



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

FIRST SECTION

**CASE OF KORNEV v. RUSSIA**

*(Application no. 26089/02)*

JUDGMENT

STRASBOURG

28 September 2006

**FINAL**

***28/12/2006***

*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 Kornev 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,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 7 September 2006,

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

## PROCEDURE

1. The case originated in an application (no. 26089/02) 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 Viktorovich Kornev (“the applicant”), on 23 May 2002.

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 12 May 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

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in the town of Mariinskiy Posad of the Chuvashiya Republic.

### **A. Proceedings for compensation**

5. On 24 October 1994 the Mariinskiy Posad Town Court convicted the applicant of destruction of the property and sentenced him to two years' imprisonment. That judgment was quashed on 8 August 1996 by the Supreme Court of the Russian Federation. The case was remitted for a fresh examination.

6. On 10 February 1998 the criminal proceedings against the applicant were discontinued because his guilt had not been proven.

7. In 2001 the applicant sued the Ministry of Finance and the Judicial Department of the Supreme Court in tort.

8. On 15 May 2001 the Basmanniy District Court of Moscow allowed the applicant's action and awarded him 36,012.53 Russian roubles (RUR, approximately 1419 euros). The judgment became final on 6 July 2001.

9. On 25 July 2002 the Chuvashiya Treasury credited the judgment debt to the account of the applicant's representative.

### **B. Proceedings for provision of housing**

10. In 1997 the applicant asked the Mariinskiy Posad Town Council to provide him with housing because his flat had been destroyed by a fire and, as an unlawfully convicted person, he had the right to free housing. The Council refused and the applicant appealed to a court.

11. On 3 July 2001 the Supreme Court of the Russian Federation, in the final instance, ordered that the Mariinskiy Posad Town Council should provide the applicant, within three months, with a flat that met the requirements of Articles 40 and 41 of the RSFSR Housing Code.

12. According to the Government, on 6 June 2001 the Council offered the applicant to move into a one-room flat. The applicant refused because the flat did not meet the requirements of the Housing Code.

13. Enforcement proceedings were instituted on 12 July 2001 but the judgment was not enforced because the Council did not have available housing or financial resources to purchase a flat.

14. In 2002 the applicant asked a court to award him a sum representing the price of the flat with which the Council had to provide him.

15. On 12 March 2002 the Supreme Court of the Russian Federation dismissed the applicant's request.

16. In April 2002 the Council offered the applicant a loan which would have allowed him to pay seventy percent of the purchase price of a flat. The applicant declined the offer.

17. In July 2003 the Council offered the applicant a flat with stove heating. A bailiff refused the offer because the flat was in a dilapidated block of flats and did not satisfy the requirements of the Housing Code.

18. In April 2004 the applicant was offered another flat which he refused because it had no gas heating and sanitary facilities.

19. In the meantime, the applicant asked the Supreme Court to amend the method of enforcement of the judgment of 3 July 2001 and to award him money in lieu of the flat.

20. On 27 April 2004 the Supreme Court granted the applicant's request and awarded him RUR 290,400. The Supreme Court noted that the flat offered in April 2004 had not met the requirements of the RSFSR Housing Code.

21. Enforcement proceedings were opened on 6 June 2005 and on 22 June 2005 the Council credited the judgment debt to the account of the bailiffs' service.

22. According to the applicant, on 8 July 2005 he received the money.

## II. RELEVANT DOMESTIC LAW

### *The RSFSR Housing Code (in force until 1 March 2005)*

23. Individual housing premises had to be well-equipped... and to meet sanitary and technical requirements (Article 40).

24. Housing were to be provided taking into account the state of health of individuals and other relative circumstances (Article 41).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF PROTRACTED NON-ENFORCEMENT OF THE JUDGMENT OF 15 MAY 2001

25. The applicant complained that the judgment 15 May 2001 had not been enforced in good time. 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**

26. The Court notes that this 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**

27. The Government, without providing further explanations, claimed that the judgment of 15 May 2001 had been fully enforced on 11 July 2002 and no violation of the applicant's rights had thus occurred.

