



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

FIRST SECTION

CASE OF NAGOVITSYN v. RUSSIA

(Application no. 6859/02)

JUDGMENT

STRASBOURG

24 January 2008

FINAL

24/04/2008

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 Nagovitsyn v. Russia,

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

Loukis Loucaides, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 6859/02) 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 Yuriy Aleksandrovich Nagovitsyn (“the applicant”), on 16 May 2001.

2. The applicant was represented by Ms A. Vretik, a lawyer practising in the Raduzhnyi township, Kirov Region. 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 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Kirov.

5. In 1986 the applicant took part in the cleaning up operation after the nuclear accident at the Chernobyl nuclear plant. He was subsequently registered disabled, becoming entitled to various social benefits, including the right to obtain a loan on preferential terms (*льготный кредит*) and free housing from the State.

6. According to the Government, the applicant lived in a four-room flat with six other members of his family. The flat measured 52 square metres. In 1996 this flat was officially categorised as a “communal dwelling” which gave the applicant the right to claim free housing from the State.

A. Proceedings concerning the preferential loan

7. On an unspecified date the applicant requested Sberbank (a bank controlled by the State – hereafter “the bank”) to provide him with a preferential loan to purchase housing for himself and his family. However, he did not obtain the loan. Apparently there had been no agreement between the State and the banks regulating the allocation of such credits to Chernobyl victims.

8. In 1997 the applicant brought proceedings against the State and the bank, seeking to obtain a preferential loan, as provided by the Law on the welfare of Chernobyl victims (“the Chernobyl Law” – see “Relevant domestic law” below).

9. On 19 November 1997 the Leninskiy District Court of Kirov decided the case in his favour. It found that the applicant, as a Chernobyl victim, had the right to a preferential loan under section 14 (20) of the Chernobyl Law, but the Ministry of Finance had not yet signed an agreement with banks on the procedure for issuing such loans. The District Court ordered the Ministry of Finance to secure the applicant's right to the loan. That judgment was not appealed against and became final on 1 December 1997. The writ of execution was forwarded to the bailiff in Moscow, and on 27 July 1999 enforcement proceedings were commenced.

10. In the meantime, on 13 July 1999 the Ministry of Finance informed the applicant that the judgment of 19 November 1997 could not be enforced since the law relating to the federal budget did not allow the allocation of preferential loans to Chernobyl victims.

11. Later that year, referring to the lack of progress in the enforcement proceedings, the applicant requested the court to modify the operative part of the judgment of 1997. He sought to obtain compensation of 50% of the amount he needed to buy a flat. On 24 November 1999 the Leninskiy District Court modified the judgment of 19 November 1997 ordering the State to compensate the applicant for the cost of the flat he would buy.

12. On 27 December 1999 the applicant purchased a three-room flat in a house under construction from a developer. He paid 203,200 Russian roubles (RUB) for that flat.

13. On 10 April 2001 the Kirov Regional Court quashed the decision of 24 November 1999 and remitted the case to the district court for fresh examination. There is no information as to whether the applicant's request concerning the modification of the original judgment of 19 November 1997 was eventually satisfied.

B. Proceedings concerning the housing in Moscow

14. On 10 October 2000, referring to the provisions of the Chernobyl Law, the applicant brought proceedings against the municipality of Moscow seeking an order to oblige them to provide him with a flat in Moscow. On 15 January 2001 the Presnenskiy District Court of Moscow dismissed his claim. On 14 May 2001 the Moscow City Court upheld the district court's decision.

C. Proceedings concerning the housing in Kirov

15. On 8 August 2001 the applicant brought proceedings against the local municipality of Kirov claiming free accommodation. On 28 November 2001 the Leninskiy District Court of Kirov ruled in his favour and ordered the municipality to provide the applicant with appropriate housing for a family of three within three months, in accordance with existing housing and sanitary standards. That judgment was not appealed against and became final on 10 December 2001. On 11 January 2002 the bailiffs initiated enforcement proceedings.

16. On an unspecified date the municipality requested the court to stay the enforcement proceedings. They claimed that they had no free housing available to enforce the judgment of 28 November 2001. The applicant objected; he also asked the court to specify how the judgment of 28 November 2001 should be enforced.

17. By a supplementary judgment of 12 November 2002 the Leninskiy District Court dismissed the request of the municipality. The court also held that housing should be given to the applicant under a protected tenancy agreement. The court further held that the applicant had the right to acquire the housing through privatisation in accordance with section 14 (21) of the Chernobyl Law. In the operative part of the supplementary judgment the court held as follows:

“[the applicant] should be provided with housing either [on the basis of] a social tenancy or ...by way of transfer [of housing] into his ownership.”

