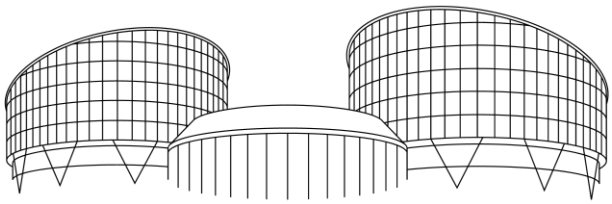

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BALAKIN v. RUSSIA

(Application no. 21788/06)

JUDGMENT

STRASBOURG

4 July 2013

FINAL

09/12/2013

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

In the case of Balakin v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 21788/06) 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 Sergey Vyacheslavovich Balakin ("the applicant"), on 3 April 2006.

2. The applicant was represented by Ms Zh. Dmitrovskaya, a lawyer practising in Orel. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that by refusing to examine his complaint concerning the provision of additional social housing to his family the courts had deprived him of his "right to a court" under Article 6 of the Convention.

4. On 15 October 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. The applicant works in a municipal school in Orel; his wife is a librarian. They own a two-room apartment measuring 27.9 square metres, which they share with their two children, a daughter and a son. Their daughter is handicapped – she suffers from severe diabetes.

7. In 1988 the applicant's family was put on the "general" waiting list for residents of Orel who have sub-standard housing and who are therefore entitled to more spacious social housing (otherwise called "the list for those in need of better housing"). From 1997 onwards the applicant filed numerous requests with the local authorities of Orel seeking better housing for his family, which, in his view, they were entitled to on the ground of his daughter's illness. In 1999 the applicant's family was put on the local authorities' "first priority" list of persons needing improved living conditions, on account of his daughter's illness.

8. In July 2004 the applicant was received by the Governor of the Orel Region and then met with the head of the Housing Authority of the Orel municipality. According to the applicant, the head of the Housing Authority promised him a new three-room flat in the town centre. However, a month later the Housing Authority offered the applicant's family an old three-room flat in a suburb. The applicant was not satisfied with that offer, referring to the poor transport connections and the remoteness of the place.

9. On 5 December 2005 the applicant lodged a complaint with the Sovetskiy District Court of Orel ("the District Court") about inaction on the part of the local authorities and their failure to provide him with better social housing. He asked the court to order the local authorities to grant him a three-room apartment in exchange for his two-room apartment, and to pay him compensation for the non-pecuniary damage caused to him by their inaction. The relevant part of the applicant's statement of claim read as follows:

> "Under Decree No. 330 of the USSR Ministry of Health ... of 1983, diabetes was included in the list of illnesses which conferred a "first priority" (*pervoocherednoy*) right to the provision of additional room [to the families concerned]. In addition, under Decree No. 901 of the Russian Government of 27 July 1996, "... families with disabled children [who have been previously put on the "general" waiting list for families in need of better housing] shall be put on a separate list for the provision of "first priority" housing.
>
> Additional room ... is to be provided to the disabled persons in accordance with the list of illnesses established by the Government.
>
> In allocating the housing to families with disabled children ... [the competent authority] has to take into account the needs of an individual treatment program for the disabled person, his medical condition, and the distance to the [relevant] medical centre, the homes of his relatives, etc."

10. The applicant further indicated that he had been waiting for new housing for nine years. The authorities had repeatedly promised to provide him with a three-room apartment but had not done so. He added that the

conditions his family had to live in (four persons living in a two-room apartment) were having a negative effect on the health of his handicapped daughter. The applicant described his correspondence and personal meetings with the representatives of the administration of the Orel Region and the town administration concerning the improvement of his living conditions. He acknowledged that in August 2004 his family had been offered a three-room flat, but he had had to decline that offer because the flat had been old and had been located too far from the polyclinic, a pharmacy, relatives, and so on. The statement of claim contained lengthy citations from the 1959 UN Declaration of the Rights of the Child, from the Russian Constitution of 1993, and from the European Convention on Human Rights. In the closing part of his statement of claim the applicant asked the court to order the town administration "to allocate [them] a three-room flat with the right of privatisation, free of charge, pursuant to Governmental Decree No. 901 ..., in exchange for their two-room flat ...". He also sought payment of compensation for non-pecuniary damage caused by the prolonged inaction of the authorities.

