CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KIRILL MARCHENKO v. RUSSIA

(Application no. 5507/06)

JUDGMENT

STRASBOURG

9 October 2008

FINAL

09/01/2009

This judgment may be subject to editorial revision.

In the case of Kirill Marchenko 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 5507/06) 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 Kirill Aleksandrovich Marchenko ("the applicant"), on 5 January 2006.

2. The applicant was represented by the International Protection Centre. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 26 March 2007 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. The Government objected to the joint examination of the admissibility and merits of the application. The Court examined and dismissed their objection.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Moscow.

6. The applicant's father owned a flat in Moscow. In June 1993, a certain K., acting on behalf of the applicant's father, sold the flat to L. In

October 1993 the applicant's father died. Later, L. made a gift of that flat to her son.

7. In February 1995 the applicant lodged a court action with the Butyrskiy District Court of Moscow ("the District Court") against K. and L. and L.'s son, seeking annulment of the contract of sale of his father's flat. The Moscow department of housing policy, the registration service and the notary who had certified the power of authority delivered by the applicant's father were invited as third parties to the proceedings.

A. First examination of the case

8. Between 1995 and 1997 several hearings were listed, but they were adjourned for various reasons. In 1998 the examination of the case was postponed several times because the third parties or the defendants failed to appear. According to the Government, the hearing of 23 December was adjourned until 29 December because the applicant failed to appear.

9. On 29 December 1998 the District Court adjourned the applicant's action generally on the grounds that the parties had failed to attend two court hearings. The applicant applied for reinstatement of the case on the grounds that he had not been duly summoned to the hearings. On 20 January 1999 the District Court quashed the decision of 29 December 1998, having found that the applicant had had a valid reason for failing to appear. It reinstated the case and scheduled the hearing for 23 March 1999.

10. In 1999 several hearings were adjourned for various reasons. On 26 May the case was adjourned until 14 July because the judge was involved in unrelated proceedings. According to the Government, the hearings of 30 November and 10 December did not take place because the applicant did not attend them.

11. In 2000 the hearings were postponed several times because the defendants or the third parties failed to appear.

12. On 13 March 2001 the applicant amended his claims. On the same date the District Court appointed, at his request, an expert examination of the power of authority signed by his father and suspended the proceedings pending the expert study.

13. On 4 June 2001 the proceedings were resumed and the hearing was fixed for 20 July 2001. On that date, according to the Government, the hearing did not take place because the applicant did not appear.

14. At the hearing of 5 September 2001 the applicant rejected the expert study and returned to his initial claims. On the same date the District Court dismissed his claims in full. On 22 February 2002 the Moscow City Court ("the City Court") quashed that judgment, finding that the first-instance court had failed to establish all relevant facts of the case. It remitted the case for a fresh examination to a different panel of the first-instance court.

B. Second examination of the case

15. In the second round of proceedings, the District Court accepted the case for examination on 26 September 2002. The first hearing was fixed for 15 November 2002. On that date the hearing was adjourned until 10 January 2003 because the parties failed to appear.

16. In 2003 six hearings were scheduled. Of these, the hearing of 6 August was adjourned until 29 October because the parties did not appear. However, on that date the defendants did not appear and the case was postponed until 20 January 2004.

17. In 2004 eight hearings were listed. Of these, at least five hearings were adjourned because the defendants failed to appear. On 30 June the court heard the parties and adjourned the case until 10 August at the applicant's request. On that date the applicant amended his claims. This time he requested that the defendants be evicted from the flat in question.

18. On 1 October 2004 the District Court adjourned the case generally on the grounds that the parties failed to appear at the hearings. On 5 October 2004 the District Court quashed that decision, having found that the applicant had received a delayed notification about the hearing. It reinstated the proceedings and fixed the hearing for 22 October 2004.

19. In 2005 three hearings were listed. The hearings of 28 January and 1 March were adjourned because the defendants failed to appear and because the judge was on leave.

20. On 22 April 2005 the District Court examined the case in the absence of the defendants and dismissed the applicant's action. Both the applicant and his representative were present. The applicant appealed against that judgment.

21. The applicant submitted that on the morning of 5 July 2005 his mother had received a summons from the City Court. It said that the appeal hearing had been listed for 5 July 2005. By that time the applicant had already gone to work.

22. On 5 July 2005 the City Court heard the case in the absence of the defendants and the applicant. The applicant's grandmother, acting on his behalf, maintained his claims. On the same date the City Court upheld the judgment of 22 April 2005.

