



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

FIRST SECTION

CASE OF TETERINY v. RUSSIA

(Application no. 11931/03)

JUDGMENT

STRASBOURG

30 June 2005

FINAL

30/09/2005

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 Teteriny v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 11931/03) 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 two Russian nationals, Mr Anatoliy Grigoryevich Teterin and Ms Tamara Vasilyevna Teterina (“the applicants”), on 25 February 2003. The second applicant was also the first applicant's representative before the Court.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 6 September 2003 the Court decided to communicate to the Government the complaint concerning non-enforcement of the judgment of 26 September 1994. 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1954 and 1955 respectively, and live in Syktyvkar in the Komi Republic. They are both retired judges.

5. On 26 September 1994 the Ezhvinskiy District Court of the Komi Republic allowed the first applicant's claim against the Yemva Town Council for provision of State housing, for which he was eligible as a judge. The court ordered the town council to:

“...grant or purchase for Mr Teterin, whose family comprises five members, a separate well-equipped flat or house taking account of the plaintiff's entitlement to one additional room or having a habitable surface of no less than 65 square metres, located near the Knyazhpogostskiy District Court in the town of Yemva”.

6. No appeal was brought against the judgment and it became final and enforceable ten days later.

7. In October 1994 enforcement proceedings were instituted. However, the judgment could not be enforced because the town authorities did not possess any available housing or the financial resources to purchase a flat.

8. The applicants complained to the Courts Administration Department at the Supreme Court of the Russian Federation, the Court Bailiffs' Department of the Ministry of Justice of the Russian Federation and the Court Bailiffs' Department of the Komi Republic Department of Justice. The responses received by the applicants in 2001 and 2002 indicated that the judgment could not be enforced as the town authorities had no available housing.

9. In 2002 the first applicant applied to the Ezhvinskiy District Court with a request to change the method of execution of the judgment of 26 September 1994. He asked that the value of the flat be paid to him in cash.

10. On 24 April 2002 the Ezhvinskiy District Court closed the proceedings for the amendment of the judgment as the first applicant had withdrawn his request.

11. On 23 August 2002 a court bailiff reopened enforcement proceedings and ordered the Knyazhpogostskiy District Council to execute the judgment.

12. On 30 January 2003 the enforcement proceedings were closed because enforcement was not possible. On the following day the writ of execution was returned to the first applicant.

13. Further to the applicants' complaint, on 3 March 2003 the Knyazhpogostskiy District Court quashed the bailiff's decision to terminate the proceedings.

14. The proceedings were resumed on 7 May 2003. The bailiff collected information on the cash flows and funds of the Yemva Town Council.

15. On 7 July 2003 the bailiff discontinued the enforcement proceedings on account of the town council's lack of funds for the construction or purchase of housing. The writ of execution was returned to the Ezhvinskiy District Court. The first applicant submits that a copy of that decision was not served on him and that he first became aware of it upon receipt of the Government's memorandum of 1 December 2003, to which it was attached.

16. On 19 January 2004 the Yemva Town Council offered the first applicant a two-room flat of 25 square metres with central heating. It noted that no State housing had been constructed since 1994 and that it was therefore not in a position to offer a flat with full amenities. The applicants did not accept the offer. On 17 December 2004 the enforcement proceedings were re-opened and they are now pending.

17. The judgment of 26 September 1994 has not been enforced to date.

II. RELEVANT DOMESTIC LAW

A. Enforcement proceedings

18. Section 9 of the Enforcement Proceedings Act (Law no. 119-FZ of 21 July 1997) provides that a bailiff's order on institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow should the defendant fail to comply with the time-limit. Pursuant to section 13, the enforcement proceedings must be completed within two months of the receipt of the writ of execution by the bailiff.

B. Implementation of the right to a “social tenancy”

19. The RSFSR Housing Code (Law of 24 June 1983, effective until 1 March 2005) provided that Russian citizens were entitled to possess flats owned by the State or municipal authorities or other public bodies, under the terms of a tenancy agreement (section 10). Certain “protected” categories of individuals (disabled persons, war veterans, Chernobyl victims, police officers, judges, etc.) had a right to priority treatment in the allocation of flats.