That judgment was not appealed against and became final.

18. On 15 December 2002 the applicant registered himself as the owner of another flat in Kirov, which he had purchased some time earlier from a developer (see paragraph 12 above).

19. On 25 December 2002 the municipality formally deprived the applicant of the status of a person in need of better housing. On 29 May 2003 the municipality tried to reopen the case which had ended with the judgment of 28 November 2001, claiming that the applicant was no longer entitled to better housing. However, on 14 July 2003 the court refused to reopen the case.

20. On 22 June 2004 the municipality offered the applicant a two-room flat. According to the Government, since the flat offered to the applicant was smaller than the one awarded by the court judgment, the municipality also offered the applicant compensation to cover the difference. However, the applicant refused to accept the flat and the compensation.

21. In December 2004 the applicant was offered a three-room flat. However, he did not accept the offer.

22. On 5 April 2005 the municipality provided the applicant with another three-room flat. On 11 April 2005 the applicant signed a declaration which was formulated as follows:

“I declare that I accept, in execution of the judgment of 28 November 2001..., ... the three-room flat situated at 9/1, Stroiteley Avenue, ... measuring 40.28 square metres.

Taking into account the decision of the Leninskiy District Court of 12 November 2002, the flat should either be transferred into my ownership or the social tenancy agreement should stipulate that ... 'the owner shall transfer the flat into the ownership of the tenant at his first request.'

...

Otherwise I shall not consider that the judgment of the court is executed.”

23. On 13 April 2005 the applicant received the keys to flat no. 68, 9/1, Stroiteley Avenue. However, it appears that another tenant had already obtained the title to the flat by that time. Thus, on 6 May 2005 the municipality decided to allocate another flat to the applicant (no. 72). The applicant accepted the flat, and on 19 May 2005 he signed a social tenancy agreement with the municipality.

24. On 27 May 2005 the Mayor of Kirov wrote a letter to the applicant stating that “flat no. 72 would be transferred to the applicant, free of charge”.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Entitlement of the Chernobyl victims to housing

25. The Law on social protection of citizens exposed to radiation as a result of the Chernobyl Nuclear Power Station explosion (“the Chernobyl Law”) of 15 May 1991, as in force at the material time, provides that persons who were registered disabled following their exposure to radioactive emissions are entitled to certain social benefits. In particular, they were entitled to free housing, where their existing accommodation did not comply with minimum housing standards (“a person in need of better housing”). The State undertook to provide such persons with accommodation within three months of placing them on a waiting list. The

same law entitled them to obtain preferential credit - an interest-free loan for buying or constructing a house. It also provided that fifty per cent of the amount of the loan would be paid off by the State (section 14 (20) of the Chernobyl Law), under the condition that they are in need of better housing.

26. The Law of 27 December 2000 on the federal budget for 2001 suspended the application of section 20 (14) of the Chernobyl Law until 31 December 2000 because of the lack of funds. In the following years the application of this paragraph was repeatedly suspended by the laws relating to the federal budget.

27. On 22 August 2004 the law commonly known as “the Monetisation of Social Benefits Law” was passed (Law no. 122-FZ). That Law abrogated various non-monetary social benefits granted by the previous legislation (free housing, free medicine and so on) or replaced them with monetary payments. Section 3 (8) of that Law modified the wording of section 14 of the Chernobyl Law. In particular, the right to receive preferential loans from the State was excluded from the list of social benefits to which the Chernobyl victims were entitled.

B. Social tenancy

28. For provisions governing the right to “social tenancy” of State-owned housing see *Malinovskiy v. Russia*, no. 41302/02, §§ 20 et seq., ECHR 2005-... (extracts)).

29. Under Articles 13, 209 and 338 of the Code of Civil Procedure, a court judgment which has acquired legal force is binding and must be executed.

THE LAW

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

30. The applicant complained that the prolonged non-enforcement of the judgments of 19 November 1997 and 28 November 2001 in his favour breached Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

He also referred to Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“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.”

31. The Government contested the applicant's argument. In their view, the applicant's complaints were manifestly ill-founded. First, the Government stressed that in April 2005 the applicant had received the flat in accordance with the judgment of 28 November 2001. Therefore, the judgment in his favour had been fully enforced. As to the delay in enforcing it, the Government pointed out that this had been explained by the need to provide housing for various groups of socially disadvantaged people, including other victims of the Chernobyl catastrophe. The Government argued that on two occasions the authorities had offered the applicant housing which he had not accepted.

