



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

FOURTH SECTION

CASE OF VOLKOVA v. RUSSIA

(Application no. 48758/99)

STRASBOURG

5 April 2005

FINAL

05/07/2005

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 Volkova v. Russia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr A. KOVLER,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 48758/99) 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, Mrs. Lyubov Alekseyevna Volkova ("the applicant"), on 28 December 1998.

2. The applicant, who had been granted legal aid, was represented by Mr K.N. Koroteyev, a lawyer practising in Moscow, and Mr. Philip Leach, a lawyer practising London. The Russian Government ("the Government") were represented by Mr. P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that a judgment rendered in her favour was quashed by way of supervisory review and that these proceedings were unfair.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 18 November 2003 the Court declared the application partly admissible and partly inadmissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

A. The circumstances of the case

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

1. The initial housing dispute

9. The applicant and her family (her husband and two children, born in 1982 and 1987) moved into a dormitory in Volgograd in 1985. They occupied two rooms in the dormitory, with shared kitchen, shower and toilet facilities. They were registered as living in the dormitory permanently, which was their sole residence. In 1993 the ownership of the dormitory was transferred to a company called “VNIITMASH”.

10. In 1995 the applicant, along with other residents, was ordered by the District Prosecutor of the Sovetskiy district of Volgograd to vacate the premises because the building required urgent structural renovation. The applicant was provided with temporary housing in another dormitory in Volgograd, although smaller and of inferior quality. In August 1995 the applicant was forcibly evicted from the building and her belongings were transferred.

11. The applicant, along with other residents, brought an action against VNIITMASH and the administration of the Sovetskiy district for provision of permanent housing and compensation for non-pecuniary damage. They alleged that though the status of the building was a dormitory, their contracts were not for dormitory-type accommodation, but for proper flats. On 24 April 1996 the Volgograd Regional Court confirmed in the final instance the judgment of the Sovetskiy District Court to reject the applicants’ claim. VNIITMASH undertook to allow the applicants to return to the dormitory after the renovation, which was scheduled to be completed in September 1996.

12. The building was not renovated on time, and the applicant applied to the court again. The district administration accepted her claims. The Sovetskiy District Court by its judgment of 22 June 1999 ordered the administration to provide the applicant with “comfortable” (*благоустроенное*) housing. Neither of the parties appealed, and the judgment entered into force and was forwarded to the bailiff in July 1999.

13. On 8 September 1999 the renovation in the original building was completed and the ownership of it was transferred to the district administration, with the status of a dormitory.

14. On 24 September 1999 the administration of the Sovetskiy district issued a voucher (*ордер*) to the applicant’s family for two rooms of

34 square metres in the newly renovated dormitory building. It appears that the bailiff closed the enforcement procedures on 11 October 1999.

15. The applicant refused to accept the accommodation offered, as she believed that the housing in the dormitory did not correspond to the definition of “comfortable”, as ordered by the court on 22 June 1999. She also alleged that the conditions had become worse since the renovation. In particular, the applicant and her family would only be able to register as temporary occupants of the building and the rooms offered to them were separated from each other and were connected by a corridor shared with other rooms. Further, they were required to share the toilet and kitchen facilities with a larger number of families, and the quality of the building remained very poor, even after the renovation.

16. On her complaint, the bailiff reopened the enforcement procedures and on 23 February 2000 prohibited the issuing of housing vouchers by the district administration.

17. On 27 April 2000 the Sovetskiy District Court, on the administration’s complaint, quashed the bailiff’s order of 23 February 2000. On 28 June 2000 the Volgograd Regional Court confirmed this decision. The courts found that the judgment of the Sovetskiy District Court of 22 June 1999 had been executed by the administration which had provided her with “comfortable” housing in the dormitory, and the applicant’s refusal to accept it did not warrant continuation of enforcement procedures.

18. On 18 July 2000 the administration offered three rooms in the dormitory to the applicant, totalling 53,5 square metres. The applicant and her family did not accept the places in the dormitory and refused to move in.

2. Procedure in the supervisory instance

19. On 6 June 2000 the rapporteur, under Rule 49 § 1 of the Rules of Court, asked the Russian Government the following questions:

“1. What is the current situation with respect to enforcement of the decision of the Sovetskiy District Court of Volgograd of 22 June 1999?

