



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

FIRST SECTION

CASE OF KARDASHIN AND OTHERS v. RUSSIA

(Application no. 29063/05)

JUDGMENT

STRASBOURG

23 October 2008

FINAL

23/01/2009

This judgment may be subject to editorial revision.

In the case of Kardashin and Others v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2008,

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

PROCEDURE

1. The case originated in application (no. 29063/05) 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 three Russian nationals, Mr Aleksandr Sergeyevich Kardashin, Ms Svetlana Vladimirovna Kardashina, and Ms Lyudmila Martselinovna Banshchikova (“the applicants”), on 25 June 2005.

2. The applicants were represented by Mr A. Koss, a lawyer practising in Kaliningrad. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 April 2007 the President of the First Section decided to communicate the complaint concerning non-enforcement of a judgment to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are a family. They were born in 1985, 1964, and 1944 respectively and live in Baltiysk, a town in the Kaliningrad Region.

5. The applicants’ house became decrepit because of a construction undertaken nearby by Military Unit 53110. On 19 September 2001 the

Baltiysk Town Court ordered the Military Unit to provide the applicants with decent dwellings. This judgment became binding on 1 October 2001.

6. On 30 January 2002 the Town Court forwarded enforcement papers to bailiffs, but on 18 February 2002 the bailiffs returned the papers because of their formal defects.

7. From 25 March to 30 May 2002 the enforcement proceedings were stayed because the Military Unit contested its liability for the judgment debt.

8. On 31 July 2002 the bailiffs returned the enforcement papers to the applicants because the judgment had been unclear.

9. On 13 August 2004 the applicants applied to clarify the judgment, and on 26 August 2004 the Town Court issued a clarification. The applicants disagreed with it and appealed. After a rehearing, on 26 November 2004 the Town Court ordered the Military Unit to

“provide [the applicants] before 1 February 2005 with a decent (in terms of Baltiysk) flat in Baltiysk, measuring at least 47.2 m² and meeting sanitary and technical requirements.”

The applicants appealed, but on 12 January 2005 the Kaliningrad Regional Court rejected the appeal.

10. On 28 February 2006 the first and second applicants received a flat of 52.8 m² and the third applicant received a flat of 34.1 m².

II. RELEVANT DOMESTIC LAW

11. 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

12. The applicants complained under Articles 6 and 8 of the Convention 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

13. The Government argued that this complaint was inadmissible.

The State had been responsible only for one year’s delay, but any harm caused by this delay had been made good, because in the end the applicants had received flats of a better quality than awarded.

The rest of the delay had had to be imputed to the applicants. The enforcement papers issued by the court had had formal defects that had had to be rectified. The enforcement proceedings had been adjourned for two months, because the Military Unit had contested its liability for the judgment debt. The judgment had been unclear and had had to be clarified. The applicants had applied for the clarification too late and delayed the process by appeals.

Furthermore, the applicants had failed to exhaust domestic remedies, as Article 35 § 1 of the Convention required. They could have sued the bailiffs for negligence and non-pecuniary damage.

14. The applicants argued that their complaint was admissible.

It had been the bailiffs’ responsibility to have the judgment clarified and to have the correct debtor determined. The applicants did exhaust domestic remedies. The applicants had received their flats only owing to their complaint to the Court, and not in the framework of ordinary enforcement proceedings.

15. As to domestic remedies, the Court cannot accept that the applicants had at their disposal remedies satisfying the requirements of Article 35 § 1 of the Convention. A complaint about the bailiffs’ negligence would have been ineffective (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikov v. Russia*, no. 43883/02, § 16, 24 February 2005). A claim for non-pecuniary damages has not been shown to be sufficiently certain in practice so as to offer the applicants reasonable prospects of success as required by the Convention. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies.

16. As to the other arguments, 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

17. 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).

18. In the present case the enforcement lasted four years and four months. Of this period, the Government have admitted their responsibility for one year. While this delay is in itself incompatible with the requirements of the Convention, the Government's responsibility extends even further. The Government attribute the bulk of the delay to the applicants' failure to apply promptly for clarification of the judgment. However, the quality of the flats that the applicants received in the end exceeded the clarified award. If the defendant enjoyed such leeway, the Court cannot, in the circumstances of this case, accept that the clarification had been a necessary condition for the enforcement.

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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

20. The applicants complained under Article 13 of the Convention that they had had no effective domestic remedy against the delayed enforcement of the judgment.

21. The Court notes that this complaint is linked to the one examined above and must therefore be also declared admissible.

22. Nevertheless, having regard to the finding relating to Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. Each applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

25. The Government argued that this claim was excessive.

26. The Court accepts that the applicants must have been distressed by the delayed enforcement of the judgment. Making its assessment on an equitable basis the Court awards each applicant EUR 3,500 under this head.

B. Costs and expenses

27. The applicants also claimed an unspecified amount for the costs and expenses incurred before the Court.

28. The Government argued that the applicants had not substantiated this claim with evidence.

29. 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 each applicant the sum of EUR 100 for the proceedings before the Court.

C. Default interest

30. 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 applications 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* that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay each 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 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicants, 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President