32. Further, the Government maintained that the laws relating to the federal budget in 2001-2004 had not allocated funds for granting preferential loans. Further, on 22 August 2004, a new law had been passed which had abrogated section 14 of the Chernobyl Law, and which had served as the basis for the judgment of 19 November 1997.

33. Finally, as regards the judgment of 19 November 1997, they argued that the applicant himself had requested that his flat in Kirov be categorised as a “communal dwelling”. As a result, he had become *de jure* “a person in need of better housing” and thus obtained the right to claim free housing from the State, although *de facto* he had had enough living space. Further, in 1999 the applicant had bought another three-room flat in a house under construction in Kirov. The construction of that house had been completed in December 2001; however, the applicant had not registered his ownership rights to that flat until 15 December 2002 – in order to keep the status of a person in need of better housing. The authorities had tried to have the case reviewed, referring to the *de facto* situation of the applicant - but to no avail.

34. The applicant maintained his claims. In his submission, the fact that he owned a three-room flat and had sought to have another four-room flat, which also belonged to him, re-categorised as a “communal dwelling” was irrelevant. He had obtained two court judgments in his favour, and it was not disputed by the Government that those judgments were both valid and enforceable. The alleged lack of funds was not a valid reason for non-enforcement.

35. Further, the applicant maintained that neither judgment in his favour had been enforced. As to the housing awarded by the judgment of 28 November 2001, the municipal authorities had offered him three flats.

However, the first two flats did not correspond to the requirements of the law as to the minimum standards of housing for disabled persons. As to the third flat, it had been transferred to him on the basis of a social tenancy agreement, whereas the decision of 12 November 2002 clearly stated that the flat should be transferred into his ownership. Therefore, the judgment of 25 November 2001 had been only partially enforced. In any event, the flat allocated to him was of very poor quality.

A. Admissibility

1. *The first judgment*

36. The Court notes that the first judgment (of 19 November 1997) entitled the applicant to receive a preferential loan from the State. It referred to the Chernobyl Law, which stipulated that the State's financial obligation consisted of (a) covering bank interest and (b) paying fifty per cent of the principal sum of the loan. However, the court's judgment did not establish the exact amount of the State's pecuniary obligation *vis-à-vis* the applicant. Nor did it refer to any exact amount the applicant needed to purchase or build a house. Finally, it did not indicate what would be the term of the loan, if any. It merely recognised that the applicant was entitled to receive a loan.

37. The Court notes that the court award in the applicant's favour did not amount to “existing possessions” but was a sort of a claim against the State. The Court reiterates that to constitute an “asset” or “possessions” within the meaning of Article 1 of Protocol No. 1 and, consequently, to attract the guarantees of this provision, a claim, for example, a judgment debt, should be sufficiently established to be enforceable (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35 et seq., ECHR 2004-IX; see also *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). In the present case the judgment of 19 November 1997 did not specify the amount of the claim or the modalities of payment of any sum due.

38. Furthermore, the Court does not have information to allow it to make any calculations as to the amount due to the applicant, and, in any event, they would only be speculative. In such circumstances the Court considers that the applicant's claim was not sufficiently established so as to qualify as an “asset” within the meaning of Article 1 of Protocol No. 1 (see, by contrast, *Vajagić v. Croatia*, no. 30431/03, §§ 33 et seq., 20 July 2006).

39. The applicability of Article 6 § 1 of the Convention to the enforcement proceedings is also open to doubt. The Court points out that, for Article 6 § 1 to be applicable under its “civil” head, there must be a “dispute” over a “private right” which can be said, at least on arguable grounds, to be recognised under domestic law (on this particular point, see,

for example, *Allan Jacobsson v. Sweden (no. 1)*, judgment of 25 October 1989, Series A no. 163, p. 20, § 72). The “dispute” must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences being insufficient to bring Article 6 § 1 into play (see, for example, *Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1357, § 32).

40. By judgment of 19 November 1997, the District Court acknowledged that the applicant had the right to a preferential loan under the Chernobyl Law (see paragraph 9 above). The Court observes, however, that the judgment did not confer any new entitlement on him since his eligibility for a preferential loan had never been disputed and since no domestic authority had contested the actual existence of the right established in the Chernobyl Law. Accordingly, the Court considers that the judgment at issue was essentially of a declaratory nature and did not concern any “dispute” over a civil right. Nor did the judgment determine the scope or manner of exercise of the applicant's right to a loan because he had not raised these issues in the proceedings. In these circumstances, the Court is unable to conclude that Article 6 § 1 of the Convention applied to the proceedings which ended with the judgment of 19 November 1997 or to the ensuing enforcement stage which is regarded as an integral part of the “trial” for the purposes of Article 6 (see *Kanayev v. Russia*, no. 43726/02, § 19, 27 July 2006, with further references).

