



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

FIRST SECTION

CASE OF VOLNYKH v. RUSSIA

(Application no. 10856/03)

JUDGMENT

STRASBOURG

17 December 2009

FINAL

28/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Volnykh 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 26 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 10856/03) 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 Vladimir Vladimirovich Volnykh (“the applicant”), on 4 March 2003.

2. 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 12 March 2007 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

4. The applicant was born in 1950 and lives in Kropotkin, a town in the Krasnodar Region of Russia.

5. The applicant is a retired serviceman. In 1992 when the applicant was still serving, his military unit signed a contract with a building enterprise of the Kropotkin Town Authority for the construction of an apartment house for servicemen, the applicant included. In 1993 the military unit was disbanded, and the applicant retired.

6. Not having received the flat, the applicant sued the enterprise. On 24 November 1997 the Kropotkin Town Court ordered the Town Authority to provide the applicant with a three-room flat in the 199-apartment house

no. 19, 20, 21 that was being constructed in Microdistrict no. 1 of Kropotkin. This judgment became binding on an unspecified date in 1997.

7. In 1997 the authority informed bailiffs that the construction had been delayed by a difficult socio-economic situation in the country. In 1999 the authority informed the bailiffs that the construction would be finished during the first three months of 2000.

8. Frustrated with the delay, the applicant asked the court to change the mode of enforcement to a lump-sum payment of 250,000 Russian roubles. The court refused that change because the applicant had failed to prove the impossibility of a literal enforcement. The court noted that the judgment had not specified a time frame for the provision of the flat, and that the construction was in progress. The court also noted that a lump-sum payment would have prejudiced other public expenditure.

THE LAW

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

9. The applicant complained that the non-provision of the flat breached his right to protection of property as provided in Article 1 of Protocol No. 1 of the Convention. Insofar as relevant, this Article reads as follows:

“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

10. The Government argued that this complaint was manifestly ill-founded. Under domestic law in force at the material time, the applicant had had no preferential right to a flat, and if he wished to receive it he should have applied to the Enlistment Office of Kropotkin, something he had not done. It had been the applicant's own choice to benefit from the contract scheme. The contract had been void because of formal defects. There had been no evidence that the applicant had put money down on the flat.

The judgment could not have been enforced because the apartment house had still not been completed, and because in the meantime the building enterprise had undergone liquidation proceedings. The judgment had not specified a time frame of its enforcement. The authorities had not been responsible for the building enterprise's slow construction of the apartment house. As the judgment had been given against the Town Authority, there had been no legal possibility to urge the enterprise to comply with the judgment.

11. The applicant maintained his application. He pointed out that the judgment could have been enforced because in 1999 the Town Authority had suggested that the house would be built in 2000.

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 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).

13. The Court recalls that its original finding of a violation in respect of non-enforcement of judgments in Russia concerned debts of pecuniary nature (see *Burdov*, cited above, § 34). This finding was later extended to include debts related to assets, e.g. flats (see, for example, *Sladkov v. Russia*, no. 13979/03, § 20, 18 December 2008).

14. It would hence appear logical at first sight to read the present case in the light of the aforementioned case-law. There exists, however, one crucial difference that sets the present case apart. The judgment of 24 November 1997 entitled the applicant not to a fungible good, e.g. money or a property of generic characteristics that the State may be expected to have in sufficient supply, but to an individual thing – a flat in a specific apartment house. Since the building enterprise had never completed the construction of the house, there apparently was no way for the bailiffs or the Town Authority to provide the applicant with the flat.

15. In view of these considerations, the Court concludes that there has been no violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible unanimously;
2. *Holds* by six votes to one that there has been no violation of Article 1 of Protocol No. 1 of the Convention.

Done in English, and notified in writing on 17 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Malinverni is annexed to this judgment.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE MALINVERNI

(Translation)

I am unable to join the conclusion reached by my colleagues that there has not been a violation of the Convention in this case.

Admittedly, as correctly stated in the judgment, “since the building enterprise had never completed the construction of the house, there was ... no way for the bailiffs or the Town Authority to provide the applicant with the flat” (see paragraph 14).

However, I would like to point out that the building enterprise that had undertaken to build an apartment block was a municipal enterprise and therefore a public one (“enterprise of the Kropotkin Town Authority” – see paragraph 5). That public enterprise had entered into a contractual undertaking with the applicant's military unit. Failure to execute that contract had the effect of directly engaging the responsibility of the State, which could and should have taken measures to ensure that the contract was honoured.

Frustrated with the delay, the applicant finally asked the court to make him a lump-sum payment of 250,000 Russian roubles in lieu of the flat.

Surprisingly, the court, which on 24 November 1997 had given judgment ordering the Town Authority to provide the applicant with a flat, refused to pay him the amount sought because, among other reasons, “a lump-sum payment would have prejudiced other public expenditure” (see paragraph 8).

I find this reason entirely unacceptable. In my opinion, the delay by the public enterprise in honouring the contract and the refusal by the court, without giving valid reasons, to convert the municipality's initial obligation into payment of a sum of money had the effect of engaging the responsibility of the public authorities.