11. On 8 December 2005 the District Court invited the applicant to re-formulate his claim by a fixed a time-limit. On an unspecified date the applicant re-formulated his claim against the local authorities and asked the court to acknowledge his right to additional housing, and to impose an obligation on the local authorities to provide him with a three-room apartment in a particular area of town.

12. On 9 February 2006 the District Court held a preliminary hearing. Its decision of the same date states that, at that hearing:

> "... the plaintiff and his representative confirmed that they had been seeking to obtain housing in essence 'out of turn', and that the law did not set time-limits for the allocation of housing to families with disabled children; that their claim was based on the prolonged (more than 9 years) failure of the Town Administration to provide them with housing, on the worsening of the health of their child, and on the repeated promises of the Town Administration to provide them with a three-room flat."

13. Having heard the applicant, the District Court concluded that it did not have jurisdiction to examine his case and discontinued the proceedings. It held, in particular, as follows:

> "Under Article 134 point 1 of the Code of Civil Procedure, the judge must refuse to examine a claim if it does not fall to be examined pursuant to the rules of civil procedure because it is to be examined and determined within a different judicial procedure.
>
> The court [refused to examine the applicant's claim] for the following reasons.
>
> Pursuant to Ruling No. 2 of the Plenary Session of the Supreme Court of the USSR of 3 April 1987, as amended ..., the courts had jurisdiction to examine ... housing disputes between landlords and tenants in State-owned houses ..., and other housing disputes relating to ... eviction ..., the provision of housing on grounds provided by the civil law (as a result of the demolition or substantial renovation of a house, transfer of

housing to the category of non-residential premises, etc.), [disputes related to] orders concerning allocation of housing by joint decision of the administration ... of a public association and a trade union committee, with subsequent notification of the executive committee [of the local administration] (under Article 24 of the USSR Basic Legislation on Housing ...), and in the case of a refusal of the executive committee to deliver an order of allocation of housing.

The courts are also competent to examine cases concerning the provision of housing at the request of persons who under the housing legislation ... have the right to obtain housing "extraordinarily", including those who have the right to obtain housing within a particular time-limit, if that time-limit has not been respected. The courts cannot examine claims which fall within the competence of other bodies, [namely disputes] concerning provision of housing for those in need of better living conditions, or concerning provision of smaller housing ... .

It has been established that the plaintiff had been put on the "general" waiting list [created by the municipal authorities] for those in need of better housing ... and on the "first priority" list on the ground that he had a disabled child. Simultaneously, the plaintiff had been put on a waiting list [created] by his employer - the Department of Culture, and he was the first on the list.

Governmental Decree No. 901 of 1996 ... provides that families with disabled children ... which are ... in need of better housing are to be put on separate waiting lists for "first-priority" allocation of housing ... .

The law "On the social protection of disabled persons in the Russian Federation" does not fix time-limits for granting housing to ... families with disabled children.

It follows that [the applicant's] claim is not within the competence of this court."

14. The applicant appealed against the decision.

15. On 15 March 2006 the Orel Regional Court upheld the decision of 9 February 2006. The court found that, according to the relevant Articles of the Code of Civil Procedure and the Housing Code, the courts did not have jurisdiction to examine disputes concerning the granting of social housing and that other State bodies had competence in respect of that issue. It emphasised that the courts could examine cases brought by persons entitled to the "extraordinary" provision of social housing, including those who had not received housing within the time-limit established by law. However, (a) the applicant was only entitled to receive housing in accordance with the "first priority list", and (b) the Law "On the Social Protection of Handicapped Persons in the Russian Federation" did not establish any time-limit for providing families with handicapped children with housing.

16. The applicant's supervisory review complaints proved unsuccessful. In those complaints the applicant confirmed that he had been put on the "general" and "first priority" waiting lists.

17. On 12 January 2007 the local authorities suggested to the applicant that he submit an application for receiving social housing aid in the form of a financial grant. It appears that the applicant did not do so.

