



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

FIRST SECTION

CASE OF IVAN NOVIKOV v. RUSSIA

(Application no. 12541/05)

JUDGMENT

STRASBOURG

3 April 2008

FINAL

29/09/2008

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 Ivan Novikov v. Russia,

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

Christos Rozakis, *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 13 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 12541/05) 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 Ivan Ilyich Novikov (“the applicant”), 19 March 2005.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about non-enforcement of a judgment in his favour.

4. On 7 May 2007 the Court decided to communicate 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

5. The applicant was born in 1931 and lives in Sochi.

6. In 1989 the applicant’s employer granted him the right to use room no. 28 in a hostel. However, he could not move in because another person, Mrs H., was living there. The applicant applied to a court for an eviction order.

7. On 25 June 2002 the Tsentralniy District Court of Sochi found for the applicant and held that he should move into room no. 28, whereas Mrs H. and her family should move to a new flat which would be provided by the

Sochi Town Council and the municipal enterprise “REO Obshchezhitiiy g. Sochi” (the entity in charge of operation and maintenance of Sochi dormitories). On 13 August 2002 the Krasnodar Regional Court upheld the judgment on appeal.

8. On 5 September 2002 a writ of execution was submitted to the Sochi Bailiffs’ Service. According to the Government, on an unspecified date the bailiffs fined the municipal enterprise “REO Obshchezhitiiy g. Sochi” for the failure to execute the judgment.

9. The director of the municipal enterprise “REO Obshchezhitiiy g. Sochi” informed the bailiffs that, pursuant to the Sochi Mayor’s letter of 6 June 2002, the task of managing flats in municipal hostels had been assigned to the municipal enterprise “Kvartirno-pravovaya sluzhba goroda” (city service for housing and legal matters).

10. Given that it was not clear which entity was responsible for execution of the judgment, the bailiffs asked the District Court for a clarification. Further to their request, on 13 February 2003 the District Court clarified the judgment of 25 June 2002, indicating the following order of enforcement. First, the Sochi Town Council would provide a flat to Mrs H., then Mrs H. would be evicted from room no. 28 in the hostel, and, finally, the applicant would move into that room.

11. The applicant complained to a court that the bailiffs had made no steps to enforce the judgment. On 27 May 2003 the District Court held that the bailiffs should take all necessary legal measures to enforce the judgment.

12. The applicant then asked the court to amend the method of enforcement and recover a sum of money from the Sochi Town Council equivalent to the market price of one room. On 3 February 2004 the District Court granted his application, finding that during more than one and a half years the Town Council had taken no measures to provide Mrs H. with a flat. The District Court held that the Town Council should pay the applicant RUB 256,727. A representative of the Town Council did not attend the hearing or lodge an appeal against the decision.

13. On 16 March 2004 a bailiff issued a decision for the above amount to be paid from the bank account of the Town Council. On the same day the Town Council asked the court to reverse its decision of 3 February 2004 on account of newly-discovered circumstances. It claimed that it had not been previously aware of the fact that on 21 January 2004 the applicant had refused, in writing, to move into room no. 28. On 30 March 2004 the District Court granted the Town Council’s application and remitted the matter for a new examination.

14. By letter of 15 February 2005, the Sochi Mayor ordered the head of the municipal enterprise “Kvartirno-pravovaya sluzhba goroda” to take measures for immediate enforcement of the judgment of 25 June 2002.

15. On 12 December 2005 the District Court amended the operative part of the judgment of 25 June 2002. It held that Mrs H. and her family should be evicted from room no. 28 and resettled into room no. 98 in the same building and that the applicant would move into room no. 28.

16. On 14 February 2006 Mrs H. and her family voluntarily moved out of room no. 28 and the applicant moved in. The bailiffs closed the enforcement proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained that prolonged non-enforcement of the judgment of 25 June 2002, as upheld on appeal on 13 August 2002, breached Article 6 of the Convention, which reads as follows:

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

A. Admissibility

18. The Government submitted that the application was inadmissible *ratione materiae*. In their view, the dispute, to which the applicant was a party, was administrative in its nature and did not affect the applicant’s “civil rights and obligations” within the meaning of Article 6 of the Convention.

19. The Court reiterates that the right to use a flat undeniably falls within the scope of an individual’s “civil rights and obligations” even where the flat at issue was made available to him or her on the basis of a social-tenancy agreement (see, for example, *Pibernik v. Croatia*, no. 75139/01, § 48 et seq., 4 March 2004; *Jóri v. Slovakia*, no. 34753/97, §§ 42-49, 9 November 2000; and *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, § 68 *in fine*). The Government’s objection must therefore be dismissed.

20. The Government further submitted that the applicant had lost his status as a “victim” of the alleged violation because he had withdrawn his claim for non-pecuniary damages in the proceedings which had ended with the District Court’s judgment of 3 February 2004.

21. The Court notes that at no point in time did the domestic authorities acknowledge a violation of the applicant’s right to a court arising out of protracted enforcement of the judgment in his favour or afford any redress to him. In any event, the judgment of 3 February 2004 on which the

Government relied, had been subsequently quashed on an application by the Town Council. It follows that the applicant may still claim to be a “victim” of the alleged violation.

22. 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

23. The Government submitted that delays in the enforcement proceedings had been caused by Mrs H. who had repeatedly failed to submit the requisite documents to the city administration. They claimed that the final decision on the applicant’s claim had been issued on 12 December 2005 and enforced within two months. They maintained that there had been no violation of Article 6 of the Convention.

24. The applicant alleged that the Russian authorities had been responsible for all delays.

25. The Court observes that that on 25 June 2002 the applicant obtained a judgment in his favour. By terms of the judgment, the town council was to provide Mrs H. and her family with a flat, that being the condition precedent for the applicant’s moving into the room currently occupied by Mrs H. That judgment became enforceable on 13 August 2002. However, for a long time the applicant could not move in because no substitute housing had been granted to Mrs H. and her family. The Court is not convinced by the Government’s thesis that delays had been attributable to Mrs H. This allegation finds no support in any domestic decision and the Government did not produce any other document to substantiate their claim. On the contrary, there is sufficient evidence to support the finding that enforcement of the judgment was impossible because of the town council’s continued failure to allocate substitute housing to Mrs H. (see paragraphs 8, 11, 12 and 14 above). It follows that the Russian authorities were responsible for more than four years’ delay in enforcement of the judgment.

26. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the ones in the present case (see *Reynbakh v. Russia*, no. 23405/03, § 23 et seq., 29 September 2005; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005; *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 30 et seq., 17 March 2005; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

27. 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. Having

regard to its case-law on the subject, the Court finds that by failing to enforce the judgment in the applicant's favour the domestic authorities violated his right to a court.

28. There has accordingly been a violation of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 18,000,000 Russian roubles in respect of pecuniary and non-pecuniary damage.

31. The Government submitted that there was no causal link between the alleged violation and the claim for damages.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant suffered distress and frustration because of the State authorities' failure to enforce the judgment in his favour within a reasonable time. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis and taking into account the length of the enforcement stage, the Court 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

33. The applicant did not claim any amount for the costs and expenses incurred before the domestic courts and before the Court. Consequently, the Court does not make any award under this head.

C. Default interest

34. 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 in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
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 one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 3 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President