THE LAW

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

23. The applicant complained that the domestic courts had failed to examine his claim within a reasonable time. The Court will examine that complaint under 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 ..."

24. The proceedings commenced in February 1995, when the applicant lodged his claim with the District Court. However, the Court will only consider the period of the proceedings which began on 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 proceedings at the time. The period in question ended on 5 July 2005 with the decision of the City Court. Thus the Court has competence *ratione temporis* to examine the period of approximately seven years and two months. During that period the case was examined at two levels of jurisdiction.

A. Admissibility

25. 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

26. The Government firstly argued that the case was factually complex. They further submitted that numerous hearings had been adjourned due to the defendants' failure to appear in spite of the proper notification. The applicant had also contributed to the length of the proceedings by failing to appear at several hearings, but also by amending his claims on several occasions; he requested an expert study and appealed against the first-instance court decisions. The domestic courts had conducted the proceedings properly. The hearings had been scheduled at regular intervals. The domestic courts had examined the case at several levels. Some delays had occurred when the case had been reassigned to different judges. However, those delays had been justified because three judges had resigned and some of them had been on sick leave. Moreover, the judges had had a significant workload.

27. The applicant contested the Government's submissions. He argued that the case was not very complex. The proceedings had to be conducted with special diligence as they concerned his deceased father's flat. He admitted that he had failed to attend several hearings, but stated that this was mainly due to late notifications. Most of the hearings had not taken place because the defendants and the third parties had not been duly summoned or had failed to appear by their own fault. The authorities had not taken appropriate measures to discipline them. Several substantial delays in the proceedings were attributable to the domestic courts.

28. 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).

29. The Court is ready to accept that the proceedings at issue were of a certain complexity, as they concerned property claims and involved several parties. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of proceedings.

30. As regards the applicant's conduct, the Court notes that the parties are in dispute as to whether the applicant was at fault when he had failed to appear at several hearings. It considers that it is not necessary to determine whether or not the applicant had been duly summoned to those hearings, because, in any event, the resulting delays were not very significant. Furthermore, the Court is not convinced by the Government's arguments that the applicant should be held responsible for amending his claims, requesting an expert opinion and lodging 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*, judgment of 8 June 1995, Series A no. 319-A, § 66). Accordingly, the Court considers that the applicant was not responsible for any substantial delays in the proceedings.

31. As regards 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 twice at two levels. The Court observes in this respect that the second round of proceedings was due to the District Court's failure to establish all relevant facts of the case during the first examination 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).

32. The Court further notes that the parties agreed that the defendants and third parties had failed to appear at numerous hearings and thus had caused certain delays in proceedings. However, the Government submitted that they had been duly notified of the hearings and the applicant argued that the courts had failed to duly inform them. The Court considers that it is not necessary to examine why the defendants and third parties failed to appear, as there are sufficient elements to conclude that the responsibility for most of delays in the proceedings, in any event, lies with the domestic authorities.

33. The Court observes that on two occasions, on 29 December 1998 and 1 October 2004 the District Court adjourned the case generally on the grounds that the applicant had failed to appear at hearings. Later it quashed those decisions and had reinstated the proceedings, having found that the applicant had not been duly summoned to the hearings. Those adjournments resulted in significant delays.

34. The Court further observes that after the quashing on 22 February 2002 of the judgment of 5 September 2001, the District Court accepted the case for examination only on 26 September 2002 and fixed the first hearing for 15 November 2002. In 2003 and 2004 only six and eight hearings were scheduled respectively. Therefore, the Court cannot agree with the Government that the proceedings had been conducted properly.

35. The Court also notes the Government's argument that the delays in the proceedings were caused to a certain extent by the judges' significant workload and the reassignment of the case to different judges. In this respect 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). Therefore, the delays referred to by the Government are imputable to the State.

36. Finally, the Court observes that an important property interest was at stake for the applicant in the present case. The Court is of the opinion that the nature of the dispute called for particular diligence on the part of the domestic courts.

37. 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. The applicant complained under Article 6 that he could not attend the appeal hearing of 5 July 2005 due to the late notification. He also complained about the outcome of the proceedings.

39. Having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, the Court finds that 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government contested the claim.

43. The Court considers that the applicant must have suffered distress and frustration resulting from the excessive length of proceedings in his case. Making its assessment on an equitable basis, it awards him EUR 3,600 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. The applicant did not make any claim in respect of costs and expenses. Accordingly, there is no call to make an award in this respect.

C. Default interest

45. 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, EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 9 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President