18. The applicant has not received new housing to date.

II. RELEVANT DOMESTIC LAW

A. Social housing regulations

19. The "old" Soviet Housing Code of 1983 (in force until 29 December 2004) proclaimed in Article 1 the right of the citizens to housing, which was realised, *inter alia*, through "just distribution of public housing" and "provision of suitable dwellings as the public building programs advance". Article 28 provided: "citizens in need of better housing have the right to be allocated State-owned housing for their use ... under the conditions provided by the legislation ...". Articles 29-35 of the old Code defined the criteria and modalities for inclusion on the "general waiting list" for those in need of better housing. Article 36 provided for a special "first priority" waiting list for certain categories of the population. Article 37 defined situations in which persons were entitled to "extraordinary" (in other words, immediate) provision of housing.

20. On 28 March 1983 the Ministry of Public Health of the USSR adopted Decree no. 330, which established a list of illnesses that entitled persons suffering from them to be put on a "first priority" waiting list for the allocation of social housing. Amongst other illnesses, it mentioned "type 1 diabetes, moderate or severe form".

21. Government Decree no. 901 of 27 July 1996 "On the granting of privileges to handicapped persons and families with handicapped children in respect of the receipt of housing and payment for housing and utilities" adopted rules which provided for the placement of families with handicapped children and in need of better housing on separate "first priority" lists for receiving a larger social housing (Section 5 of those rules). Such "first priority waiting lists" also established the priority order in which housing was to be allocated once available. No time-limit for providing persons on the "first priority waiting list" with housing was stipulated; however, it conferred an advantage on those on the "first priority" list vis-à-vis those on the "general" list.

22. Under the Russian Housing Code of 29 December 2004, which entered into force on 1 March 2005, certain persons were entitled to claim social housing from local authorities provided that they satisfied the conditions established by law (Article 51). Such persons were eligible to be placed on a local authority waiting list in order to obtain social housing (Article 57 § 1). The "general" waiting list established the priority order in which housing was to be allocated once available. Again, being on such a waiting list did not entitle the persons concerned to obtain new housing from the State under any specific conditions or within a specific time-frame;

it only guaranteed that the housing would be allocated in a certain order when it became available.

23. The new Housing Code did not provide for "first priority" waiting lists anymore. However, under the Enactment Law of 29 December 2004, No. 189-FZ, the "first priority" waiting lists created before the entry into force of the new Code remained in force (Section 6 point 2, as interpreted by Ruling No. *1549-O-P* of the Constitutional Court of 1 December 2009).

24. Finally, certain categories of person, such as persons whose dwelling has become unfit for living, orphans and persons of similar status, and persons suffering from a severe chronic illness which makes it impossible for others to live with them in the same dwelling, are entitled to have their claim for social housing treated as "extraordinary" (Article 57 § 2 in conjunction with Article 51 § 1 (4) of the Housing Code). A list of the severe chronic illnesses concerned was established by Government Decree no. 378 on 16 June 2006; it does not include diabetes.

25. As interpreted by the Russian Supreme Court, the designation of a claim as "extraordinary" means that housing must be provided immediately (supervisory review decisions nos. 85-B08-3 of 30 September 2008, 85-B10-7 of 8 February 2011, and 85-B11-2 of 3 May 2011), and, it would seem, ahead of the provision of housing to those on all other types of waiting list.

B. Access to court in social housing disputes

26. The Housing Code provides that a court must secure housing rights in accordance with the jurisdiction rules established by the relevant procedural law (Article 11 § 1). Housing rights can also be protected by resorting to various executive bodies. A decision taken by an executive body can be challenged in court (Article 11 § 2). Housing rights can be protected by, *inter alia*, the acknowledgement of a right, modification of the scope of a right or obligation, and in other ways envisaged by the Code or by federal laws (Article 11 § 3 (1), (5) and (6)).

27. The Code of Civil Procedure of 14 November 2002, which entered into force on 1 February 2003, provides for a court to refuse to deal with a claim if it cannot be examined in the course of civil proceedings because it falls to be examined in other court proceedings (Article 134 § 1 (1)). A refusal to deal with a claim prevents the claimant's subsequent recourse to a court with a claim against the same respondent, concerning the same subject and based on the same grounds (Article 134 § 3). The court discontinues the proceedings if the case cannot be examined in the course of civil proceedings on the grounds envisaged by Article 134 § 1 (1) (Article 220).

