



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

FIRST SECTION

CASE OF PONOMARENKO v. RUSSIA

(Application no. 14656/03)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

15/05/2007

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 Ponomarenko v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 14656/03) 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 Olga Ivanovna Ponomarenko, (“the applicant”), on 29 March 2003.

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 19 September 2005 the Court decided to give notice of 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 1933 and lives in Chernyakhovsk, the Kaliningrad Region.

5. On 27 March 2002 the Chernyakhovsk Town Court of the Kaliningrad Region (the Town Court) allowed the applicant's claim against the Chernyakhovsk housing authority of the Ministry of Defence (*квартирно-эксплуатационная часть Министерства Обороны РФ*

2. *Черняховска*) for provision of accommodation. The Town Court ordered that the housing authority:

“...provide Mrs Ponomarenko, whose family comprises one member, with another well-equipped dwelling premises for permanent use having a living surface of no less than established standards of living surface for one person (12 square metres), corresponding to the established sanitary and technical standards and well-equipped in accordance with the standards applied in Chernyakhovsk...”

6. The Town Court also awarded the applicant 1,000 Russian roubles (RUR) in respect of non-pecuniary damage.

7. On 3 April 2002 the housing authority allocated to the applicant a one-room flat. However, she did not accept the flat as it did not meet sanitary standards.

8. No appeal was brought against the judgment of 27 March 2002 and it entered into force on 9 April 2002.

9. On 12 April 2002 the bailiffs' service of the Chernyakhovsk District initiated enforcement proceedings and on 30 April 2002 the defendant executed the judgment of 27 March 2002 as regards the compensation for non-pecuniary damage.

10. A special commission of the housing authority visited the flat allocated to the applicant on 3 April and concluded, on 12 September 2002, that it was only equipped in part and occupied by another person.

11. On 23 May 2003 the housing authority unsuccessfully applied to the Town Court for the re-opening of the proceedings due to the newly discovered circumstances. They claimed that according to the decision of the Government of the Russian Federation of 11 October 2001, the housing premises of the Ministry of Defence had been handed over to the local administration. Therefore it was not possible to enforce the judgment of 27 March 2002.

12. On 17 May 2004, following the bailiff's request, the Town Court noted that the housing authority had handed over to the local administration only some housing premises. The court ordered the bailiff to establish which premises were left at the disposal of the housing authority and to provide the applicant with one of them.

13. On 21 March and 6 April 2005 the bailiff fined the Head of the housing authority for the failure to enforce the judgment of 27 March 2002.

14. On 26 January 2006 the housing authority and the applicant's representative concluded a social tenancy agreement by which a flat was allocated to the applicant. On 9 February 2006 the applicant signed a document by which she accepted the proposed accommodation.

THE LAW

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

15. The applicant complained about the non-enforcement of the judgment of 27 March 2002. 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). These Articles, in so far as relevant, read 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

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 acknowledged that the judgment of 27 March 2002 had not been enforced in time. They further conceded that the applicant's rights set out in Article 6 of the Convention and Article 1 of Protocol No. 1 had been violated as a result of the non-enforcement of the final judgment.

18. The applicant maintained her claims.

19. The Court observes that on 27 March 2002 the applicant obtained the judgment, by which domestic authorities had to provide her with a flat. The judgment became enforceable on 9 April 2002 when it acquired legal force. It remained without enforcement for more than three years after its entry into force. No justification was advanced by the Government which acknowledged a violation of the Convention.

20. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues to the ones in the present case (see *Malinovskiy v. Russia*, no. 41302/02, ECHR 2005-..., *Mikryukov v. Russia*, no. 7363/04, 8 December 2005).

21. Having examined the material submitted to it, the Court sees no reason for reaching 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 impaired the essence of her right to a court and prevented her from receiving a flat she had reasonably expected to receive.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

25. The Government considered that the applicant's claim was excessive and unreasonable.

26. The Court considers that the applicant must have suffered certain distress and frustration resulting from the State's authorities' failure to enforce a judgment in her favour. However, the amount claimed appears excessive. The Court takes into account the award made by the Court in the *Burdov* case (cited above, § 15), the nature of the award at stake in the present case, length of the enforcement proceedings and other relevant aspects. 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

27. The applicant did not claim reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court considers that there is no call to award her any sum on this account.

C. Default interest

28. 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 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, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President