



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

FIRST SECTION

CASE OF MALINOVSKIY v. RUSSIA

(Application no. 41302/02)

JUDGMENT

STRASBOURG

7 July 2005

FINAL

07/10/2005

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 Malinovskiy 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. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 16 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 41302/02) 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 Igor Mikhailovich Malinovskiy (“the applicant”) on 20 October 2002.

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 13 May 2003 the Court decided to communicate 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1962 and lives in Staryy Oskol, Belgorod Region.

5. In 1986 the applicant was engaged in emergency operations at the site of the Chernobyl nuclear plant disaster. The applicant’s entitlement to certain State benefits is linked to the category of disability assigned to him as a result of the deterioration in his health arising from that event.

6. In 1999 the applicant applied for free accommodation from the State. His housing conditions were recognised as substandard and he was placed on a waiting list.

7. In 2001 the applicant brought proceedings against the Belgorod Regional Administration, contesting its failure to make accommodation available to him within three months of placing him on a waiting list.

8. On 10 December 2001 the Starooskolskiy Town Court of the Belgorod Region ruled in the applicant's favour. It referred to the Law On Social Protection of Citizens Exposed to Radiation as a Result of the Chernobyl Nuclear Power Station Explosion, noted that the applicant's accommodation was substandard and ordered the Belgorod Regional Administration to provide the applicant with a flat "in accordance with the applicable standard conditions and with the order of precedence on the waiting list". This judgment was not appealed against, and enforcement proceedings were instituted on 6 February 2002.

9. On 28 June 2002 the bailiffs' service informed the applicant about a lack of progress in the enforcement proceedings, due to an insufficient number of flats allocated to the waiting list. It advised the applicant to apply to the Starooskolskiy Town Court for replacement of the in-kind award, conferred by the judgment of 10 December 2001, with an equivalent amount of money.

10. On 9 October 2002 the bailiffs' service informed the applicant that it had sought instructions from the Starooskolskiy Town Court concerning enforcement of the judgment of 10 December 2001. In particular, it asked that a time-limit be imposed, within which the authorities were to provide the applicant with a flat.

11. On 2 December 2002 the Oktyabrskiy District Court of Belgorod examined the applicant's complaint about the failure of the bailiffs' service to enforce the judgment of 10 December 2001. It found no fault on the part of the service because the judgment had not included a time-limit for enforcement.

12. On 31 July 2003 the Presidium of the Belgorod Regional Court conducted supervisory review of the judgment of 10 December 2001. It held that the statutory time-limit of three months was applicable and not amenable to further extensions. It removed the condition that the flat was to be provided in accordance with the order of precedence on the waiting list and upheld the remainder of the judgment.

13. The applicant was still waiting for accommodation in March 2004.

14. According to the applicant, on 5 March 2004 a group of five people, including the applicant, began a hunger strike to protest against the poor level of welfare protection provided for the Chernobyl victims. The mayor of Staryy Oskol launched a public call for donations in support of the protestors and collected the amount necessary to provide all of them with

housing. The applicant submitted a statement signed by four other protesters in support of his version of events.

15. According to the Government, on 2 July 2004 the mayor of Staryy Oskol decided, pursuant to the judgment of 10 December 2001, to provide the applicant with a flat measuring 86.39 m², valued at 834,960 Russian roubles.

16. On 8 July 2004 the applicant received from the mayor an occupancy voucher in respect of the flat assigned to him. He found the flat satisfactory.

17. No decision appears to have been taken as to the pending enforcement proceedings.

II. RELEVANT DOMESTIC LAW

A. Entitlement to State housing

18. The Law On Social Protection of Citizens Exposed to Radiation as a Result of the Chernobyl Nuclear Power Station Explosion (no. 1224-I of 15 May 1991, as amended at the material time) set out that disabled victims of the Chernobyl explosion were to be granted social housing within three months of submitting an appropriate application, provided that their existing accommodation did not comply with the minimum housing standards (section 14 (3)).

B. Enforcement proceedings

19. Section 9 of the Enforcement Proceedings Act (Law no. 119-FZ of 21 July 1997) provides that a bailiff's order on the 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.

C. Implementation of the right to a "social tenancy"

20. 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.

21. Decisions on granting flats were to be implemented by way of issuing the citizens concerned 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).

22. Members of the tenant's family (including his or her 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).

23. 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 residence, 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).

24. Tenants had the right to exchange their flat for another flat from the State or municipal housing stock, including one in another region (section 67). Exchanges 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)).

D. Rent for State housing

25. 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). Maintenance and repair charges are payable irrespective of whether the flat is in private ownership or owned by the 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).

E. Privatisation of State housing

26. In 1991, the Privatisation of Housing Act (Law no. 1541-I of 4 July 1991) was adopted (and 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 ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

27. The applicant complained that the prolonged non-enforcement of the judgment of 10 December 2001, as amended on 31 July 2003, violated his “right to a court” under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions as guaranteed in Article 1 of Protocol No. 1 to the Convention. These Articles, in so far as relevant, provide as follows:

Article 6 § 1

“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

“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

28. The Government considered the application manifestly ill-founded, claiming that, pursuant to the judgment of 10 December 2001, the applicant was to be provided with accommodation “in accordance with the order of precedence on the waiting list”. On 1 July 2003 the applicant had been no. 193 on the waiting list. The Government referred, in particular, to budgetary constraints inherent in providing State-funded accommodation. Finally, they claimed that the judgment had been duly enforced.