28. Ruling of the Plenary Session of the Supreme Court of the USSR no. 2 of 3 April 1987 "On the practice of the courts in applying housing legislation" (amended on 30 November 1990) provides, *inter alia*, that the

courts have jurisdiction over disputes brought by persons who have a claim to receive housing in "extraordinary" way under the relevant laws, including persons who have not been provided with housing within the time-limit established by the relevant law. The courts have no jurisdiction to examine requests which fall within the competence of other bodies: for example, concerning the granting of housing to persons in need of better living conditions, or concerning the granting of housing of a smaller size (Section 1).

29. Ruling of the Plenary Session of the Supreme Court of Russia no. 14 of 2 July 2009 "On certain issues arising in the judicial practice of the application of the Housing Code of the Russian Federation" states that housing disputes, including those concerning the recognition of rights in respect of housing, are to be examined by a district court at first instance (Section 3).

30. Article 46 of the Constitution guarantees to everybody judicial protection of his rights and freedoms. In particular, point 2 of that Article provides that "[d]ecisions and actions (inaction) of the State and municipal authorities ... can be challenged in the courts".

31. The Code of Civil Proceedings of 2003 provides for two main types of judicial proceedings: examination of claims (Articles 131-244.9 of the Code) and judicial review of administrative actions (Articles 245-261.4 of the Code). In particular, Articles 254-258 (Chapter 25) of the Code concern "the challenging of decisions and actions (inaction) of the State and municipal authorities ...". Under Articles 254 and 255 a person can challenge in court inaction on the part of a State or municipal body or official if that inaction breaches the rights or freedoms of the plaintiff, or creates an obstacle to the realisation of his rights and freedoms.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. The applicant complained that he had had no effective remedy for complaining about the authorities' failure to provide his family with better social housing. In this connection, he invoked Article 13 of the Convention, which reads 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."

33. The Court observes that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the

Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order, where there is an "arguable claim" of a violation of a substantive Convention provision (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, §§ 52-54, Series A no. 131). The right the applicant tried to assert in the domestic proceedings concerned the provision of social housing to persons in need of improved living conditions. Even though "there is no watertight division separating the sphere of social and economic rights from the field covered by the Convention (*Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 47, ECHR 2004-VIII; see also *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32), the Court considers that the right invoked by the applicant in the case at hand clearly belongs to the realm of socio-economic rights, which is not covered by the Convention. Accordingly, his complaint under Article 13 that he had no effective remedies in relation to his claim for larger social housing is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant further complained that he had not had access to a court in his housing dispute, in breach of Article 6 § 1 of the Convention, which provides, in so far as relevant, as follows:

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

35. The Government submitted that, at the material time, the applicant's claim had been excluded from judicial review under the domestic legislation. They further submitted that the domestic courts had applied that legislation correctly and that the legislation itself fully complied with the "quality of law" standard required under the Convention.

36. The Government further argued that the applicant had not had an "extraordinary" claim to new housing and that there had been no time-limit for providing him with housing with reference to him being on a "priority" list. Having established that point at the preliminary hearing, the Sovetskiy District Court of Orel had refused to examine the applicant's claim and discontinued the proceedings in his case.

37. The applicant disagreed with the Government, insisting that under the legislation in force at the material time he had had a right to have his housing claim examined by the courts. The question whether his claim to housing was "extraordinary" or not should have been determined by the domestic courts only after an examination of his action on the merits and not at a preliminary hearing. The applicant also submitted a number of

articles published by the local newspapers in 2008 describing corrupt practices in the distribution of social housing in Orel.

A. Admissibility

38. The Court notes that in the circumstances the question of the applicability of Article 6 of the Convention is closely linked to the merits of the applicant's claim. Furthermore, the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

39. The Court refers to its well-established case-law to the effect that the applicability of the civil limb of Article 6 § 1 requires the existence of "a genuine and serious dispute" over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law. A claim submitted to a tribunal for determination must be presumed to be genuine and serious unless there are clear indications to the contrary which might warrant the conclusion that the claim is frivolous or vexatious or otherwise lacking in foundation (see, among others, *Benthem v. the Netherlands*, 23 October 1985, § 32, Series A no. 97, and *Rolf Gustafson v. Sweden*, 1 July 1997, § 38, *Reports of Judgments and Decisions* 1997-IV).