2. To what type of accommodation is the applicant entitled, according to the above-mentioned judicial decision?”

20. The Government responded on 18 September 2000. They informed the Court that on 17 July 2000 the Presidium of the Volgograd Regional Court, acting by way of supervisory review upon a request (*npomecm*) lodged by its president, had quashed the judgment of the Sovetskiy District Court of 22 June 1999 and returned the case for a new consideration at first instance.

21. The applicant later informed the Court that she had not been aware of the session of the Presidium of the Volgograd Regional Court of 17 July 2000, as the information notice had been sent to her only on 13 July when she was out of town. The representatives of the administration and the

District Prosecutor's Office had attended the hearing and presented their arguments.

22. On 26 July 2000 the Sovetskiy District Court again considered the case and rejected the applicant's claim, stating that she was only entitled to housing in the renewed dormitory. The decision was confirmed on 30 August 2000 by the Volgograd Regional Court. On 27 September 2000 the bailiff closed the enforcement proceedings because the court decision of 22 June 1999 had been quashed.

23. The applicant on several occasions attempted to challenge the court decision by way of supervisory review, but was unsuccessful.

24. On 12 April 2001 the district administration confirmed the offer of three rooms in the dormitory to the applicant, but she did not accept it.

3. Communication of the complaint to the Russian Government and new supervisory proceedings

25. On 5 October 2001 the complaint was communicated to the Russian Government.

26. On 4 February 2002 a request for supervisory review was lodged with the Supreme Court by the Deputy President of the Supreme Court. On 4 March 2002 the Supreme Court, acting by way of supervisory review, quashed the following judicial decisions: the decision of the Presidium of the Volgograd Regional Court of 17 July 2000, the judgment of the Sovetskiy District Court of 26 July 2000, the decision of the Volgograd Regional Court of 30 August 2000. It has thus restored the judgment of the Sovetskiy District Court of 22 June 1999.

27. On 12 April 2002 the Presidium of the Volgograd Regional Court, acting by way of supervisory review upon a request by the President of the Regional Court, again quashed the judgment of the Sovetskiy District Court of 22 June 1999 and returned the case for a new consideration. The new proceedings are still pending.

B. Relevant domestic law and practice

28. Article 11 of the Code of Civil Procedure of 1964 (CCP) then in force provided that regional and higher courts may conduct "supervisory review" of the activities of the lower courts. This meant, according to Articles 319, 320 and 327, that certain senior judicial officers could, at any time, on the request by the person concerned or on their own motion, lodge with a higher court an "application for supervisory review" (*npomecm*) against a final decision of a lower court on all questions of fact and law. If an "application for supervisory review" was lodged, the proceedings recommenced and execution of the judgment could be adjourned (Article 323). The "supervisory review" procedure was separate from

proceedings whereby a case could be reviewed on grounds of new facts (Articles 333-337).

THE LAW

1. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

29. The applicant complained under Article 6 § 1 of the Convention that the judgment of 22 June 1999 was quashed following the supervisory review, and that this procedure was unfair. Article 6 § 1, in so far as relevant, reads as follows:

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

A. Supervisory review procedure: legal certainty

1. Arguments of the parties

30. The Government submitted that the decision of the Presidium of the Volgograd Regional Court had been quashed by the Supreme Court by way of supervisory review in March 2002. These proceedings served to correct the alleged violations, the applicant's case has not been finally determined at the national level and the application could not therefore be examined by the Court.

31. The applicant requested that her application should proceed. Referring to the judgments in *Brumărescu v. Romania*, *Sovtransavto Holding v. Ukraine* and *Ryabykh v. Russia*, the applicant submitted that the setting aside of a judgment in her favour over one year after its coming into force had infringed the principle of legal certainty and deprived her of her right of access to court (see *Brumărescu v. Romania* [GC], no. 28342/95, 28 October 1999; *Sovtransavto Holding v. Ukraine*, no. 48553/99, ECHR 2002-VII; *Ryabykh v. Russia*, no. 52854/99, 24 July 2003). She also submitted that the subsequent decisions of the Supreme Court of 4 March 2002 and of the Presidium of the Volgograd Regional Court of 12 April 2002, also adopted by way of supervisory review, which quashed the interim judicial proceedings, were further in breach of the principle of legal certainty.

