



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

FIRST SECTION

CASE OF LYATSKAYA v. RUSSIA

(Application no. 33548/04)

JUDGMENT

STRASBOURG

18 September 2008

FINAL

18/12/2008

This judgment may be subject to editorial revision.

In the case of Lyatskaya v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 August 2008,

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

PROCEDURE

1. The case originated in an application (no. 33548/04) 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 Lidiya Mikhaylovna Lyatskaya (“the applicant”), on 13 July 2004.

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

3. On 29 May 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The Government objected to the application of Article 29 § 3, but the Court dismissed this objection.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1936 and lives in Petropavlosvk-Kamchatskiy, a town in the Kamchatka Region.

5. The applicant lives in a municipally maintained flat. She sued the local council’s planning department and a municipal maintenance company for overdue repairs. On 29 April 2002 the Petropavlovsk-Kamchatskiy Town Court awarded the applicant 60,729 Russian roubles (RUB) by way of damages and costs, and in addition ordered the defendants to

“eliminate the cause of the leak in [the applicant’s flat] in the third quarter of 2002 by way of reconstructive repairs of the end wall and roof according to the estimate for selective repairs of the house.”

This judgment became binding on 6 June 2002, but was not enforced immediately.

6. On 19 August 2002 bailiffs closed enforcement proceedings against the planning department, because in the meantime it had been disbanded. On 19 February 2003 the bailiffs closed enforcement proceedings against the maintenance company because of its insolvency. The writ of enforcement was passed to the Central Bank.

7. From December 2002 to September 2006 the applicant received three payments totalling RUB 19,155.49. In the second quarter of 2005 the applicant’s roof was repaired.

8. In separate proceedings in 2004 the applicant brought unsuccessful civil claims against the Petropavlovsk-Kamchatsk Town Council. These proceedings ended with the judgment of the Kamchatka Regional Court of 17 June 2004.

II. RELEVANT DOMESTIC LAW

9. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months.

THE LAW

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

10. The applicant complained about the non-enforcement of the judgment of 29 April 2002. The Court examined this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Insofar as relevant, these Articles read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... 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.

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.”

A. Admissibility

11. The Government argued that this complaint was inadmissible.

First, the applicant had failed to exhaust domestic remedies because she had not complained about the non-enforcement to competent authorities, had not sued the bailiffs, had not applied for the cost-of-living adjustment of the award, and had not requested a replacement of the liquidated defendants.

Second, the State had not been responsible for the debt because the planning department was as a local self-government body, and because the maintenance company was a private enterprise. Besides, the judgment could not have been enforced due to the defendants’ liquidation. The delay had been partly caused by the applicant, because from August 2002 to February 2003 she had retained enforcement papers.

12. The applicant insisted that her complaint was admissible.

First, the suggested domestic remedies would have been futile.

Second, the State had been responsible for the debt because local self-government had been regulated by federal laws. The bailiffs had idled. The repairs of 2005 had failed to eliminate the leak.

13. With regard to the Government’s first argument, the Court reiterates that when the existence of domestic remedies under Article 35 § 1 is at issue, it is the Government who bear the burden of proof. The Government must show that the remedy was effective, accessible, capable of providing redress, and that it offered reasonable prospects of success (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999 V). In the present case, the Government have not shown how the suggested remedies would have met these requirements (compare with, for example, *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, §§ 39–46, 16 October 2007). In particular, in such circumstances an applicant is not required to request a replacement of the liquidated debtor (see *Furman v. Russia*, no. 5945/04, § 18, 5 April 2007).

It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies.

14. With regard to the Government’s second argument, the Court reiterates that the State is responsible for agencies of local self-government in the sense that they are governed by public law and exercise public functions vested in them by the Constitution (see *Gerasimova v. Russia* (dec.), no. 24669/02, 16 September 2004). The Court also reiterates that

unitary enterprises, such as the municipal maintenance company, do not enjoy sufficient institutional and operational independence from the State (see *Grigoryev and Kakaurova v. Russia*, no. 13820/04, §§ 35–36, 12 April 2007; *Kletsova v. Russia*, no. 24842/04, § 29, 12 April 2007).

It follows that this complaint cannot be rejected as incompatible *ratione personae* with the provisions of the Convention.

15. The Court notes that this 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

16. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

17. In the present case the Court notes that the judgment has not yet been fully enforced. The period of non-enforcement has accordingly been over six years.

18. This period is *prima facie* incompatible with the Convention. The Government justify the delay mainly with regard to the respective liquidation and disbandment of the defendants, but the Court has earlier rejected this excuse in similar circumstances (see *Shlepkov v. Russia*, no. 3046/03, § 25, 1 February 2007). The Government also refer to the applicant's six-month-long retention of enforcement papers, but even if the Court accepted this justification, the overall period of non-enforcement would in any event be unreasonable.

19. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant also complained about the outcome of the proceedings that ended with the judgment of 17 June 2004.

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, 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 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

21. 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

22. The applicant claimed 1,100,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government considered this claim unjustified and excessive.

24. The Court accepts that the non-enforcement of the judgment might have distressed the applicant. Making its assessment of an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

25. The applicant also claimed RUB 10,000 for the costs and expenses incurred before the domestic courts and the Court.

26. The Government argued that only one third of this claim related to the vindication of the applicant's Convention rights.

27. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 300 covering costs under all heads.

C. Default interest

28. 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 binding judgment 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;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 18 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President