40. The Court's traditional approach to determining whether there is a "right" attracting the application of Article 6 is based on the distinction between the substantive content of the right invoked and possible procedural obstacles to obtaining judicial protection thereof (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 119, ECHR 2005-X). Whether a person has an actionable domestic claim may depend not only on the content, properly speaking, of the relevant civil right as defined under national law but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court. In the latter kind of case Article 6 § 1 may be applicable (see *Petko Petkov v. Bulgaria*, no. 2834/06, § 26, 19 February 2013, with further reference to *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 47, ECHR 2001-XI). By implication, where the national law defines the substantive content of the right so that it is not "actionable", Article 6 does not apply.

41. For example, in *Powell and Rayner v. the United Kingdom* (21 February 1990, Series A no. 172) the Court was concerned with the effects of the Civil Aviation Act on persons complaining of noise from aircraft. The Act excluded liability for any action in trespass or nuisance so

long as the height of the aircraft was reasonable having regard to all the circumstances, and its flight was not in breach of the provisions of the Act or any order made under it. In unanimously rejecting the applicants' claim under Article 6 § 1 the Court relied on the fact that the applicants had no substantive right to relief under English law.

42. The dividing line between substantive limitations on a right invoked by a claimant and procedural limitations restricting his access to court is sometimes difficult to trace (see *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B), but the Court continues to use this test when deciding whether a particular claim engages Article 6. This distinction is consonant with the idea that the Court "may not create by way of interpretation of Article 6 § 1 a substantive civil right which has no legal basis in the State concerned" (*Fogarty v. the United Kingdom* [GC], no. 37112/97, § 25, ECHR 2001-XI (extracts)).

43. The Court further reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Société Anonyme Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, § 17, ECHR 2000-XII). Thus, it belongs primarily to the national courts to decide whether or not a particular "substantive civil right" invoked by the claimant exists in the domestic legal order and may give rise to an actionable claim.

44. That being said, the Court retains a residual power in this field. The State should not be allowed, without restraint or control by the Court, to remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons (see *Fayed*, cited above, § 65).

2. Application to the present case

45. The Court recalls that in the present case the applicant considered that the domestic authorities were under an obligation to provide his family with better social housing. The applicant tried to enforce that obligation by bringing a claim before a court. However, the domestic courts refused to accept his case for examination. It can be seen from their reasoning that they considered that the obligation in issue was a matter of social policy and did not confer any right on the applicant or the members of his family lending itself to judicial protection. In other words, the Russian courts considered that the applicant's claim was not "actionable" and the applicant did not have a "sustainable cause of action" for the purposes of the initiation of proceedings (see, *mutatis mutandis*, *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 100, ECHR 2001-V).

46. The Court does not dispute that the applicant's living conditions may have been difficult. Furthermore, the fact of being on a waiting list labelled

"first priority" might have given the applicant to believe that better housing would be provided to his family in the near future. However, it is questionable to what extent the applicant's expectations had a basis in the domestic law, and whether the "right to better housing", as it existed at the material time, gave rise to an "actionable domestic claim".

47. The Russian law at the time recognised that families with disabled children were entitled to better housing (see paragraph 21 above). However, as can be seen from the domestic courts' decisions, the law did not stipulate any time-limit for the provision of housing to such persons. Nor did it establish any specific obligation on the part of municipalities to build or buy housing for distribution amongst families in need. The fact of being on a waiting list – general or "first priority" - merely "represented an acceptance by the State of its intention to provide new housing when resources become available" (see *Fadeyeva v. Russia*, no. 55723/00, § 62, ECHR 2005-IV). Thus, legally speaking, the fact of being on a waiting list did not confer on the persons concerned any enforceable right and did not place any corresponding binding obligation on the State.

48. Such a right or corresponding obligation may have existed if the applicant had been eligible for the "extraordinary" allocation of social housing pursuant to Article 57 § 2 taken in conjunction with Article 51 § 1 (4) of the new Housing Code (see paragraph 22 above). However, as noted in the court's decision of 9 February 2006, although the applicant sought to receive housing immediately, "out of order", he did not assert that his case fell into one of the categories defined by law as pre-conditions for the "extraordinary" improvement of living conditions at the expense of the municipality. His claim was rather based on the fact that his family, which included a handicapped child, had had to live for many years in a very small apartment despite being on a "first priority" waiting list and despite promises given by the town administration to improve their living conditions (see paragraph 12 above).

