



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

FIRST SECTION

CASE OF ANTONOVA v. RUSSIA

(Application no. 25749/05)

JUDGMENT

STRASBOURG

25 September 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Antonova 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 4 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 25749/05) 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, Ms Lena Aleksandrovna Antonova (“the applicant”), on 23 June 2005.

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

3. On 14 November 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1962 and lives in Yakutsk, a town in Yakutia.

5. The applicant’s father and his family of three (including the applicant) lived in a council flat under the threat of collapse. On 16 November 1998 the Yakutsk Town Court ordered the local council to provide the applicant’s father with “decent living premises for a family of three”. This judgment became binding on 26 November 1998, but was not enforced.

6. In January 2001 the applicant's father died, and on 19 September 2005 the Town Court transferred the right of claim to the applicant.

II. RELEVANT DOMESTIC LAW

7. 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

8. The applicant complained under Article 1 of Protocol No. 1 about the non-enforcement of the judgment. The Court will examine 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

9. The Government argued that the application had been inadmissible. The applicant had abused her right of individual petition under Article 35 § 3 of the Convention because she had claimed a flat of a higher quality than that awarded by the domestic judgment.

10. The applicant maintained her complaint.

11. The Court reiterates that an application may be rejected as abusive if, among other things, it was knowingly based on untrue facts (see *Varbanov v Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). However, by giving her interpretation of the domestic court's imprecise award ("decent living premises for a family of three"), the applicant did not misrepresent facts. Accordingly, the Court rejects the Government's objection.

12. 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

13. The Government admitted that they had violated the applicant's rights. Nevertheless, they claimed responsibility for only four years and nine months' delay. In their opinion, the rest of the delay had been attributable to the applicant who had sought alternative ways of enforcement and had rejected reasonable settlement offers.

14. The Court takes note of the Government's admission as to the violation of the applicant's rights under the Convention. In the circumstances of the present case the Court finds no reason to hold otherwise. Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

2. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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

16. The applicant claimed non-pecuniary damage in the amount to be determined by the Court.

17. The Government argued that this claim had been unfounded.

18. The Court accepts that the applicant might have been distressed by the non-enforcement of the judgment. Making its assessment on an equitable basis, the Court awards 3,900 euros under this head.

B. Costs and expenses

19. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

20. 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 § 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 in accordance with Article 44 § 2 of the Convention, EUR 3,900 (three thousand nine 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 25 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President