29. The applicant did not accept that budgetary constraints had justified the non-enforcement of the judgment. He also claimed that the Government’s interpretation of the judgment of 10 December 2001 would have required him to wait indefinitely for his turn on the waiting list. He considered that the need to preserve the order of precedence did not absolve the authorities from the obligation to respect the statutory time-limit of three months. In this connection he noted that the judgment of the Presidium of the Belgorod Regional Court dated 31 July 2003 had removed a reference to the order of precedence on the waiting list from the judgment of 10 December 2001. As to the current situation, the applicant considered that, although the mayor had provided him with a flat, he was still a victim of the State’s failure to enforce a judgment in his favour.

30. The Court notes that the judgment of 10 December 2001 imposed a condition on provision of housing to the applicant, notably that the “order of precedence on the waiting list” be respected. The applicant’s view that it was also subject to the statutory time-limit of three months has no explicit ground in the judgment. It was not until 31 July 2003 that the Presidium of the Belgorod Regional Court clarified that the applicant was entitled to receive a flat within three months. Thus, leaving aside the alleged discrepancy between the operative part of the judgment of 10 December 2001 and the relevant statutory provisions, it is clear that at least after the decision of 31 July 2003 the authorities had no legitimate ground to delay its enforcement proceedings for more than three months.

31. Nevertheless, between July 2003 and July 2004 no steps appear to have been taken by the authorities to enforce the award. Moreover, even after a flat had been assigned by the mayor, no formal acknowledgment was made that the judgment could now be deemed enforced, or that the applicant no longer had any outstanding entitlement. Thus, as there remains uncertainty as to the status of the previously-instituted enforcement proceedings, the Court considers that the applicant retains his victim status.

32. The Court concludes, based on the parties’ submissions, 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

1. Article 6 § 1 of the Convention

33. The parties did not make separate comments on the merits of the complaint under Article 6 § 1 of the Convention.

34. 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, and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

35. The Court further recalls that it is not open to a State authority to cite a lack of funds or other resources as an excuse for not honouring a court award. 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 v. Russia*, cited above, § 35).

36. The Court accepts that the judgment of 10 December 2001, as it was worded prior to 31 July 2003, did not require the immediate award of a flat, since its implementation was conditional on the prior allocation of flats to those persons on the waiting list before the applicant. However, the amendment of 31 July 2003 left no ambiguity as to the time-limit for enforcement. The Government have not advanced any justification for the failure to enforce it, other than a generic reference to budgetary constraints.

37. As to the circumstances relating to the granting of a flat by the mayor, the Court notes that the parties’ versions of events differ. Whereas the applicant points out that the flat was provided as a result of the extraordinary intervention brought about by the hunger strike, the Government claim that the flat was granted in the framework of the

enforcement proceedings. The Government, however, have not submitted any documents concerning the enforcement proceedings to which they refer. The applicant's statement, by contrast, has been countersigned by his fellow protesters. The Court therefore finds no factual basis for the Government's version of events and assumes that the flat was granted as a consequence of the mayor's extraordinary intervention.

38. The Court observes that no attempts were made by the authorities prior to the applicant's hunger strike to provide him with the housing due to him under the judgment or to make alternative arrangements if this was impossible. Although the mayor's humanitarian reaction in response to the applicant's demonstration meant that he was eventually allocated a flat, the Court considers that the mayor's interference could not take the place of enforcement of the judgment through due legal process.

39. Consequently, by failing for a substantial period of time to take the necessary measures to comply with the final judicial decisions in the present case, the Russian State authorities deprived the provisions of Article 6 § 1 of their useful effect.

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

2. Article 1 of Protocol No. 1 to the Convention

41. The Government submitted that the flat claimed by the applicant could not be viewed as his "possession" for the purposes of Article 1 of Protocol No. 1, in that the judgment of 10 December 2001 did not require that a flat be given to the applicant as an owner, but that he receive housing under a social tenancy agreement, funded from the budget. The applicant made no comment on this aspect.

42. The Court reiterates first 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 Court further recalls that a 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 1 to the Convention (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).

43. 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 (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) may also fall within the notion of "possessions" contained

in Article 1 of Protocol No. 1. In particular, the Court has consistently held that a “claim” — even concerning 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).

44. Turning to the facts of the present case, the Court notes that, by virtue of the judgment of 10 December 2001, the town council was to put at the applicant’s disposal a flat with certain characteristics. The judgment did not require the authorities to grant him ownership of a particular flat, but rather to issue him with an occupancy voucher in respect of any flat satisfying the criteria laid down by the court. 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 21 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 to privatise it in accordance with the Privatisation of State Housing Act.

45. Accordingly, from the date of the judgment of 10 December 2001, as confirmed on 31 July 2003, the applicant had an established “legitimate expectation” to acquire a pecuniary asset. That judgment was final as no ordinary appeal lay against it, and enforcement proceedings were instituted.

46. 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.

47. The Court finds that the fact that it was impossible for the applicant to obtain the execution of the judgment of 10 December 2001 as amended by the judgment of 31 July 2003 for a substantial period of time constituted an interference with his right to peaceful enjoyment of his possessions, for which the Government have not advanced any plausible justification (see paragraph 36 above).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 50,000 euros (EUR) in respect of compensation for non-pecuniary damage.

51. The Government submitted that the applicant's claims were excessive, arguing that if the Court decided to make an award it should not exceed the amount awarded in the *Burdov v. Russia* case.

52. The Court considers that the applicant must have suffered certain distress and frustration resulting from the State authorities' failure to enforce a judgment in his favour. However, the amount claimed appears excessive. The Court takes into account the award made by the Court in the *Burdov v. Russia* case (cited above, § 47), the nature of the award whose non-enforcement was at stake in the present case (namely a benefit linked to the applicant's disability arising from the incident at Chernobyl), the length of the enforcement proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

53. The applicant made no claims under this head.

C. Default interest

54. 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 § 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 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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national

currency of the respondent State 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President