49. The Court is not called upon to decide whether the applicant had any substantive entitlement to a larger flat. It is conceivable that the applicant had no such right, or, at least, that this "right" was not enforceable within a specific time-limit. That being said, the question before the Court is not whether the applicant was entitled to a larger flat, but whether the domestic courts had to examine the claim whereby he tried to assert his rights.

50. In *Gryaznov v. Russia* (no. 19673/03, § 81, 12 June 2012) the Court held as follows:

> "[If] as a matter of law there was no basis for the claim, the hearing of evidence would have been an expensive and time-consuming process which would not have provided the applicant with any remedy at its conclusion. Such a hearing would have indeed served no purpose in a situation where, as in the present case, no liability for the alleged damage existed under domestic law. It is not for this Court to find that such liability should have been imposed ... in the applicant's case, since this would effectively involve substituting its own views for those of the national courts as to the

> proper interpretation and content of domestic law. There is therefore no reason to consider the inadmissibility decision based on the absence of a sustainable cause of action as offending the principle of access to court."

51. A similar reasoning applies in the case at hand. The distinction drawn by the domestic courts between "first priority" waiting lists and the "extraordinary" allocation of social housing appears reasonable. The circumstances of the case provide a sufficiently clear indication that the applicant did not have a "sustainable cause of action" under the domestic law, or, which is essentially the same, a "defendable right" (see, for similar reasoning, *Zhigalev v. Russia*, no. 54891/00, §§ 160-162, 6 July 2006; *Kunkov and Kunkova v. Russia* (dec.), no. 74690/01, 12 October 2006; *Uskova v. Russia* (dec.), no. 20116/02, 24 October 2006; *Serov v. Russia*, no. 75894/01, §§ 56-57, 26 June 2008; and *Melnik v. Russia* (dec.), no. 2062/03, 8 January 2009). The Court stresses that the inability of the applicant to sue the local authority flowed not from immunity, a time-bar or another procedural obstacle but from the applicable principles governing the substantive right to the improvement of housing conditions at the expense of the State, as defined by the domestic law (see, *mutatis mutandis*, *Z and Others*, cited above, § 100).

52. Finally, the Court observes that although the District Court discontinued the proceedings, it did so after having heard the applicant and after having explained in detail why the "right to better housing" claimed by the applicant did not lend itself to judicial protection. In essence, the District Court addressed the point raised by the applicant, so the form of the domestic decision (discontinuation of the proceedings without rendering a final judgment on the merits) is not so important. It can be said that the applicant's claims "were fairly examined in the light of the domestic legal principles" of the law on social housing, and that the applicant "cannot argue that [he was] deprived of any right to a determination of the merits" of his claims (see *Markovic and Others v. Italy* [GC], no. 1398/03, § 115, ECHR 2006-XIV). Any further hearing of the facts of the case, once the court had established that the applicant's claim did not lend itself to judicial protection, "would only have served to protract the domestic proceedings unnecessarily" (*ibid*) because the only alternative solution the District Court could have proposed to the applicant would have been to dismiss the claim since the law did not confer on the applicant the right he tried to assert.

53. The Court concludes the applicant's claim did not attract the protection of Article 6 of the Convention *ratione materiae*. Therefore, there was no violation of that provision.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint under Article 6 § 1 concerning access to court admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 4 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Sicilianos and Dedov is annexed to this judgment.

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DISSENTING OPINION OF JUDGES SICILIANOS AND DEDOV

1. With all due respect for the position of the majority, we are unable to agree that there was no violation of Article 6 § 1 of the Convention in this case. In our view, the present case raises an important question of principle concerning the applicability threshold of Article 6.

2. It is clear that at the material time there existed a general undertaking on the part of the State to improve the living conditions of those who resided in sub-standard housing. In most situations, that undertaking was not concrete and, consequently, did not clearly confer an enforceable "right" on the persons concerned. Only certain categories of persons were eligible to receive the housing within a certain time-limit, whereas other persons on the waiting lists had to wait until housing became available (see paragraph 19 under "Relevant domestic law" above).

