



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

FIRST SECTION

CASE OF TELYATYEVA v. RUSSIA

(Application no. 18762/06)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

12/10/2007

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 Telyatyeva v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 21 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 18762/06) 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 Svetlana Yuryevna Telyatyeva (“the applicant”), on 10 April 2006.

2. The applicant was represented by Mr I. Telyatyev, a lawyer practising in Arkhangelsk. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 June 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1967 and lives in Arkhangelsk.

5. On 20 January 2004 the Kotlas Town Court upheld the applicant's action against the Kotlas Town Council and ordered that the Council should:

“...provide Ms Yuryevna Telyatyeva Svetlana, whose family comprises one member, with separate well-equipped living premises that meet sanitary and technical requirements, situated in the town of Kotlas, having a living surface of no less than 12 square metres”.

The judgment was not appealed against and became final.

6. On 6 February 2004 enforcement proceedings were instituted. On 28 July 2005 the bailiffs' office informed the applicant that the judgment of 20 January 2004 remained unenforced because the administration had no available housing or financial resources to purchase a flat.

7. The judgment of 20 January 2004 was enforced on 12 January 2006 when the applicant was provided with a flat measuring 15 square metres.

THE LAW

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

8. The applicant complained that the judgment of 20 January 2004 had not been enforced in good time. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). The relevant parts of these provisions read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... 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

9. The Court notes that the application 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

10. The Government claimed that the judgment of 20 January 2004 had been enforced in full and the period of the non-enforcement had not been excessive. The Kotlas Town Council had had to enforce a number of

judgments concerning provision of housing. It had not possessed available housing or financial resources to expedite the enforcement proceedings.

11. The applicant maintained her complaints.

12. The Court observes that on 20 January 2004 the applicant obtained a judgment in her favour by which she was to be provided with a flat. The judgment was not appealed against and became final. It was enforced on 12 January 2006. It thus remained unenforced for approximately two years.

13. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see *Malinovskiy v. Russia*, no. 41302/02, § 35 et seq., ECHR 2005; *Teteriny v. Russia*, no. 11931/03, § 41 et seq., 9 June 2005; *Gizatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Burdov*, cited above, § 34 et seq., ECHR 2002-III).

14. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court notes that the judgment was not enforced because the debtor did not possess available housing and did not have financial recourses to purchase a flat. However, the Court reiterates that it is not open to a State authority to cite the lack of funds or other resources, such as housing, as an excuse for not honouring a judgment debt (see *Malinovskiy*, cited above, § 35; *Plotnikov v. Russia*, no. 43883/02, § 23, 24 February 2005). Admittedly, a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov*, cited above, § 35).

15. The Court finds that by failing for almost two years to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of her right to a court and prevented her from receiving a flat she could reasonably have expected to receive.

16. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

19. The Government argued that the applicant's claims were ill-founded and unreasonable.

20. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce in good time the judgment in her favour. The Court takes into account the relevant aspects, such as the length of non-enforcement and the nature of the domestic award, and making its assessment on an equitable basis, awards the applicant EUR 1,600 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

21. The applicant also claimed EUR 850 for the costs and expenses incurred before the Court, of which EUR 50 represented postal expenses and EUR 800 represented lawyer's fees.

22. The Government submitted that the applicant's claim in respect of postal expenses was not supported by any receipts or vouchers. As regards the claim in respect of lawyer's fees, the Government considered that the sum claimed was excessive as the present case was not particularly complex and it had not required substantial legal work.

23. According to the Court's case-law, an applicant is entitled to reimbursement of his 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. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for compensation for postal expenses as the applicant did not submit any receipts or other vouchers in support of that claim. As regards the claim for legal expenses, the Court considers that the sum claimed should be awarded in full, plus any tax that may be chargeable on that amount.

C. Default interest

24. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) EUR 1,600 (one thousand and six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 800 (eight hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President