



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

FIRST SECTION

CASE OF NEVOLIN v. RUSSIA

(Application no. 38103/05)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

31/03/2008

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 Nevolin 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,

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 21 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 38103/05) 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 Valentin Georgiyevich Nevolin (“the applicant”), on 23 September 2005.

2. The applicant was represented by Mr V. Kutkin, a lawyer practising in Syktyvkar. 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 June 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 1960 and lives in the town of Syktyvkar in the Komi Republic.

A. Housing proceedings

5. On 28 January 2004 the Syktyvkar Town Court upheld the applicant's action against the Syktyvkar Town Council and ordered that the Council should:

“...provide Mr Nevolin Valentin Georgiyevich, whose family comprises one member, with well-equipped living premises in Syktyvkar, having a living surface of no less than 9 square metres that meet sanitary and technical requirements”.

6. The judgment was not appealed against and became final. Enforcement proceedings were instituted.

7. In July 2004 the applicant was offered a room in a hotel. He refused the offer. On 7 September 2004 bailiffs fined the Council because it had failed to enforce the judgment of 28 January 2004. On 25 February 2005 the Council offered the applicant a flat which he agreed to accept. However, in May 2005 the Council withdrew the offer because the flat was occupied.

8. On 24 May 2005 the Council offered the applicant and his mother a two-room flat which they agreed to accept and moved into. The enforcement proceedings were closed.

B. Tort action

9. On 16 January 2005 the applicant lodged an action against the Syktyvkar Town Council and municipal housing maintenance authorities seeking compensation for non-pecuniary damage caused by the fact that for years he had been forced to live in a dilapidated house.

10. On 9 February 2005 the Syktyvkar Town Court dismissed his claim against the Council but accepted the action against the housing maintenance authority and awarded him 1,000 Russian roubles. That judgment was upheld on appeal on 24 March 2005 by the Supreme Court of the Komi Republic.

THE LAW

I. 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 28 JANUARY 2004

11. The applicant complained that the judgment of 28 January 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

12. 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

13. The Government claimed that the judgment of 28 January 2004 had remained unenforced until 24 May 2005 because the Town Council had not had necessary resources to enforce it. However, they further argued that the authorities had taken steps to ensure the enforcement. For example, in July 2004 the Council had offered the applicant a room in a hotel and in September 2004 the bailiffs had fined the Council.

14. The applicant averred that the Council had offered him a flat which had been occupied and a room in a hotel. Those offers had not met requirements of the judgment of 28 January 2004.

15. The Court observes that on 28 January 2004 the applicant obtained a judgment by which he was to receive a flat. The judgment became final and enforceable as it was not appealed against. It was enforced in full on 24 May 2005 when the applicant accepted a two-room flat into which he moved with his mother. Thus, the judgment of 28 January 2004 remained unenforced for approximately sixteen months.

16. 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).

17. 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*, cited above, § 35; *Plotnikovy v. Russia*, no. 43883/02, § 23, 24 February 2005).

18. The Court is not convinced by the Government's argument that the Council had taken necessary steps to ensure the prompt enforcement of the judgment of 28 January 2005 by offering the applicant a room in a hotel in July 2004 and an occupied flat in February 2005. The Court notes that these offers by the Council fell short of the conditions set out in the judgment of 28 January 2004 (see paragraph 5 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 28 January 2004 (see *Kornev v. Russia*, no. 26089/02, § 40, 28 September 2006).

19. The Court therefore finds that by failing for months 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.

20. 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

21. The applicant complained under Articles 6, 8 and 13 of the Convention that the tort proceedings had been unfair in that his action had only been accepted in part, that for many years he had been unable to live in a new flat, that for more than eight years he had unsuccessfully asked authorities to repair his house and that he had to share the flat with his mother and his wife.

22. Having regard to all the materials in its possession, and in so far as these complaints fall within its competence *ratione temporis*, 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

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 compensation in respect of non-pecuniary damage, leaving the determination of the sum to the Court's discretion.

25. The Government averred that there were no grounds for accepting the applicant's claims as his rights had not been violated.

26. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in his favour. The Court takes into account the relevant aspects, such as the length of the non-enforcement and the nature of the domestic award, and making its assessment on an equitable basis, awards the applicant EUR 1,200 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

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

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

C. Default interest

29. 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 a delay in enforcement of the judgment of 28 January 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 1,200 (one thousand and two 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;

Done in English, and notified in writing on 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President