



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

FIRST SECTION

CASE OF TARASOV v. RUSSIA

(Application no. 13910/04)

JUDGMENT

STRASBOURG

28 September 2006

FINAL

12/02/2007

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 Tarasov 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. 13910/04) 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 Andrey Anatolyevich Tarasov (“the applicant”), on 6 March 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

4. The applicant was born in 1961 and lives in the town of Dubna in the Moscow Region.

A. Proceedings for provision of housing

5. On 17 June 2002 the Dubna Town Court allowed the applicant's claim against the Dubna Town Administration for provision of housing. The Town Court ordered that the administration:

“...provide Mr Tarasov, whose family comprises three members, with a separate well-equipped flat having a living surface of no less than 61 square metres on the basis of a special tenancy agreement...”.

6. The judgment was upheld on appeal on 12 August 2002 by the Moscow Regional Court.

7. Enforcement proceedings were opened. However, the judgment could not be enforced because the town administration possessed no available housing or financial resources to purchase a flat.

8. On 24 February 2005 the Dubna Town Administration signed a contract with the applicant. According to the contract, the administration was to provide the applicant with a flat in 2005.

9. On 25 February 2005, upon the applicant's request, the Dubna Town Court discontinued the enforcement proceedings.

10. In August 2005 the Dubna Town Administration bought a three-room flat for the applicant. It appears that in September 2005 the applicant moved into the flat.

B. Proceedings concerning the method of enforcement of the judgment of 17 June 2002

11. In February 2003 the applicant requested a court to amend the method of enforcement of the judgment of 17 June 2002 and to order that the Dubna Town Administration should pay him the value of a flat.

12. On 26 February 2003 the Dubna Town Court dismissed the applicant's claim. That judgment was quashed on appeal on 2 April 2003 and the case was remitted for a fresh examination.

13. On 26 June and 18 September 2003 the Dubna Town Court allowed the claim. Both judgements were quashed on appeal and the matter was remitted for re-examination.

14. On 10 March 2004 the Town Court dismissed the applicant's claim. The judgment became final on 22 June 2004.

THE LAW

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

15. The applicant complained under Articles 1, 8, 13, 17 and 53 of the Convention that the judgment of 17 June 2002, as upheld on appeal on 12 August 2002, 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

16. 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

17. The Government submitted that the judgment of 17 June 2002, as upheld on appeal on 12 August 2002, remained unenforced until February 2005 because the Dubna Town Administration did not have financial resources to purchase a flat for the applicant.

18. The applicant maintained his claims.

19. The Court observes that on 17 June 2002 the applicant obtained a judgment in his favour by which he and his family members were to be granted a flat. The judgment became enforceable on 12 August 2002. It was enforced in August 2005 when the Dubna Town Administration bought the flat for the applicant. Thus, it remained unenforced for approximately three years.

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

21. 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).

22. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant furthermore complained under Articles 6 and 8 of the Convention that the proceedings concerning the method of enforcement of the judgment of 17 June 2002 had been unfair and excessively long and that for more than three years he had not been able to live in a flat awarded by the judgment of 17 June 2002. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence *ratione materiae*, the Court 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 23,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

27. The Government contested the claim as excessive and unsubstantiated.

28. 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. Ruling on an equitable basis, it awards him EUR 2,400 under that head, plus any tax that may be chargeable.

B. Costs and expenses

29. The applicant also claimed EUR 11,100 for the costs and expenses incurred before the domestic courts and in the Strasbourg proceedings. Those included EUR 10,800 in respect of legal fees paid to a lawyer and EUR 300 for postal expenses.

30. The Government did not comment.

31. 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 rejects the claim for legal expenses as the applicant was not represented by a lawyer in the domestic or Strasbourg proceedings. As regards the remainder of the applicant's claims, the Court accepts that the applicant incurred postal expenses. It however considers the amount claimed to be excessive. Having regard to the elements at its disposal, the Court awards the applicant EUR 30 for the costs related to the proceedings before the Court, plus any tax that may be chargeable.

C. Default interest

32. 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 complaint concerning non-enforcement of the judgment of 17 June 2002, as upheld on appeal on 12 August 2002, 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 17 June 2002, as upheld on appeal on 12 August 2002;
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 2,400 (two thousand and four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 30 (thirty 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 28 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President