20. A decision on granting a flat was to be implemented by way of issuing the citizen with an occupancy voucher (*ордер на жилое помещение*) from the local municipal authority (section 47). The voucher served as the legal basis for taking possession of the flat designated therein and for the signing of a tenancy agreement between the landlord, the tenant and the housing maintenance authority (section 51, and also Articles 672 and 674 of the Civil Code).

21. Members of the tenant's family (including the spouse, children, parents, disabled dependants and other persons) had the same rights and obligations under the tenancy agreement as the tenant (section 53). The tenant had the right to accommodate other persons in the flat (section 54). In the event of the tenant's death, an adult member of the tenant's family succeeded him or her as a party to the tenancy agreement (section 88).

22. Flats were granted for permanent use (section 10). The tenant could terminate the tenancy agreement at any moment, with the consent of his or her family members (section 89). The landlord could terminate the agreement on the grounds provided for by law and on the basis of a court decision (sections 89-90). If the agreement was terminated because the house was no longer fit for living in, the tenant and family were to receive a substitute flat with full amenities (section 91). Tenants or members of their family could be evicted without provision of substitute accommodation only if they “systematically destroyed or damaged the flat”, “used it for purposes other than residence” or “systematically breached the [generally accepted rules of conduct] making life with others impossible” (section 98).

23. The tenant had the right to exchange the flat for another flat in the State or municipal housing, including across regions (section 67). An exchange involved reciprocal transfer of rights and obligations under the respective tenancy agreements and became final from the moment of issuing new occupancy vouchers (section 71). “Speculative” or sham exchanges were prohibited (section 73(2)).

C. Rent for State housing

24. The Federal Housing Policy Act (Law no. 4218-I of 24 December 1992) provides that the payments for a flat comprise (i) a housing maintenance charge, (ii) a housing repair charge, and, in the case of tenants only, (iii) rent (section 15). The maintenance and repair charges do not depend on the flat's ownership, whether private or State. Rent is fixed by regional authorities, taking into account the surface area and quality of the housing. It is usually considerably lower than free-market rent. For example, the highest monthly rent for municipal housing in Moscow is 80 kopecks (0.02 euro) per square metre (Resolution of the Moscow Government no. 863-PP of 7 December 2004).

D. Privatisation of State housing

25. In 1991, the Privatisation of Housing Act (Law no. 1541-I of 4 July 1991) was adopted (it will remain effective until 31 December 2006). It grants Russian citizens the right to acquire title to State and municipal-owned flats of which they have taken possession on the basis of a social tenancy agreement (section 2). The acquisition of title does not require any payment or fee (section 7). The right to privatisation can be exercised once in a lifetime (section 11) and requires the consent of all adult family members.

THE LAW

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

26. The applicants complained that the continued failure to enforce the judgment of 26 September 1994 violated their “right to a court” under Article 6 of the Convention and their right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1. The relevant parts of Article 6 provide as follows:

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

Article 1 of Protocol No. 1 reads as follows:

“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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

1. The Government's objection as to the second applicant's victim status

27. The Government submitted that the second applicant was not the victim of the alleged violation. The judgment of 26 September 1994 had been made in favour of the first applicant alone and the second applicant had merely represented his interests in the enforcement proceedings. She could not claim, therefore, that her “right to a court” or her property rights had been violated.

28. The applicants submitted in reply that the continued failure to enforce the judgment concerning the provision of housing for the entire family had an adverse impact on each family member. Moreover, this situation had hindered the second applicant's professional activities as she had been challenged in other proceedings by the district council on the ground that she could not be impartial.

29. The Court observes that the claim for housing was lodged by the first applicant and that the judgment of 26 September 1994 was made in his

favour. That judgment did not determine the second applicant's civil rights and obligations and did not confer any entitlement on her.

30. The Court therefore considers that the complaints lodged by the second applicant on her own behalf are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4. The Court will henceforth refer to the first applicant as “the applicant”.