28. The applicant disagreed.

29. The Court observes that on 15 May 2001 the applicant obtained a judgment in his favour by which he was to receive a certain sum of money from the Ministry of Finance. The judgment became final and enforceable on 6 July 2001. It was fully enforced on 25 July 2002 when the sum of the judgment debt was transferred to the account of the applicant's representative. Thus, it has remained unenforced for approximately thirteen months.

30. 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 *Burdov v. Russia*, no. 59498/00, § 19 et seq., ECHR 2002-III; *Gizatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

31. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delay in enforcement of the judgment of 15 May 2001. The Court finds that by failing for more than a year to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he had legitimately expected to receive.

32. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF LONG NON-ENFORCEMENT OF THE JUDGMENT OF 3 JULY 2001

33. The applicant complained that the judgment of 3 July 2001 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.

### A. Admissibility

34. 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

35. The Government claimed that the judgment of 3 July 2001 had remained unenforced until 22 June 2005 because the applicant had not cooperated and showed no diligence, which could be reasonably expected, thereby delaying the enforcement proceedings. In any event, the Mariinskiy Posad Town Council had not had necessary resources to enforce the judgment.

36. The applicant averred that the Council had offered him dilapidated flats which had not met requirements of the Housing Code.

37. The Court observes that on 3 July 2001 the applicant obtained a judgment in his favour by which he was to receive a flat. The judgment became enforceable on the same day. On 27 April 2004 the Supreme Court amended the method of enforcement of the judgment of 3 July 2001 and awarded a sum of money in lieu of the flat. On 8 July 2005 the judgment of 3 July 2001, as amended on 27 April 2004, was enforced in full when the applicant received the money. Thus, it has remained unenforced for approximately four years.

38. 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).

39. 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).

40. The Court is not convinced by the Government's argument that the applicant contributed to delays in the enforcement proceedings by refusing offers of the Council. On three occasions the applicant refused to accept the flats which had not satisfied conditions set out in the judgment of 3 July 2001 and once he dismissed the offer of a loan instead of a flat. According to the judgment of 3 July 2001 the applicant was entitled to a flat having a satisfactory sanitary condition. The offers by the Council fell short of those requirements. The domestic authorities twice admitted that the applicant had rightfully dismissed offers made by the Council (see paragraphs 17 and 20 above). The Court considers that the applicant cannot be blamed for refusing to settle for less than he was entitled to, under the judgment of 3 July 2001.

41. The Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving a flat he could reasonably have expected to receive.

42. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. The applicant finally complained under Articles 7 and 8 of the Convention that he had been convicted of a criminal offence he had not committed, that he had served a prison sentence, that in 2002 the Supreme Court had refused to award him money in lieu of the flat and that in 2004 it had awarded less than the applicant had expected. However, having regard to all the materials in its possession, and in so far as these complaints fall within the Court's competence *ratione temporis*, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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**

45. The applicant claimed 160,000 Russian roubles (RUR) in respect of pecuniary damage, representing the difference between the purchase price of a three-room flat and the sum awarded by the judgment of 27 April 2004. The applicant considered that he was entitled to a bigger flat than the one awarded by the judgment of 3 July 2001 because, in the meantime, he got married and his first child had been born. The applicant also claimed RUR 93,000 in respect of non-pecuniary damage.

46. The Government considered the applicant's claims excessive and unreasonable.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the awards at issue, and making its assessment on an equitable basis, it awards the applicant EUR 3,100 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

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

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

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

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

50. 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 delay in enforcement of the judgments of 15 May and 3 July 2001 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of prolonged non-enforcement of the judgment of 15 May 2001;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of prolonged non-enforcement of the judgment of 3 July 2001;
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 3,100 (three thousand and one hundred 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;
  - (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 28 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President