



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

FIRST SECTION

CASE OF LYKOV v. RUSSIA

(Application no. 18557/06)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

12/10/2007

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 Lykov 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. 18557/06) 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 Mikhail Petrovich Lykov (“the applicant”), on 15 March 2006.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mrs V. Milinchuk.

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 1949 and lives in Kostroma.

5. On 11 May 2004 the Sverdlovskiy District Court of Kostroma upheld the applicant's action against the Kostroma Town Council and ordered that the Council should:

“...provide Mr Lykov Mikhail Petrovich and his family members - a wife, Ms Lykova Olga Aleksandrovna, a son, Mr Lykov Sergey Mikhailovich and Ms Shelepo Tatiana Pavlovna, with well-equipped living premises that meet sanitary and technical requirements, taking into consideration the right to an additional living surface of one separate room”.

6. The judgment was upheld on appeal by the Kostroma Regional Court on 21 July 2004.

7. On 20 August 2004 enforcement proceedings were instituted. The judgment remained unenforced because the Council had no available housing or financial resources to purchase a flat.

8. The Kostroma Regional Administration asked the Federal Treasury to provide it with financial resources for purchasing a flat measuring 82 square metres to which the applicant and his family members were entitled under the judgment of 11 May 2004. In December 2004 a sum of 738,000 Russian roubles was credited to an account of the Regional Administration. Having regard to the average market property price in the town of Kostroma, in 2005 the Regional Administration was only able to purchase a flat measuring 57.3 square metres. The applicant was offered that flat, but he refused to accept it because he was entitled to a bigger flat under the judgment of 11 May 2004.

9. In January 2006 the applicant's mother-in-law, Ms Shelepo, died. Bailiffs asked the Sverdlovskiy District Court to clarify its judgment of 11 May 2004, having regard to Ms Shelepo's death. On 14 August 2006 the Sverdlovsk Regional Court dismissed the request.

10. On 21 August 2006 the bailiffs offered the applicant the same flat which had been purchased in 2005. The applicant again dismissed the offer, noting the size of the flat and its dilapidated state.

11. On 7 September 2006 enforcement proceedings were closed and the writ of execution was returned to the applicant because he had rejected the bailiffs' offer.

12. On 14 November 2006 the Sverdlovsk District Court of Kostroma quashed the decision of 7 September 2006. The District Court held that under the judgment of 11 May 2004, as upheld on appeal on 21 July 2004, the applicant was entitled to a well-equipped flat measuring 82 square metres and satisfying sanitary and technical requirements. The applicant had been twice offered the smaller flat which "had not satisfied technical and sanitary requirements, had been in poor state, had been in need of the renovation and, thus, had required, substantial financial resources". The District Court also noted that Ms Shelepo's death had not effected the applicant's and his family's entitlement to a flat. The judgment of 14 November 2006 was not appealed against and became final.

13. In December 2006 the enforcement proceedings were re-opened. In March 2007 the Kostroma Town Council informed the applicant that it possessed two flats, i.e. the one which had been bought in 2005 and had already been offered to the applicant, and another one which measured 75.6 square metres. The applicant could choose any one of them. He again rejected the offer arguing that his was entitled to a flat of a bigger living surface.

THE LAW

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

14. The applicant complained that the judgment of 11 May 2004, as upheld on 21 July 2004, remained unenforced. 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

15. 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

16. The Government claimed that the judgment of 11 May 2004, as upheld on 21 July 2004, remained unenforced because the Kostroma Town Council did not have available housing or financial resources and because there were complex budgetary arrangements. Furthermore, the applicant had rejected a number of offers, thereby delaying the enforcement proceedings.

17. The applicant averred that the Council's offers had fallen far short of the requirements set out in the judgment of 11 May 2004.

18. The Court observes that on 11 May 2004 the applicant obtained a judgment in his favour by which he and his family members were to be granted a flat. The judgment was upheld on appeal and became enforceable

on 21 July 2004. It has not been enforced yet. It thus remains unenforced for a little less than three years.

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

20. 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; *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*, cited above, § 35). The same principle applies to difficulties experienced by the State enforcement services and the complexity of the budgetary arrangement (see *Wasserman v. Russia*, no. 15021/02, § 38, 18 November 2004 and *Chernyshov and Others v. Russia*, no. 10415/02, § 14, 28 September 2006).

21. The Court also is not convinced 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 11 May 2004. According to the judgment of 11 May 2004 the applicant and his three family members were entitled to a flat having a satisfactory sanitary condition. On 14 November 2006 the District Court confirmed the applicant's entitlement to a flat measuring no less than 82 square metres. The offers by the Council fell short of those requirements. The domestic authorities admitted that the applicant had rightfully dismissed offers made by the Council (see paragraph 12 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 11 May 2004, as upheld on 21 July 2004 (cf. *Kornev v. Russia*, no. 26089/02, § 40, 28 September 2006).

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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government argued that the applicant's claims were excessive and unreasonable.

27. The Court reiterates that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the judicial decision in the applicant's favour was not enforced. The Court recalls that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found (cf. *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). The State's outstanding obligation to enforce the judgment in the applicant's favour is not in dispute. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the judgment of 11 May 2004, as upheld on appeal on 21 July 2004.

28. The Court further 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 non-enforcement and the nature of the domestic award, and making its assessment on an equitable basis, awards the applicant EUR 2,300 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

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

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

C. Default interest

31. 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 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the judgment made by the domestic court in the applicant's favour, and pay the applicant EUR 2,300 (two thousand and three 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 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President