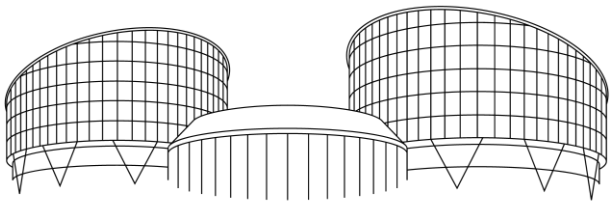

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LEKHANOVA v. RUSSIA

(Application no. 43372/06)

JUDGMENT

STRASBOURG

22 December 2009

FINAL

22/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lekhanova v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 43372/06) 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, Ms Anna Grigoryevna Lekhanova ("the applicant"), on 14 August 2006.

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

3. On 25 November 2008 the President of the First Section decided to grant priority treatment to the application and to give notice of it 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1930 and lives in the town of Voronezh.

A. Civil proceedings

1. First round of proceedings

5. The applicant was a member of a housing cooperative. Having paid a sum of money, she expected to receive a certain flat from the cooperative in a newly built block of flats. However, the applicant was then expelled from the cooperative. The flat was given to Mr L instead. The latter sold the flat to Mr Ch.

6. On 16 March 1998 the applicant brought proceedings against the housing cooperative in the Kominternovskiy District Court of Voronezh. She sought the annulment of the cooperative's decision to expel her and give the flat to L. She also sought compensation in respect of non-pecuniary damage and recognition of her title to the flat.

7. In the meantime, Mr Ch resold the flat to Ms K. On 7 May 1998 the judge issued a charging order in respect of the flat.

8. In September 1998 the applicant amended her claims, seeking the annulment of the purchase contracts by Ch and K and recognition of her right to live in the flat in question.

9. According to the Government, several hearings between September and November 1998 had to be adjourned in order to take account of the applicant's amended claims and enable the parties to collect evidence in support of their claims.

10. According to the Government, in 1999 one hearing was adjourned because of the defendants; another one was adjourned on account of their and the lay judges' failure to attend; and two further hearings were adjourned to enable the applicant to submit amended claims.

11. By a judgment of 6 September 1999, the District Court rejected her claims. The applicant appealed. After complying with the court's instructions concerning court fees, on 20 April 2000 the Voronezh Regional Court examined her appeal and upheld the above judgment as regards the rejection of the non-pecuniary claim but ordered a fresh hearing in respect of the remaining claims.

2. Second round of proceedings

12. Upon the applicant's complaint about the length of proceedings before the District Court, a judge of the Regional Court carried out a preliminary inquiry and concluded on 31 January 2001 that a further inquiry would be appropriate. Its outcome remains unclear.

13. In the meantime, having re-examined the remaining claims, on 27 June 2001 the District Court upheld most of the claims against the defendant, including the applicant's claim for title to the flat in question. On 15 August 2001 the District Court issued an additional judgment amending

the earlier one and ordering Ms K's eviction. On 11 October 2001 the Regional Court upheld the judgment of 27 June 2001.

14. On an unspecified date the applicant applied for registration of her title to the flat. On 18 January 2002 the State Property Registry refused to issue a title certificate to the applicant because there was a valid charging order in respect of the flat. However, on 29 January 2002 the applicant was provided with the title certificate.

3. Supervisory review

15. On 5 February 2002 the President of the Regional Court lodged a request for supervisory review of the judgment of 15 August 2001. On 11 February 2002 the Presidium of the Regional Court quashed the judgment on the ground that the defendant had not been informed of the hearing.

16. Upon a request of the Acting President of the Regional Court, on 14 October 2002 the Presidium court quashed the judgments of 27 June and 11 October 2001 in part and ordered a re-examination of the relevant claims.

17. It appears that, on an unspecified date, the title registration in respect of the flat at issue was revoked in view of the annulment of the court decisions on which it had been based.

