



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

FIRST SECTION

**CASE OF KUKSA v. RUSSIA**

*(Application no. 35259/04)*

JUDGMENT

STRASBOURG

15 June 2006

**FINAL**

*15/09/2006*

*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 Kuksa 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,

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 23 May 2006,

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

## PROCEDURE

1. The case originated in an application (no. 35259/04) 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 Sergey Vladimirovich Kuksa (“the applicant”), on 17 September 2004.

2. 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 February 2005 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

### THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Yakutsk.

#### **A. Judicial proceedings for provision of housing**

5. On 1 October 1999 the Yakutsk Town Court of Sakha (Yakutiya) Republic allowed the applicant’s claim against the Yakutsk Town

Administration for provision of housing. The Town Court ordered that the administration:

“...provide Mr Kuksa and his family members with living premises that meet sanitary and technical requirements”.

6. The judgment of 1 October 1999 was amended on appeal by the Supreme Court of the Sakha (Yakutiya) Republic on 14 September 2000. The Supreme Court ordered that the administration:

“...provide Mr Kuksa and his family members with well-equipped living premises in a stone building constructed after 1994”.

7. On 22 December 2000 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic, by way of supervisory-review proceedings and upon the applicant’s request, amended the judgment of 14 September 2000 and ordered that the administration:

“...provide Mr Kuksa with a three-room well-equipped flat in a new stone block of flats”.

8. The judgment entered into force on the same day.

## **B. Enforcement proceedings**

9. In November 1999 the bailiffs’ service opened enforcement proceedings and in February 2000 charged 17 flats belonging to the Yakutsk Town Administration.

10. On 31 May 2000 the Yakutsk Town Court, upon the complaint from the Town Administration, quashed the bailiffs’ charging order.

11. After the decision of 31 May 2000 had been quashed on appeal and the case had been remitted for a fresh examination, the Yakutsk Town Court reconsidered the matter and discontinued the proceedings.

12. In December 2000 the bailiffs charged 7 flats of the Town Administration and deposited them with the administration’s creditors. The applicant was not among them. The bailiffs also fined the Town Administration for its failure to enforce the judgment in the applicant’s favour. Those decisions were quashed by the Yakutsk Town Court, upon the administration’s appeal.

13. On an unspecified date liquidation proceedings were instituted against the Yakutsk Town Administration and in February 2003 the bailiffs sent the writ of execution to the liquidation commission.

14. At the time the application was lodged with the Court, the judgment of 1 October 1999, as amended on 22 December 2000, remained unenforced because the Town Administration possessed no available housing or financial resources to purchase a flat.

15. On 14 November 2005 the Ministry of Building of the Sakha (Yakutiya) Republic offered the applicant to purchase a three-room flat at

the Ministry's expense. Four days later the applicant bought a three-room flat and submitted a copy of the contract to the Government of the Sakha (Yakutiya) Republic.

16. On 22 November 2005 the Ministry of Finance of the Sakha (Yakutiya) Republic paid the purchase price to the construction company and on 6 December 2005 the company provided the applicant with keys to the flat and he and his family members moved into it.

## 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 1 October 1999, as amended on 22 December 2000, was not timeously enforced. 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**

18. The Government stated that the Yakutsk Town Administration was an organ of local self-government. It was not a State organ and enjoyed independence in the management of its budget. The Government argued that the principles established in the judgment of *Burdov v. Russia* (no. 59498/00, ECHR 2002-III) were inapplicable to the present case since the Russian Federation was not responsible for non-execution against such an organ.

19. The applicant disagreed.

20. The Court notes that it has on several occasions dismissed the same argument of the Russian Government (see, for example, *Gerasimova v. Russia* (dec.), no. 24669/02, 16 September 2004, *Yavorivskaya v. Russia*, no. 34687/02, § 25, 21 July 2005, and *Mikryukov v. Russia*, no. 7363/04, § 21, 8 December 2005). In particular, the Court held that, according to the established case-law of the Convention organs, the agencies of local self-government are clearly State organisations in the sense that they are governed by public law and exercise public functions vested in them by the Constitution and the laws. The Court does not find any reason to depart from this conclusion in the present case and dismisses the Government's objection.

21. 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**

22. The Government claimed that the judgment of 1 October 1999, as amended on 22 December 2000, remained unenforced until 22 November 2005 because the Yakutsk Town Administration was in the process of liquidation and was "financially insolvent".

23. The applicant averred that since 1999 tens of thousands of square metres of living premises had been built in Yakutsk. The Town Administration thus had an opportunity to provide him with a flat.

24. The Court observes that on 1 October 1999 the applicant obtained a judgment in his favour by which he and his family members were to be granted a flat. The judgment was eventually amended and became enforceable on 22 December 2000. It was enforced on 22 November 2005 when the Ministry of Finance of the Sakha (Yakutiya) Republic paid for the flat. Thus, it has remained unenforced for approximately five years.

25. 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; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Burdov*, cited above, § 34 et seq., ECHR 2002-III).

26. 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 v. Russia*, no. 41302/02, § 35, 16 June 2005; *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 v. Russia*, no. 59498/00, § 35, ECHR 2002-III). The Court also notes that pending liquidation proceedings against a State organ cannot absolve the State from its responsibility to enforce a final judgment. To conclude otherwise would allow the State to use this avenue to avoid payment of the debts of its organs, especially taking into account that changing needs force the State to make frequent changes in its organisational structure, including by forming new organs and liquidating old ones.

27. The Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving a flat he could reasonably have expected to receive.

28. 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

29. 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

30. As regards the pecuniary damage, the applicant argued that for 10 years he had not been able to obtain a flat he had been entitled to. He claimed EUR 532,388, representing the price of a three-room flat adjusted for inflation. He further claimed EUR 48,732, representing the aggregated rent which he would have paid for a similar flat if he had had sufficient means to rent such a flat. The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

31. The Government commented that the applicant was not a victim of the alleged violations as the State was not responsible for non-enforcement of the judgment and that no compensation should be granted to him.

32. The Court does not consider it necessary to address the Government's argument as to the State's responsibility because it has already been examined (see paragraph 28 above). As regards the claim for compensation for pecuniary damage, the Court observes that the applicant was provided with a three-room flat which apparently satisfied the conditions set out in the judgment of 1 October 1999, as amended on 22 December 2000. As to the rent, the applicant's calculations are speculative. He did not submit any evidence of the actual rent he had paid. The Court therefore rejects his claim for pecuniary damage.

33. 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 relevant aspects, such as the nature of the award at stake in the present case and the length of the enforcement proceedings. Making its assessment on an equitable basis, it awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

#### **B. Costs and expenses**

34. The applicant also claimed EUR 66 for the costs and expenses incurred before the Court.

35. The Government did not comment.

36. 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 considers that the sum claimed should be awarded in full, plus any tax that may be chargeable on that amount.

#### **C. Default interest**

37. 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 3,900 (three thousand and nine hundred euros) in respect of non-pecuniary damage;
    - (ii) EUR 66 (sixty six 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 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President