applicant had a civil dispute with her sister regarding division of the house. On 17 January 2001 the Taganrog Town Court determined that the sisters had equal shares in respect of the inherited property.

7. On 29 May 2002 the Taganrog Town Court factually determined the equal shares of the house, as well as the way of its sharing. On 31 July 2002 the Rostov Regional Court upheld this judgment.

8. On an unspecified date the applicant's sister lodged a separate claim, requesting the court to acknowledge her property right to the corridor and

the kitchen in the house, referring to the fact that she had invested in their reconstruction in 1989 and built some attachments to the house.

9. On 17 October 2003 the Taganrog Town Court held that the attachments to the house belonged to the applicant's sister because she had built them after the inheritance. The court increased the share of the applicant's sister in the property up to 64/100 and reduced the applicant's part to 36/100. On 26 November 2003 the Rostov Regional Court upheld this judgment.

10. On 22 October 2004 the Taganrog Town Court on request of the applicant's sister held that the judgment of 17 October 2003 established "new circumstances", i.e. that the attachments in the house had been built by the applicant's sister. Thus the court quashed the judgment of 29 May 2002 and re-opened the case on account of the "newly-discovered circumstances which were not and could not have been known at the moment of delivering the judgment of 29 May 2002".

11. The proceedings resumed, but on 8 February 2005 the applicant withdrew her claim and the proceedings were terminated.

12. In March 2005 the applicant's sister again filed an action seeking to divide their property in kind.

13. On 10 October 2006 the Taganrog Town Court granted her claims. The house was divided in two parts and the parties were ordered to pay dividing costs. The court rendered the judgment in the absence of the applicant and her representative on the ground that she failed to appear without any reasons despite her having been duly summoned to the hearing. The court noted that the applicant had attended several hearings and had already presented her arguments on the merits. It also mentioned that the applicant had begun to avoid the court hearings in order to delay the trial. The applicant appealed, claiming, *inter alia*, that the trial court had rendered the judgment in her absence though she had been ill.

14. On 6 December 2006 the Rostov Regional Court upheld the judgment on appeal. As to the applicant's absence, the court found that the applicant had been properly notified about the hearing in question but had failed to inform the trial court that she had been ill and never requested to suspend the proceedings.

II. RELEVANT DOMESTIC LAW

15. The Code of Civil Procedure ("CCivP"), as in force at the material time, provided as follows:

Article 392. Grounds for re-consideration of final judgments

"[Judgments] which have come into force may be re-considered on the basis of newly-discovered circumstances. The grounds for re-consideration ... shall be:

1. significant circumstances which were not and could not have been known to the party who applies for re-consideration."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

16. The applicant complained about a violation of the principle of legal certainty on account of the quashing on the grounds of newly discovered circumstances of binding and enforceable judgment in her favour. She invoked Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. The relevant parts of the aforementioned provisions read:

Article 6 § 1

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law ..."

A. Admissibility

17. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

18. The Court observes that it has already found numerous violations of the Convention on account of the quashing of binding and enforceable judgments on the grounds of newly discovered circumstances under the Code of Civil Procedure, as in force at the material time (see *Pravednaya v. Russia*, no. 69529/01, §§ 27-42, 18 November 2004; *Botskalev and Rostovtseva and 42 other "Privileged pensioners" cases v. Russia*, nos. 22666/08 and 42 others, § 15, 26 November 2009; and most recent *Dolbin v. Russia* [Committee], no. 18451/04, §§ 19-21, 19 April 2016). The Court does not see any reasons to reach a different conclusion in the present case.

19. Having examined all the material before it the Court concludes that there has been a violation of Article 6 of the Convention and Aricle 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

20. Relying on Article 6 § 1 of the Convention, cited above, the applicant in addition complained about not being afforded an opportunity to attend the hearing on 10 October 2006 when the Town Court had granted her sister yet another claim and that the courts wrongly decided the case.

21. The Court notes that the applicant made oral submissions to the court, was properly summoned to the last hearing but failed to provide a valid excuse for her absence or to request adjournment. For unspecified reasons her representative also failed to attend that hearing. She could have defended her rights by attending the appeal hearing, but chose not to do so. It follows that this complaint is manifestly ill-founded. As for the complaint about the outcome of the proceedings there is nothing in the case file to indicate that the domestic courts decisions were taken in violation of the guarantees of Article 6 of the Convention.

22. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

25. The Government argued that the sum claimed in respect of pecuniary and non-pecuniary damage is excessive and unreasonable.

26. The Court considers that the applicant did not submit any document or calculation in respect of pecuniary damage. The Court thus makes no award under this had.

27. As regards non-pecuniary damage the Court having regard to the documents in its possession and to its case-law (see, in particular, *Botskalev and Rostovtseva and 42 other "Privileged pensioners" cases*, cited above, § 23), considers it reasonable to award the applicant EUR 2,000.

B. Costs and expenses

28. The applicant did not submit any claim for the costs and expenses. Accordingly, the Court does not award her any sum under that head.

C. Default interest

29. The Court considers it appropriate that the default interest rate 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 under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the quashing on the grounds of newly discovered circumstances of final domestic judgment in the applicant's favour admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the quashing on the grounds of newly discovered circumstances of the final domestic judgment in the applicant's favour;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President