2. The Government's objection as to the exhaustion of domestic remedies

31. The Government submitted that the applicant had failed to exhaust the domestic remedies available to him. Firstly, he had not appealed to a court against the court bailiff's decision of 7 July 2003 in which the enforcement proceedings had been terminated. Secondly, he had not applied for an interest-free loan for the purchase or construction of housing, for which federal judges with not less than ten years' professional experience were eligible. Thirdly, he had not submitted a request to be placed on the waiting list of persons needing improved housing, which could have been examined by the housing commission of the Courts Administration Department of the Komi Republic.

32. The applicant submitted that he had not been able to appeal against the decision of 7 July 2003, since it had not been served on him. The writ of execution had been returned to the District Court and not to him as the creditor, as required by section 73 of the Enforcement Proceedings Act. Furthermore, on 24 December 2003 the court had again forwarded the writ of execution for enforcement. As regards the interest-free loan, the applicant noted that, pursuant to section 19 of the Status of Judges Act, free housing was to be provided to a judge by the local authorities within six months of his or her appointment. A loan could be granted as an alternative to free housing at the initiative of the authorities. However, in his case the authorities had not made such an offer. Finally, the applicant indicated that the proposal by the Courts Administration Department that he apply to be put on the housing waiting list had been made in disregard of the existing judgment that had already confirmed his right to a flat.

33. The Court must first examine whether the applicant has complied with the rule of exhaustion of domestic remedies as required under Article 35 § 1 of the Convention.

34. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success

(see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further emphasises that the domestic remedies must be “effective” in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

35. As regards the possibility of complaining against the bailiff's decision to terminate the proceedings, the Court notes that the Government failed to provide any explanation as to how such a complaint could have put an end to the continued violation or to the kind of redress which the applicant could have been afforded as a result of the complaint. In any event, the Court observes that the applicant did not complain about any unlawful act on the part of a bailiff but, rather, about the fact that the judgment was not enforced. Even if the applicant had brought a complaint against the bailiff and obtained a decision confirming that the decision to terminate the enforcement proceedings had been unlawful in domestic terms, such an action would only have produced repetitive results, namely a writ of execution enabling the bailiffs to proceed with the enforcement of the judgment of 26 September 1994 (see *Yavorivskaya v. Russia* (dec.), no. 34687/02, 15 May 2004, and *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000). The Court concludes that such an action would have been ineffective.

36. In so far as the Government suggest that the applicant should have applied for an interest-free loan or for placement on the housing waiting list, the Court fails to see how such an application could have contributed to the enforcement of the judgment. In fact, the pursuit of this “remedy” would have required the applicant either to purchase a flat at considerable personal expense, albeit with borrowed money, or to wait his turn indefinitely on the housing list. This could not have improved the situation of the applicant, who had already obtained an enforceable judgment as a result of successful litigation, by the terms of which a State authority was to grant him a flat without additional charges or undue delay. Furthermore, the decision to grant a loan or place a person on the waiting list depended on the discretionary powers vested in the Courts Administration Department. The Court does not accept that the applicant was required to exhaust these remedies in order to comply with the requirements of Article 35 § 1 of the Convention.

37. The Court notes that the 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

38. The Government made no comments on the merits of the complaint. They claimed, however, that the applicant and his family no longer needed improved living conditions as he had purchased a one-room flat in 2001 and his spouse had bought a three-room flat in Syktyvkar in 2003.

39. The applicant contended that the State authorities had had ample opportunities to comply with the judgment. Over the last ten years several new blocks of flats had been built, including a twenty-flat block on Pushkin Street in 1997. If no flat of the required surface area was available, the authorities could have granted him two flats having the same aggregate surface area, as they had done in other cases. He submitted that he had persistently complained about the failure to enforce the judgment, but to no avail.

1. Alleged violation of Article 6 § 1 of the Convention

40. 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 the 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. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

41. The Court further 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. 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).

42. Turning to the instant case, the Court notes that the judgment of 26 September 1994, by which the applicant was to be granted a comfortable

flat measuring no less than 65 square metres, has remained unenforced in its entirety to date. The offer made by the Yemva Town Council in 2004 did not meet the terms of that judgment.

43. By failing for years to take the necessary measures to comply with the final judicial decision in the present case, the Russian authorities have deprived the provisions of Article 6 § 1 of all useful effect.

44. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Alleged violation of Article 1 of Protocol No. 1

45. The Court reiterates at the outset that the concept of “possessions” in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as property rights, and thus as “possessions” for the purposes of this provision (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I, and *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II).

46. The Court further recalls that the right to any social benefit is not included as such among the rights and freedoms guaranteed by the Convention (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). The right to live in a particular property not owned by the applicant does not as such constitute a “possession” within the meaning of Article 1 of Protocol No. 1 (see *H.F. v. Slovakia* (dec.), no. 54797/00, 9 December 2003; *Kovalenok v. Latvia* (dec.), no. 54264/00, 15 February 2001, and *J.L.S. v. Spain* (dec.), no. 41917/98, 27 April 1999).

47. However, pecuniary assets, such as debts, by virtue of which the applicant can claim to have at least a “legitimate expectation” of obtaining effective enjoyment of a particular pecuniary asset may also fall within the notion of “possessions” contained in Article 1 of Protocol No. 1 (see *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, Series A no. 222, p. 23, § 51; *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31, and, *mutatis mutandis*, *S.A. Dangeville v. France*, no. 36677/97, §§ 44-48, ECHR 2002-III). In particular, the Court has consistently held that a “claim” — even to a particular social benefit — can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

48. Turning to the facts of the present case, the Court notes that by virtue of the judgment of 26 September 1994 the town council was to put at the applicant's disposal a flat with certain characteristics. The judgment did not require the authorities to give him ownership of a particular flat, but rather

obliged them to issue him with an occupancy voucher in respect of any flat satisfying the court-defined criteria. On the basis of the voucher, a so-called “social tenancy agreement” would have been signed between the competent authority and the applicant, acting as the principal tenant on behalf of himself and the members of his family (see paragraph 20 above). Under the terms of a “social tenancy agreement”, as established in the RSFSR Housing Code and the applicable regulations, the applicant would have had a right to possess and make use of the flat and, under certain conditions, to privatise it in accordance with the Privatisation of State Housing Act.

49. Accordingly, from the moment the judgment of 26 September 1994 was issued, the applicant has had an established “legitimate expectation” to acquire a pecuniary asset. The judgment was final as no ordinary appeal lay against it, and enforcement proceedings were instituted.

50. The Court is therefore satisfied that the applicant's claim to a “social tenancy agreement” was sufficiently established to constitute a “possession” falling within the ambit of Article 1 of Protocol No. 1.

51. The Court finds that the fact that it was impossible for the applicant to obtain the execution of the judgment of 26 September 1994 for more than ten years constituted an interference with his right to peaceful enjoyment of his possessions, for which the Government have not advanced any plausible justification (see paragraph 41 above).

52. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 40,000 euros (EUR) by way of compensation for non-pecuniary damage. He did not make any claim for pecuniary damage.

55. The Government considered that the claim was excessive and unsubstantiated. They believed that, in any event, the award should not exceed the amount awarded by the Court in the *Burdov v. Russia* case. Alternatively, they submitted that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

56. The Court notes that the State's outstanding obligation to enforce the judgment at issue is undisputed. Accordingly, the applicant is still entitled to recover the judgment debt in the domestic proceedings. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position in which he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12; and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violation found. It therefore considers that the Government should secure, by appropriate means, the enforcement of the award made by the domestic courts.

57. Furthermore, the Court accepts that the applicant suffered distress, anxiety and frustration because of the State authorities' failure to enforce a judgment in his favour. It further observes that, in contrast to the aforementioned *Burdov* case, the judgment in question has not yet been enforced and no effective measures appear to have been taken in order to comply with it. Making its assessment on an equitable basis, it awards Mr Teterin EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

58. The applicant did not make any claims for costs and expenses incurred before the domestic courts or the Court.

59. Accordingly, the Court does not award anything under this head.

C. Default interest

60. 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 complaints concerning the continued failure to enforce a final judgment in Mr Teterin's favour 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* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, is to secure, by appropriate means, the enforcement of the award made by the domestic court, and, in addition, to pay Mr Teterin 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, plus any tax that may be chargeable on that amount;
 - (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President