4. Third round of proceedings

18. In view of her advancing age and declining health, the applicant was represented by her daughter, Ms P, at most hearings throughout the proceedings.

19. According to the Government, in 2004 at least six hearings were listed and adjourned because the parties had failed to appear. One hearing was adjourned because the judge was on sick leave, and another one because the defendants failed to attend. Each adjournment resulted in delays of up to two months.

20. In 2005 at least three hearings were listed but adjourned because the parties failed to attend or sought to adduce evidence or appoint new representatives. On 3 August 2005 the applicant submitted amended claims.

21. By a judgment of 5 October 2005 the District Court ruled on the merits of the applicant's claims as amended. With reference to the judgment of 27 June 2001 in its valid part, the court reconfirmed the unlawfulness of the cooperative's decisions to expel the applicant and give the flat to L. The court accepted that the applicant had honoured her contract with the cooperative and had thus acquired a *claim* to a particular flat, the one which was given to L. Referring to a 2003 ruling by the Constitutional Court, the court refused to annul the flat purchases by Ch. and then K. because they were protected “purchasers in good faith” within the meaning of Article 167

of the Civil Code; the court indicated, however, that a claim under Article 302 of the Code would be a proper course of action (see paragraphs 29 and 30 below). The court also observed that any of the above claims could be brought by an "owner". The court reiterated that only an official certificate from the State register could prove ownership title (see paragraph 31 below). Accordingly, the court refused to accept the applicant's membership card as valid proof of her title to the flat at issue (see, however, paragraphs 14 and 17 above). The court also rejected the applicant's eviction claim against Ms K, because only the proven owner could seek eviction. However, the court awarded the applicant 3,000 Russian roubles (RUB) in respect of non-pecuniary damage and RUB 2,000 in litigation costs (lawyer's fees, photocopying fees, compensation for loss of time). The court refused to award the applicant's representative P's travel expenses between her residence town (Moscow) and Voronezh.

22. The applicant appealed, contending that the 2003 ruling of the Constitutional Court could not be applied to events in the 1990s. On 16 February 2006 the Regional Court set aside the judgment in the part concerning compensation in respect of non-pecuniary damage and upheld it in the remaining part. The appeal court held that the Constitutional Court had only determined the constitutional meaning of the relevant provisions of the Civil Code in force at the material time.

5. Subsequent proceedings

23. In May 2006 Ms K obtained an official certificate confirming her title to the flat. It appears that she sold it to another person in the same month.

24. By an order of 6 September 2006, the District Court lifted the charging order in respect of the flat in question. The applicant appealed. On 16 January 2007 the Regional Court upheld this order.

25. On an unspecified date the applicant applied to the Bailiffs' Service for enforcement of the judgment of 5 October 2005. On 19 April 2007 the Bailiffs' Service indicated that the judgment could not be enforced against the housing cooperative because it had ceased its activity in January 2007.

26. On 20 April 2007 the Regional Court refused leave for supervisory review of the judgments of 5 October 2005 and 16 February 2006.

B. Other proceedings

27. In reply to the applicant's complaint concerning the above civil dispute, by a letter of 12 February 2007 the Prosecutor General's Office advised her to sue the housing cooperative for damages in view of their failure to honour their contractual obligations.

28. In separate proceedings, on an unspecified date, the authorities opened a criminal investigation into the applicant's allegations that the

private company's acts had deprived her of her flat. In August 2008 the case was discontinued because the statutory time-limit for criminal prosecution had expired.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. Under Article 167 of the Civil Code 1994, a voided transaction does not give rise to any legal consequences beyond those related to its annulment, and is void *ab initio*. In a voided transaction the parties should return to each other what was received or, if not practicable, they should pay compensation. Under Article 302 of the Civil Code, the first owner can claim property back from a purchaser in good faith who has acquired it from an unauthorised seller without knowing or being in a position to know that the seller was unauthorised. However, such a claim can only arise if the property was lost, stolen or otherwise taken out of the first owner's control.