2. The Court's assessment

32. As regards the Government's argument, the Court notes that the applicant's complaint under Article 6 § 1 concerns the quashing of an earlier judgment in the applicant's favour. The issue is whether such procedure, permitting a final judgment to be quashed, can be considered compatible with Article 6 and, in particular, whether the principle of legal certainty was thereby infringed.

33. The fact that the decision of the Presidium of the Regional Court was subsequently quashed on a further application for supervisory review could not be said to improve legal certainty in the applicant's case and this position is not affected by the proceedings which are pending at the national level.

34. The Court considers that this case is similar to the above-mentioned case of *Ryabykh v. Russia*, where it was said, in so far as relevant to the instant case:

"51. ... the Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question...

54. The Court notes that the supervisory review of the judgment ... was set in motion by the President of the Belgorod Regional Court – who was not party to the proceedings ... As with the situation under Romanian law examined in *Brumărescu*, the exercise of this power by the President was not subject to any time-limit, so that judgments were liable to challenge indefinitely.

55. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

56. The Court considers that the right of a litigant to a court would be equally illusory if a Contracting State's legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official."

35. Furthermore, the Court has found in this respect in its above-mentioned judgment *Sovtransavto Holding v. Ukraine*, § 77:

“...judicial systems characterised by the objection (protest) procedure and, therefore, by the risk of final judgments being set aside repeatedly, as occurred in the instant case, are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention, read in the light of *Brumărescu* ...”

36. The Court notes that in the instant case in July 2000 the President of the Volgograd Regional Court lodged a protest against the decision of the Sovetskiy District Court of Volgograd of 22 June 1999 that had become final and binding, and in respect of which enforcement proceedings had been concluded. On 17 July 2000 this decision was quashed and the case was remitted for re-consideration by a decision of the Presidium of the Volgograd Regional Court. In further proceedings supervisory review was employed by the Supreme Court and by the Presidium of the Volgograd Regional Court on two more occasions, in March and April 2002.

37. The Court does not find any reason for departing from its aforementioned judgments. It considers that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicant’s case.

B. Supervisory review procedure: procedural issues

38. The applicant submitted that the proceedings in the Presidium of the Volgograd Regional Court in July 2000 had been unfair and that that body could not be regarded as an impartial tribunal in view of the very short delay between the lodging of the protest and its review.

39. The Court finds, as it did in § 59 of the above-cited judgment of *Ryabykh*, that having concluded that there has been an infringement of the applicant’s “right to a court” by the very use of the supervisory review procedure, it is not necessary to consider whether the procedural guarantees of Article 6 of the Convention were available in these proceedings.

2. 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, in respect of pecuniary damage, 25,000 euros (EUR) based on the cost of a two-room flat in Volgograd. She also claimed EUR 10,000 for reimbursement of non-pecuniary damage caused by uncertainty as to the finality of the district court’s judgment in her favour.

42. The Government contested these claims.

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this aspect of the claim. The Court finds, however, that the applicant may be considered to have suffered some degree of frustration and distress as a result of the violation found in this case. Deciding on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant claimed EUR 1,300 for the work of lawyers who entered the proceedings after the case had been declared admissible. This included 20 hours of work of her Moscow-based representative and 2 hours of work of her London-based representative.

45. The Government found this amount excessive and unjustified. They argued that no contract or payment receipt had been produced by the applicant to prove her expenses under this heading.

46. The Court recalls that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII). In the present case the Court finds that the amount of work claimed by the applicant’s representatives in respect of legal costs appears reasonable and justifiable. It also considers that the submitted documents justifying the lawyers’ work represent an acceptable form of a proof of the expenses incurred by the applicant’s representatives.

47. The Court awards EUR 1,300 under this heading, to be paid to the applicant’s lawyers, less the EUR 556 received by way of legal aid from the Council of Europe.

C. Default interest

48. 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. *Holds* that there has been a violation of Article 6 of the Convention in respect of the quashing of a final and binding judgment issued in the applicant's favour;
2. *Holds* that it is not necessary to consider separately the allegation of procedural unfairness in the supervisory review proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 744 (seven hundred forty-four euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyers in the United Kingdom;
 - (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 5 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President