



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

FIRST SECTION

CASE OF GORLOVA v. RUSSIA

(Application no. 29898/03)

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 Gorlova 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. 29898/03) 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 Anna Nikolayevna Gorlova (“the applicant”), on 9 July 2003.

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 1 March 2006 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

4. The applicant was born in 1942 and lives in the town of Yakutsk in the Sakha (Yakutiya) Republic.

A. Proceedings for provision of housing

5. On 4 October 2002 the Yakutsk Town Court ordered that the Yakutsk Town Council should provide the applicant with a well-equipped one-room flat. The judgment was not appealed against and became final on 19 October 2002.

6. On 13 January 2003 the Yakutsk mayor's office took over the functions of the Town Council because the latter had ceased to exist as a legal entity.

7. The applicant asked the Yakutsk Town Court to impose on the Yakutsk mayor's office the obligation to enforce the judgment of 4 October

2002. On 26 August 2003 the Yakutsk Town Court dismissed the request because she had not provided any evidence that the mayor's office was the successor to the Town Council. The applicant did not appeal against that judgment.

8. On 10 October 2003 the Yakutsk Town Court dismissed the applicant's request for immediate enforcement of the judgment of 4 October 2002. The judgment was upheld on appeal on 17 November 2003.

9. On 30 March 2004 the Yakutsk Town Court, upon the applicant's request, amended the judgment of 4 October 2002 and ordered that the Yakutsk mayor's office should enforce it.

10. On 28 December 2004 the Yakutsk Town Court once again amended the judgment of 4 October 2002 and ordered that the Yakutsk mayor's office should pay the applicant 700,000 Russian roubles in lieu of the flat. The judgment was not appealed against and became final.

11. On 7 April 2006 the Yakutsk mayor's office credited RUR 700,000 to the bailiffs' account. In June 2006 the bailiffs sent a letter to the applicant informing her about the transaction and asking to provide details of her bank account. According to the Government, the applicant did not respond. The bailiffs also attempted to personally serve the applicant with the letter, but she could not be found at her place of residence.

12. On an unspecified date the bailiffs learned the details of the applicant's bank account and on 4 September 2006 they credited RUR 700,000 to it.

B. Proceedings concerning restoration of the heating supply

13. In 1994 a housing maintenance company cut off the heating in the applicant's flat. The applicant sued the company seeking restoration of the heating supply and compensation for damage.

14. On 8 December 1999 the Supreme Court of the Sakha (Yakutiya) Republic, in the final instance, partly accepted the action. The maintenance company restored the heating.

15. The judgment of 8 December 1999 was quashed by way of a supervisory review on 25 October 2001 and the case was remitted for a fresh examination.

16. On 18 November 2002 the Yakutsk Town Court awarded the applicant RUR 1,845 in compensation. The judgment was upheld on appeal on 11 December 2002.

C. Tort proceedings

17. The applicant sued the Yakutsk Town Council claiming compensation for damage caused to her flat due to the absence of the heating.

18. On 28 August 2002 the Yakutsk Town Court dismissed the action because the municipal authorities had not been responsible for the damage. The judgment was upheld on appeal on 7 October 2002.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENT OF 4 OCTOBER 2002

19. The applicant complained that the judgment of 4 October 2002, as amended on 30 March and 28 December 2004, 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

20. 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

21. The Government stated that the judgment of 4 October 2002 had been enforced on 4 September 2006. However, the domestic authorities should not be held responsible for a delay in the enforcement proceedings after 7 April 2006 because the applicant had not co-operated and showed no diligence, which could be reasonably expected, thereby delaying the proceedings. In any event, the Yakutsk Town Council and then the Yakutsk mayor's office had not had the necessary resources to enforce the judgment.

22. The applicant maintained her complaints.

23. The Court observes that on 4 October 2002 the applicant obtained a judgment by which the Town Council was to provide her with a flat. The judgment became final and enforceable on 19 October 2002. On 30 March 2004 the Yakutsk Town Court ordered that the Yakutsk mayor's office should enforce the judgment of 4 October 2002. On 28 December 2004 the Town Court further amended the judgment of 4 October 2002 and awarded

the applicant a sum of money in lieu of the flat. On 4 September 2006 the judgment of 4 October 2002, as amended on 30 March and 28 December 2004, was enforced in full when the applicant received the money. Thus, it has remained unenforced for approximately three years and eleven months.

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 *Malinovskiy v. Russia*, no. 41302/02, § 35 et seq., ECHR 2005; *Teteriny v. Russia*, no. 11931/03, § 41 et seq., 9 June 2005).

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. 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).

26. The Court is not convinced by the Government's argument that the applicant contributed to the length of the enforcement proceedings by failing to provide details of her bank account. The Court observes that the bailiffs had inquired the applicant about the account almost two years after the Town Court had awarded her the money in lieu of the flat. The Government did not provide any explanation for such a delay. Moreover, the Government did not produce any evidence showing that after the applicant had, in fact, been notified about the money transfer she had failed to indicate the details of her account.

27. 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, or subsequently the sum of money, she 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicant also complained under Articles 1, 6 § 1, 8 and 13 of the Convention that in 1994 the heating supply had been cut off in her flat, that the judgment of 8 December 1999 had not been enforced and had been quashed on supervisory review, that the tort proceedings and proceedings concerning the restoration of the heating supply had been unfair because the courts had incorrectly applied the law and assessed the facts and that on 26 August and 17 November 2003 the courts had dismissed her claims.

30. Having regard to all the materials in its possession, and in so far as these complaints fall within the Court's competence *ratione temporis* and *ratione personae*, 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 43,000 euros (EUR) in respect of pecuniary damage, of which EUR 40,000 represented the market price of a one-room flat in Yakutsk and EUR 3,000 represented the reduction of maintenance charges in respect of her old flat which she had not obtained due to the absence of registration in that flat. She further claimed EUR 100,000 in respect of non-pecuniary damage.

33. The Government argued that on 28 December 2004 the Yakutsk Town Court had awarded the applicant the sum representing the cost of a one-room flat. She had already received that money. They further stated that the applicant could have registered at her old flat and could have asked the authorities to reduce the maintenance charges. However, she had not done it. In any event, the claims were excessive and irrelevant.

34. As regards the claim for compensation in respect of pecuniary damage, the Court observes that on 28 December 2004 the Town Court awarded the applicant the money in lieu of a flat which she was to receive under the judgment of 4 October 2002. It appears that the awarded sum satisfied the applicant as she did not appeal against the judgment of 28 December 2004. The sum has already been paid to her. The Court therefore rejects that claim. As regards the pecuniary damage claimed by the applicant in respect of reduction of maintenance charges, the Court observes that the applicant's calculations are speculative. She did not submit any evidence to substantiate her calculations. The Court therefore rejects her claim in respect of pecuniary damage.

35. The Court considers that the applicant must have suffered certain distress and frustration resulting from the State's failure to enforce a judgment in her favour. However, the amount claimed appears excessive. The Court takes into account the relevant aspects, in particular, the length of the enforcement proceedings and the nature of the domestic award. Making its assessment on 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

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

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

C. Default interest

38. 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 delay in enforcement of the judgment of 4 October 2002, as amended on 30 March and 28 December 2004, 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;
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 the 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