30. By a ruling of 21 April 2003, the Constitutional Court interpreted Article 167 of the Code as not allowing the first owner to reclaim his property from a purchaser in good faith unless there is a special legislative provision to this effect. Instead, a claim vindicating prior rights (*виндикационный иск*) could be lodged under Article 302 of the Code.

31. Under Article 219 of the Civil Code, ownership title to a building or other newly built premises requiring State registration, arises from the time of such registration.

THE LAW

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

32. The applicant complained that the length of the civil proceedings had exceeded a "reasonable time" in breach of Article 6 § 1 of the Convention, which, in so far as relevant, 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 ..."

A. Submissions by the parties

33. The Government submitted that the case was complex, involving issues of property rights, eviction claims and requests for annulment of a contract. The case concerned several parties and had been examined at three levels of jurisdiction on seven occasions. The applicant amended her claims on a number of occasions and lodged various requests, thus causing delays of around six months. She failed to attend a number of hearings, thus

causing delays of eleven months and seventeen days. The applicant's appeals caused further delays. Other delays were attributable to the defendants. At the same time, the State could not be held liable for any significant delays; hearings were scheduled at regular intervals. In any event, adjournments were intended to enable the parties to be present at hearings.

34. The applicant contested the Government's submissions, noting that the latter adduced no evidence in support of their argument. The applicant argued that the case was not particularly complex and that she had amended her claims only twice – in 1998 and 2005 – because the relevant factual circumstances had evolved. Only one hearing was held in 2000; no full hearing was held between October 2002 and January 2004. While more than twenty adjournments were due to the defendants' or third persons' failure to appear before the court, the authorities had taken no measures to discipline the defaulting persons. Certain adjournments unnecessarily spanned over several months. As a result, the applicant or her representative had to appear before the court on fifty-nine occasions only to see most of the hearings adjourned.

B. The Court's assessment

1. Admissibility

35. 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.

2. Merits

(a) Period under consideration

36. The Court notes that the domestic proceedings started in March 1998. However, the Court's competence *ratione temporis* is limited to the proceedings pending after 5 May 1998, the Convention having entered into force in respect of Russia on that date. In assessing the reasonableness of the time that elapsed after that date, the Court may, however, take account of the state of proceedings at the time.

37. As to the date when the proceedings ended, the Court considers it unnecessary to decide, in the absence of the parties' submissions, whether the 2007 proceedings concerning the charging order (see paragraph 24 above and, *mutatis mutandis*, *Robins v. the United Kingdom*, 23 September 1997, §§ 28 and 29, *Reports of Judgments and Decisions* 1997-V) or the enforcement proceedings in the applicant's favour (see paragraph 25 above and *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and*

Decisions 1997-II) should be taken into account. Thus, it is accepted that the proceedings ended on 16 February 2006, when the appeal court issued its decision.

38. For the same reasons, the Court considers that the period from 11 October 2001 to 5 February 2002 should not be taken into account because no court or enforcement proceedings were pending.

39. Thus, the proceedings lasted seven years and nearly seven months, of which a period of seven years and nearly five months (at two levels of jurisdiction) was within the Court's competence *ratione temporis*.

(b) Reasonableness of the period

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 conduct of the relevant authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. The Court considers that the case was relatively complex. While admitting that the task of the courts was rendered more difficult by this factor, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of those proceedings (see *Mattila v. Finland*, no. 77138/01, § 15, 23 May 2006).

42. As to the applicant's conduct, the Court reiterates that the person concerned is required only to show diligence in carrying out the procedural steps relating to her and to refrain from using delaying tactics (see *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, § 35, Series A no. 157). There is no reason to criticise the applicant for having used the remedies available under Russian law in the defence of her interests (see, among other authorities, *Rokhlina v. Russia*, no. 54071/00, § 88, 7 April 2005). It has not been alleged by the Government that the applicant went beyond the limits of legitimate defence by lodging frivolous petitions or unsubstantiated requests (see *Komarova v. Russia*, no. 19126/02, § 50, 2 November 2006). Having examined the parties' submissions and the available material, the Court considers, however, that some delays in 1998, late 1999 and 2004 are at least in part attributable to the applicant and that no other significant delay is attributable to her.