41. Having regard to the above, the Court finds that the complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in so far as it concerned the judgment of 19 November 1997, is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. The second judgment

42. It is not disputed that the second judgment concerned the applicant's “civil rights and obligations” and, therefore, Article 6 § 1 was applicable to the situation complained of - namely the failure to enforce the judgment within a reasonable time (see, as a classic authority, *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III). Further, the Court reiterates that, irrespective of whether that judgment required the provision of a flat in the applicant's ownership or under a social tenancy agreement, such a court award constituted the applicant's “possessions” within the meaning of Article 1 of Protocol No. 1 to the Convention (see *Malinovskiy v. Russia*, no. 41302/02, §§ 42 et seq., ECHR 2005 (extracts)), and the delayed enforcement constituted an interference with the rights guaranteed under Article 1 of Protocol No. 1. Therefore, the complaint about the non-

enforcement of the second judgment falls within the scope of both Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

43. As regards the delay in the enforcement of the judgment of 28 November 2001, which became final on 10 December 2001, the parties disagreed as to when or whether it had been fully enforced (see paragraphs 30 et seq. above). The applicant alleged that the judge had ordered the transfer of the housing into his ownership. However, the Court observes that two possible solutions to the applicant's problem were provided (see paragraph 6 above), and the transfer of the housing into the applicant's ownership was only one of them. In the Court's opinion, by providing the applicant with appropriate housing under a "social tenancy" agreement the authorities complied with the judgment of 28 November 2001, as interpreted by the supplementary judgment of 12 November 2002.

44. At the same time the Court notes that it was not until 19 May 2005 that the applicant obtained appropriate housing. It appears that the other two flats, offered to the applicant in 2004, fell short of the requirements established by the applicable domestic legislation (see paragraphs 20 and 21 above). Thus the Court cannot accept the Government's argument that the applicant himself contributed to the delays in the enforcement of the second judgment (see paragraph 31 above). Therefore, the second judgment was enforced three years, five months and one week after it had become final and binding.

45. The Court notes that this part of 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

46. At the outset, the Court recalls that it 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*, cited above, §§ 35 et seq.; *Teteriny v. Russia*, no. 11931/03, §§ 41 et seq., 9 June 2005; *Gizatova v. Russia*, no. 5124/03, §§ 19 et seq., 13 January 2005; and *Burdov*, cited above, §§ 34 et seq.).

47. Turning to the present case, the Court notes that the Government claimed that the delay in the enforcement of the second judgment had been justified in the circumstances. They basically relied on three groups of arguments, which will be examined below.

1. Conflict with the budget law; shortage of housing

48. First of all, the Government claimed that the laws relating to the federal budget had not allocated enough money to honour all of the financial obligations of the State under the Chernobyl Law. Therefore, honouring the

judgment in the applicant's favour would have been in conflict with budget legislation. By advancing this line of argument the Government, in substance, were referring to the lack of funds at federal level to be allocated to the implementation of the Chernobyl Law.

49. The Government also referred to the shortage of housing and the rights of other persons in need of better housing conditions. However, the rights of others would be infringed not by the applicant receiving his court award, but by the shortage of municipal property to be distributed amongst those entitled to it. In other words, in substance this argument also concerns the alleged lack of resources.

50. The Court reiterates that it is not open to a State authority to cite lack of funds or other resources, such as housing, as an excuse for not honouring a judgment debt (see *Malinovskiy*, cited above, § 35, and *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 litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov*, cited above, § 35). Therefore, this argument should be dismissed.

2. Abrogation of non-monetary social benefits

51. Further, the Government claimed that the Law of 22 August 2004 abrogated those provisions of the Chernobyl Law which had served as a basis for the awards in the applicant's favour. However, the Government did not explain why the second judgment had remained unenforced for more than two years before that Law was enacted. Furthermore, there is nothing in the law of 22 August 2004 to render null and void all the judgments adopted earlier under the previous legislation. If such was the meaning of the Law of 22 August 2004, it would be contrary to the principle of legal certainty, enshrined in Article 6 § 1 of the Convention, and would constitute a disproportionate interference with the possessions of those who obtained judicial awards against the State, and thus would be in breach of Article 1 of Protocol No. 1.

52. The Court recalls in this respect its findings in the *Smokovitis and Others v. Greece* case (no. 46356/99, § 23, 11 April 2002), where it held that, as a matter of principle, the legislature should not interfere with the judicial determination of disputes to which the State was a party. The Court reached a similar conclusion in another Greek case (see *Stran Greek Refineries and Stratis Andreadis*, cited above, § 47), where the State, by enacting new legislation, determined the outcome of a pending dispute to which it was a party and thus upset the fairness of the proceedings.

