



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

FIRST SECTION

CASE OF NATALYA GERASIMOVA v. RUSSIA

(Application no. 24077/02)

JUDGMENT

STRASBOURG

21 July 2005

FINAL

21/10/2005

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 Natalya Gerasimova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 30 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 24077/02) 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, Ms Natalya Nikolayevna Gerasimova, on 21 May 2002.

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

3. On 25 March 2004 the Court decided to communicate the complaint about non-enforcement of a final judicial decision to the Government and declared the remainder of the application inadmissible. Under the provisions of Article 29 § 3 of the Convention, the Court 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 1942 and lives in Moscow.

5. In June 2001 the applicant was advised by the Housing Policy Department of the North-Eastern Administrative District Council that the building in which she owned a flat had been scheduled for demolition within the framework of a city-wide programme for reconstruction of Soviet-era housing. The applicant was offered a substitute flat in a remote

area of Yuzhnoye Butovo. After the applicant had rejected the offer, the Council sued her for eviction and resettlement.

6. On 27 September 2001 the Babushkinskiy District Court of Moscow found for the Council. It ordered the applicant's eviction from her old flat and transferred her title in it to the Council's account. It also held that the new flat in Yuzhnoye Butovo should be transferred into the applicant's ownership. On 6 December 2001 the Moscow City Court upheld the judgment of 27 September 2001.

7. On 24 January 2002 enforcement proceedings were opened. On 2 April 2002 bailiffs relocated the applicant into the new flat.

8. The applicant asked the court to clarify the judgment of 27 September 2001. She submitted that title in the new flat had not been transferred to her because the local council had asked her to pay for additional living surface and to advance the registration fee.

9. On 26 August 2002 the Babushkinskiy District Court delivered a procedural order (*определение*). It interpreted Article 49.3 of the Housing Code (see below) in the sense that, where eviction was required because of demolition of a building, registration fees were to be borne by the party who sought eviction, that is the North-Eastern District Council.

10. On 10 April 2003 a court bailiff requested the Municipal Housing Department of the North-Eastern Administrative District Council to report why the judgment of 27 September 2001, as clarified on 26 August 2002, remained unenforced in the part concerning the transfer of title to the applicant.

11. On 7 May 2003 the Municipal Housing Department responded to the bailiff that the judgment had not imposed the obligation to transfer title on the Department and that it was not competent to act on behalf of the North-Eastern Administrative District Council.

12. According to the Government, on 4 December 2003 the Presidium of the Moscow City Court quashed, by way of supervisory-review proceedings, the procedural order of 26 August 2002 and remitted the matter for a fresh examination. On 20 May 2004 the Babushkinskiy District Court refused the applicant's request for a clarification of the judgment of 27 September 2001. Copies of these decisions were not made available to the Court.

II. RELEVANT DOMESTIC LAW

Civil Code of the Russian Federation

13. Article 223 § 2 establishes that where the transfer of property is subject to State registration, the purchaser acquires title from the moment of such registration.

Housing Code of the RSFSR (in force at the material time)

14. Article 49.3 established that in case of demolition of a block of flats, the local authority, company or organisation that performed the demolition should grant the evicted owners title in an equivalent flat or any other compensation.

Law on State Registration of Rights to Immovable Property or Transactions with It (no. 122-FZ of 21 July 1997)

15. Sections 13 § 1 and 16 § 4 provide that State registration may be carried out upon production of the required documents and payment of the registration fee.

16. Pursuant to section 17 § 1, a final judicial decision is a basis for State registration of a right to immovable property or a transaction with it. Section 28 § 3 (as amended on 9 June 2003) requires judicial bodies to submit final judgments and decisions concerning rights to immovable property to the registration authorities within three days of their delivery.

THE LAW

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

17. The applicant complained that the judgment of 27 September 2001, as upheld on 6 December 2001, has not been enforced in the part requiring the transfer of title in the new flat. The Court considers that these complaints fall 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). Article 6, in the relevant part, provides 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. Arguments by the parties

18. The Government submit that there has been no violation of the Convention or the Protocols thereto because the applicant has obtained title in the new flat from the moment of coming into force of the judgment of 27 September 2001. From that moment she has been able to use, possess and alienate the flat. At present the State registration of her right of ownership has not been performed, but the applicant may apply for registration at any moment, subject to the payment of the registration fee. The Council may not apply for registration in the applicant's stead.

19. The applicant submits that she was evicted contrary to her wishes. In such circumstances it would be reasonable to expect that the domestic authorities would gather the required documents and perform the registration. Moreover, the amount of the registration fee is commensurate with her monthly pension. On the other hand, she never refused to come and collect the ownership certificate from the registration authority.

B. Admissibility

20. 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.

C. Merits

21. Turning to the merits of the case, the Court observes that on 27 September 2001 the domestic court issued a judgment, according to which the applicant was to obtain the right of ownership of the substitute flat. Enforcement proceedings were instituted, the applicant got the keys to the flat and moved into it, but the State registration of the transfer has not been performed to date.

22. The Government's submission that the applicant acquired title from the moment of coming into force of the judgment appears to be at variance with Article 223 of the Russian Civil Code, pursuant to which title to immovable property is considered to have been acquired from the moment of State registration. The Court notes that the Government did not refer to any provision of the domestic law supporting their interpretation or to any other legal rule which could have been more appropriately applied to the applicant's case. It follows that the transfer of the flat cannot be deemed completed until the State registration has been performed. Accordingly, the judgment of 27 September 2001, as upheld on 6 December 2001, has not been enforced in the part concerning the transfer of title.

23. The Court further notes that the failure to enforce the judgment of 27 September 2001 at the initial stage could have been due to the court's omission to specify which of the applicant or the Council was to carry out State registration of the applicant's title and bear the associated costs. However, even after the same court issued a special clarification imposing the duty to register the transfer of title on the Council, the domestic authorities do not appear to have taken any steps to enforce the judgment. Instead, they chose to attack the clarification by way of supervisory-review proceedings. As the Government failed to submit copies of the judicial decisions of 4 December 2003 and 20 May 2004, it is impossible to determine the domestic courts' current approach to the distribution of the obligation to perform State registration. In any event, the Government have not contested that the enforcement proceedings are now pending, but the judgment has remained without enforcement to date, that is for more than four years since it was issued.

24. 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, e.g., *Gizatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Burdov*, cited above, § 34 et seq.).

25. 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. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented her from obtaining title in property she could reasonably have expected to acquire.

26. 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

27. 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

28. The applicant claimed 1,900 US dollars (USD) in respect of pecuniary damage, representing the expenses incurred in connection with

her move into the new flat. She claimed a further USD 50,000 in respect of non-pecuniary damage.

29. The Government did not comment.

30. The Court notes that the claim for the pecuniary damage refers to the applicant's eviction and resettlement into the new flat. However, it declared the complaints relating to these events inadmissible in its decision of 25 March 2004. As the applicant did not claim that the non-enforcement of the judgment of 27 September 2001, as upheld on 6 December 2001, caused her pecuniary damage, the Court rejects her claims in that part. As regards the claim for non-pecuniary damage, the Court, deciding on an equitable basis, considers that the finding of a violation constitutes sufficient just satisfaction.

B. Costs and expenses

31. The applicant claimed 1,175 Russian roubles for postal and copying expenses. The Government did not comment.

32. Having regard to all materials in its possession, the Court is satisfied that these expenses have been actually and necessarily incurred and were reasonable as to quantum. It awards the applicant 1,175 Russian roubles in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

33. 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;
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, RUR 1,175 (one thousand one hundred

seventy-five Russian roubles) in respect of costs and expenses, plus 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 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 21 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President