43. As regards the conduct of the judicial authorities, the Court reiterates that respondent States have a duty to organise their legal systems in such a way that their courts can meet the obligation to hear cases within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006). The Court notes in that connection that the length of the proceedings was due, *inter alia*, to the fact that the civil case was re-examined several times, including once following a reopening by way of supervisory review. The Court does not lose sight of the fact that the procedure for

reopening proceedings in 2002 was set in motion by the President of the Regional Court. Besides, while the Convention allows the resumption of national proceedings in the circumstances of a substantial and compelling character outweighing the principle of legal certainty (see *Protsenko v. Russia*, no. 13151/04, §§ 30-34, 31 July 2008, and *Lenskaya v. Russia*, no. 28730/03, §§ 40 and 41, 29 January 2009), once such a reopening is allowed, the ensuing proceedings should be completed within a "reasonable time", regard being had to all pertinent factors (see, *mutatis mutandis*, *Oblov v. Russia*, no. 22674/02, § 27, 15 January 2009). However, in the present case, no full hearing was held after the resumption of the trial proceedings in 2000 and 2002. Nor was such a hearing held in 2003.

44. Moreover, numerous adjournments throughout the proceedings resulted on each occasion in delays exceeding two or three months at times. The Government provided no reasons to justify such repetitive periods of inactivity.

45. The Court further observes that although there were no other significant periods of inactivity directly attributable to the domestic courts, they did not take any measures to discipline the defaulting parties, thus allowing the proceedings to drag on for years (see *Salmanov v. Russia*, no. 3522/04, § 87, 31 July 2008, with further references). It is also true that Article 6 commands that judicial proceedings be expeditious, but it also lays down the more general principle of the proper administration of justice (see *Boddaert v. Belgium*, 12 October 1992, § 39, Series A no. 235-D). However, in the circumstances of the case, the Court is not satisfied that the authorities succeeded in maintaining the fair balance between various aspects of this fundamental requirement.

46. Having regard to the above, in particular to the fact that the proceedings within the Court's competence *ratione temporis* lasted over seven years at two levels of jurisdiction, the Court considers that the length of the proceedings did not satisfy the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. The applicant also complained under Article 6 of the Convention about the quashing of the judgments of 27 June and 15 August 2001 by way of supervisory review. The Court observes that the supervisory review took place on 14 October and 11 February 2002 respectively, while the above complaint was first raised before the Court in 2009. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

48. Lastly, the applicant complained in general terms about the outcome of the court proceedings and the findings made by the court. She also

contended that as a result of the proceedings she had been deprived of her "possessions" in breach of Article 1 of Protocol No. 1.

49. The Court has examined the remaining complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, 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 is 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

50. 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

51. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

52. The Government considered that the claim was excessive and unfounded.

53. Making an assessment on an equitable basis, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

54. The applicant submitted a detailed list of claims totalling EUR 780 for the costs and expenses incurred before the domestic courts, consisting in the major part of lawyers' fees and the travel expenses of her representative Ms P, and before the European Court (postage, photocopying and translation).

55. The Government considered that the claim was unrelated to the proceedings before the Court.

56. 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 first observes that certain litigation costs were granted by the national court (see paragraph 21 above). Regard being had to the information in its possession and the above criteria, and in so far as

related to the violation found, the Court considers it reasonable to award the sum of EUR 480 covering costs under all heads.

C. Default interest

57. 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 length of 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) in respect of non-pecuniary damage, and EUR 480 (four hundred and eighty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, both sums 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 amounts 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 22 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Nina Vajić President