53. The Court further notes that only in very exceptional circumstances a judgment may be affected by changes in the legislative framework. Thus, as

regards statutory pensions regulations (and other similar welfare benefits), they are “liable to change and a judicial decision cannot be relied on as a guarantee against such changes in the future” (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006), even if such changes are to the disadvantage of certain welfare recipients. However, the State cannot interfere with the process of adjudication in an arbitrary manner. Thus, when the authorities lose a case in a court but then have the case reopened by introducing new legislation with retroactive effect, an issue under Article 6 § 1 and Article 1 of Protocol No. 1 may arise (see *Bulgakova v. Russia*, no. 69524/01, §§ 42 and 47, 18 January 2007).

54. In the present case the judgment in the applicant's favour did not concern regular payments in the future, but rather aimed at improving his housing conditions at the time. Given the nature of such an award it is inconceivable that it could be retroactively annulled by the legislature, without appropriate compensation and after a prolonged period of non-enforcement. Accordingly, the argument of the Government should be dismissed.

3. *The applicant acted mala fide; the courts took wrong decisions*

55. Finally, the Government suggested that the applicant had acted *mala fide*. First, he himself had created the situation in which he became entitled to better housing. Further, he had bought another flat for himself but had not registered his title to it before he had obtained the second court award. Therefore, the applicant had not in fact been “in need of better housing” at any time. As a result, the domestic courts had erred in their assessment of the facts of the case, applied the law in a formalistic way and awarded him unwarranted social benefits.

56. The Court reiterates that due to its subsidiary role it does not, as a rule, reassess the facts of the case or reinterpret national law. In the present circumstances the domestic courts, after having examined the parties' arguments, decided that the applicant was entitled to a particular social benefit – free housing. That judgment was not appealed against by the authorities and became final and enforceable. That judgment in the applicant's favour does not appear arbitrary or unreasonable. Therefore, this argument by the Government should be dismissed.

4. *Conclusions*

57. In sum, the arguments advanced by the Government cannot justify the prolonged non-enforcement of the second judgment in the applicant's favour. Having examined the material submitted to it, the Court notes that the Government have not put forward any other fact or argument capable of persuading it to depart from its previous case-law, cited above, in paragraph 42. The foregoing considerations are sufficient to enable the

Court to conclude that by failing, for more than three 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 housing he could reasonably have expected to receive.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

59. The applicant complained about the outcome of the proceedings which ended with the decision of the Moscow City Court of 14 May 2001. In his submission, the refusal to provide him with a flat in Moscow constituted a breach of his right to liberty of movement guaranteed by Article 2 of Protocol No. 4 to the Convention. That provision of the Convention, in so far as relevant, reads as follows:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. ...”

60. The Court notes that the applicant was not in any way prevented from moving to Moscow or renting or purchasing a flat there. The fact that the domestic courts refused to allocate him free housing in Moscow cannot be considered an interference with his rights under Article 2 of Protocol No. 4 to the Convention (see *Natalya Gerasimova v. Russia* (dec.), no. 24077/02, 25 March 2004).

61. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. As regards the judgment of 19 November 1997, the applicant claimed 1,800,000 Russian roubles in respect of pecuniary damage. That amount, in his words, represented fifty per cent of the cost of a flat in Moscow that he would need to buy in order to improve his housing conditions. The applicant further claimed 9,000 euros (EUR) in respect of

non-pecuniary damage caused by the prolonged non-enforcement of both judgments in his favour.

64. The Government considered that no just satisfaction should be awarded to the applicant. They insisted that the applicant had received free housing and, therefore, the court judgments in his favour had been duly enforced.

65. The Court notes that the applicant's claim in respect of pecuniary damage was based on his understanding that the judgment of 1997 had not been enforced. However, the Court reiterates that it has found this complaint inadmissible. Therefore, the applicant's claims in this part should be dismissed.

66. At the same time the Court considers that the prolonged non-enforcement of the second judgment in the applicant's favour (that of 28 November 2001) caused him certain mental distress. Making its assessment on an equitable basis, it awards the applicant EUR 2,100 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

67. The applicant did not make any claims for costs and expenses incurred before the domestic courts or the Court. Accordingly, the Court does not award anything under this head.

C. Default interest

68. 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 28 November 2001 in the applicant's favour admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of unjustified delay in the enforcement of the judgment of 28 November 2001;

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 2,100 (two thousand one hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(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 24 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Loukis Loucaides
President