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

Communicated on 28 August 2014

FIRST SECTION

Application no. 28961/11
Aleksandra Mikhaylovna YEVTUSHENKO
against Russia
lodged on 24 February 2011

## STATEMENT OF FACTS

The applicant, Ms Aleksandra Mikhaylovna Yevtushenko, is a Ukrainian national, who was born in 1949 and lives in Kiev.

### A. The circumstances of the case

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

In 2005 the applicant concluded a contract with a mortgage cooperative, a private company. In 2009 she tried to initiate civil proceeding against this company to recover some sum of money which she had paid to the company under the above mentioned contract.

In September 2009 the applicant filed an action with the Savelovskiy District Court of Moscow against this company. The District Court received the documents on 25 September 2009 and scheduled the first hearing for 15 December 2009. The applicant received a copy of this decision only on 25 December 2009.

On 15 December 2009 the hearing was postponed to 25 December 2009 as the applicant had not appeared. The applicant did not receive any summons with regard to the hearing of 25 December 2009.

On 25 December 2009 the Savelovskiy District Court decided to reject the applicant's claim without considering its merits. The applicant received this decision on 23 January 2010.

On 29 December 2009 the applicant filed a complaint with the President of the Savelovskiy District Court where she described the situation. By letters of 31 January and of 17 May 2010 the applicant asked the President of the Savelovskiy District Court to quash the decision of 25 December 2009, to inform her properly of the hearing and to restore the term for appeal with regard to the decision of 25 December 2009.

The applicant also filed a complaint with the Supreme Court of Russia. By a letter of 25 August 2010 the Supreme Court informed the applicant that if she intended to challenge the decision of 25 December 2009, she should file her appeal with the Savelovskiy District Court of Moscow.

On 1 April 2011 the President of the Savelovskiy District Court replied to her complaints stating that her appeals with regard to the decision of 25 December 2009 should have been submitted to the registry of the court, rather than to its President. He further informed that her appeal together with all attachments would be transferred to the judge in order to determine whether the decision of 25 December 2009 should be quashed. The applicant did not get any summons after that.

The applicant also submitted her complaints to the prosecutor's office. The prosecutor replied on 12 October 2011 that the hearing on her case had been scheduled for 10 November 2011.

According to the applicant, afterwards the applicant sent the Savelovskiy District Court several letters asking to inform her about the time of the hearing. She did not get any response.

According to the information contained in the extract from the web-site of the Savelovskiy District Court provided by the applicant, her claim was registered at the court on 4 April 2011. The applicant had not received any summons.

On 20 June 2011 the judge of the Savelovskiy District Court postponed the hearing because the parties had failed to appear.

On 23 September 2011 and 10 November 2011 the hearings were postponed again for unknown reasons.

On 23 December 2011 the judge of the Savelovskiy District Court discontinued the proceedings as the applicant had defaulted for the second time. It appears that the applicant did not appeal.

## B. Relevant domestic law

According to Article 133 of the Civil Procedure Code the judge shall rule on the admissibility of the statement of claim within five days from the date it has been received by the court.

According to Article 134 of the Code in case the judge holds the statement of claim inadmissible, he or she shall issue a reasoned decision which shall be sent to the claimant within five days from the date the statement of claim has been received by the court.

According to Article 135 of the Code in case the judge decides to return the statement of claim to the claimant, he or she shall issue a reasoned decision specifying the court to be seized or how to remedy the deficiencies which prevent initiation of proceedings. This decision shall be sent to the claimant within five days from the date the statement of claim has been received by the court.

According to Article 136 of the Code the judge may provisionally defer acceptance of the statement of claim pending remedy by the claimant of defects in the statement of claim identified by the judge and ordered to be rectified. The claimant shall be informed accordingly and shall be provided with reasonable time to correct the defects.

According to Articles 222 and 223 of the Code the judge shall leave the statement of claim without examination, *inter alia*, if the parties did not ask the court to consider the case in their absence and failed to appear before the court after second summons; the claimant did not ask to consider the case in his or her absence and did not appear before the court after second summons and the defendant does not request to examine the merits of the case. In such circumstances the judge shall issue a decision which may be quashed if a claimant or a defendant submits the evidence confirming that his or her absence was justified and that it was impossible to inform the court of non-attendance.

According to Article 113 of the Code the parties to the proceedings shall be notified or called to court by registered mail with return receipt, by court summons with return receipt, by telephone message or telegram, by fax or using other means of communication and delivery providing confirmation of service to the addressee. The court notices and the summons shall be handed to the parties so that they would have enough time to appear timely at the hearing and prepare their case.

## COMPLAINT

The applicant complains under Article 6 of the Convention about the lack of access to a court in the proceedings initiated in September 2009 and that the courts failed to duly notify her about the progress in her case.

## QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of her civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, did the Savelovskiy District Court of Moscow examine on the merits the applicant's claims filed with it in September 2009? What is the current state of the proceedings to which the applicant was a party?

2. Did the applicant enjoy the procedural safeguards stipulated in Article 223 of the Civil Procedure Code? In particular, was the applicant duly notified about the hearings? If yes, by what means and when? The Government is invited to submit evidence of due notification. If not, was that situation compatible with the applicant's right of access to a court under Article 6 § 1 of the Convention?