3. As is rightly observed in the judgment, the Court was not called upon to decide whether the applicant had any substantive entitlement to a larger flat. It is conceivable that the applicant had no such right, or, at least, that this "right" was not enforceable within a specific time-limit. That being said, the question before the Court was not whether the applicant was entitled to a larger flat, but whether the domestic courts had to examine the claim whereby he tried to assert his rights.

4. The Court has repeatedly considered that Article 6 cannot be interpreted as guaranteeing access to court only in respect of well-founded claims. According to well-established case-law, "the dispute over a 'right', which can be said *at least on arguable grounds* to be recognised under domestic law, must be genuine and serious; *it may relate* not only *to the actual existence of a right* but also to its scope and the manner of its exercise" (*Vilho Eskelinen and Others v. Finland*, [GC], no. 63235/00, § 40 ECHR 2007-II (emphasis added). See also *Tre Traktörer AB v. Sweden*, 7 July 1989, § 36, Series A no. 159; *Rolf Gustafson v. Sweden*, 1 July 1997, § 38, *Reports of Judgments and Decisions* 1997-IV; and *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 44, Series A no. 327-A). Furthermore, the Court has noted that "the mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a right" (see *Boulois v. Luxembourg*, [GC], no. 37575/04, § 93, ECHR 2012; *Camps v. France* (dec.), no. 42401/98, 23 November 1999; and *Ellès and Others v. Switzerland*, no. 12573/06, § 16, 16 December 2010). In other words, the threshold set by the Court's case-law for the applicability of Article 6 is much lower: in order to attract the protection of this provision the right claimed by the plaintiff must be recognised under the domestic law "at least on arguable grounds". The dispute may concern the very existence of the right in question, precisely as in the present case. The intention is to free the domestic courts from unnecessary work and to relieve them from examining claims which are "frivolous or vexatious or otherwise lacking in foundation" (*Rolf Gustafson*, cited above, § 39).

5. Nevertheless, Article 6 does not allow the rejection of all potentially weak claims without examination, far from it. If this was the case, the scope of application of Article 6 (and the supervisory role of the Court) would have been substantially restricted. A mere doubt about the existence of a "right" would preclude the applicability of article 6 and thus the whole set of guarantees under this provision. However, it is precisely under those circumstances that the guarantees of article 6 are most needed. Such a restrictive approach would not be in conformity with the cornerstone principle of the rule of law, or indeed with the object and purpose of the Convention.

6. In our opinion, the issues raised by the applicant in the domestic proceedings were not at all "frivolous or vexatious" and deserved examination on the merits. The applicant based his claim on the fact that his daughter suffered from diabetes, that their flat was too small, and that for many years their situation had remained the same despite the family being simultaneously on three waiting lists. Those facts were contested neither in the domestic proceedings nor by the Government. It is not disputed that diabetes was on the list of illnesses which conferred the right of inclusion on the "first priority" waiting list under the old Housing Code and the Decree of 28 March 1983 of the Ministry of Public Health of the USSR. Under the new Housing Code also "severe chronic illness" of a member of the family was mentioned as a ground for entitlement to additional living space. The applicant, referring to these acts, claimed that his family was entitled to additional housing. Whereas diabetes was not included in the list of "severe chronic illnesses" which entitled the family to the "extraordinary" (that is, priority or "out of turn") provision of additional housing, the new Housing Code empowered the Government to establish such a list (see Government Decree no. 378 of 16 June 2006), and it was for the courts to ascertain whether the applicant's family was eligible to obtain better housing. Thus, the applicant's interpretation of the law and the facts was not "frivolous" and his claim was not "vexatious". It was rather his *bona fide* understanding of the meaning of the "right to housing" as proclaimed in the Constitution and the Housing Code, and of the "benefits" made available to disabled people by Government Decree no. 901 of 27 July 1996 (see paragraph 21 of the judgment).

7. In sum, we conclude that in the circumstances the applicant's case related to a dispute over a civil right which could be said, at least on arguable grounds, to be recognised under domestic law. Thus, this claim attracted the protection of Article 6 of the Convention. However, by terminating the proceedings without addressing the substance of the applicant's arguments and without rendering a judgment on the merits, the courts denied the applicant access to court. In our opinion, there has therefore been a violation of Article 6 § 1 of the Convention on that account.