



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

FIRST SECTION

CASE OF GORBUNOV v. RUSSIA

(Application no. 9593/06)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Gorbunov 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 9593/06) 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 Vladislav Gennadyevich Gorbunov (“the applicant”), on 21 February 2006.

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

3. On 6 October 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 1965 and lives in Chelyabinsk, a town in the Chelyabinsk Region.

5. The applicant is a retired officer. In 2002 he sued a local authority for the provision of a flat.

6. On 4 June 2002 the Kurchatovskiy District Court of Chelyabinsk held for the applicant. On 15 August 2002 the Chelyabinsk Regional Court upheld the judgment having modified the award as follows:

“The local authority of Chelyabinsk is to provide [the applicant] at the expense of the federal budget with a decent dwelling for his family.”

This judgment became binding on 15 August 2002, but has not been enforced to date.

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 6 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

9. The Government admitted that the period of the enforcement had breached the Convention. They noted that the judgment could have been enforced only by means of a State housing voucher – a registered instrument entitling its owner to a housing subsidy.

10. The applicant maintained his complaint.

11. 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

12. The Government have admitted a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

13. In the circumstances of the present case, the Court has no reason to hold otherwise. There has, accordingly, been a violation of these Articles.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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

15. In respect of pecuniary damage, the applicant claimed 9,682.90 euros (EUR). This amount represented his rent from 1998, the year when he retired.

16. The Government argued that this claim was unsubstantiated.

17. The Court finds that the formulated claim is unsupported by evidence and cannot be entertained. However, the Court reiterates that violations of Article 6 are best redressed by putting an applicant in the position he would have been if Article 6 had been respected. The Government shall therefore secure, by appropriate means, the enforcement of the domestic court's award (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005).

18. In respect of non-pecuniary damage, the applicant claimed EUR 2,281.80.

19. The Government argued that this claim was unsubstantiated.

20. The Court accepts that the applicant must have been distressed by the non-enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 2,200 under this head.

B. Costs and expenses

21. The applicant also claimed EUR 449.50 for the costs and expenses incurred before the domestic courts and the Court.

22. The Government argued that this claim was unsubstantiated.

23. 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 rejects this claim.

C. Default interest

24. 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court, and in addition pay the applicant EUR 2,200 (two thousand two 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 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President