CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 74694/01
by Lyubov Nikolayevna KRIVONOGOVA
against Russia

The European Court of Human Rights (First Section), sitting on 1 April 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges,*
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application introduced on 11 September 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Lyubov Nikolayevna Krivonogova, is a Russian national, who was born in 1957 and lives in Omsk. She is represented before the Court by Ms Deryabina, a lawyer practising in Omsk. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

In 1998 the applicant brought an action against a private party to recover a debt under a loan contract.

On 23 December 1998 the Sovetskiy District Court of Omsk awarded RUR 46,263.56 to the applicant, with interest to be charged until the day of actual payment.

On 4 January 1999 the judgment entered into force.

On 4 February 1999 the enforcement proceedings were opened. The defendant's flat was subject to a charging order.

On 18 August 1999 the bailiff seized the defendant's car and lifted the charging order on the flat.

On 20 August 1999 the bailiff suspended the enforcement proceedings until 26 August 1999 due to the defendant's husband's request to separate his property from that of his wife to preserve his share.

Following the lifting of the charging order the applicant learned that the defendant had sold the flat and bought another one. The applicant alleges that the defendant sold the flat at the price RUR 180,000 and paid RUR 112,000 for the new one.

The applicant brought two sets of proceedings against the bailiff. Firstly, she challenged the lifting of the charging order. Secondly, she challenged the delay in enforcement.

On 22 March 2000 the Sovetskiy District Court of Omsk declared the lifting of the charging order unlawful. The court held, in particular, that "it reduced the effectiveness of the court's judgment". The bailiff appealed.

On 11 April 2000 the Sovetskiy District Court of Omsk declared unlawful the suspension of 20 August 1999 and the delay in enforcement of the judgment.

On 26 April 2000 the Omsk Regional Court acting on appeal upheld the decision of 22 March 2000. The court dismissed the bailiff's objection that the flat could not be subject to an injunction for being the defendant's only dwelling, as having no basis in law. It found that the bailiff's unlawful act allowed the defendant to dispose of the flat, which impeded the enforcement proceedings.

On 1 June 2000 the Sovetskiy District Court of Omsk defined the property shares between the defendant and her husband.

The applicant brought an action against the Ministry of Finance of the Russian Federation (*Министерство финансов РФ*) and the Department of Justice of the Omsk Region (*Управление юстиции администрации Омской области*). She claimed damages resulting from the bailiff's failure to enforce her award. She sought a total sum of RUR 82,838.00, representing the principal debt and the outstanding interest.

On 14 February 2001 the Central District Court of Omsk dismissed her claim. It stated that "neither the fact that the lifting of the charging order had been declared unlawful nor the undue delay of enforcement proceedings, although they resulted in a failure to execute the judgment, justifies an action for damages against the [authorities] because it was the [debtor under the loan] who had caused the damage to the applicant and who was liable pursuant to the judgment." The court found "neither a fault on the part of the bailiff, nor a causal link between the bailiff's act and the damage caused".

On 11 April 2001 the Omsk Regional Court acting on appeal upheld the judgment of 14 February 2001. The court noted that the enforcement proceedings had continued and that on 27 April 2000 and 14 August 2000 the bailiff had issued injunctions in respect of a flat and a vehicle, in both of which the defendant had had a share.

On 30 January 2002 the defendant's car was seized, and in May 2002 it was sold. So far RUR 32,260.65 has been paid to the applicant.

B. Relevant domestic law

The Constitution of the Russian Federation, adopted by referendum on 12 December 1993, provides, in so far as relevant, as follows:

Article 46

"...2. Decisions and actions or lack of action of state bodies, bodies of local self-government, public associations and officials may be appealed against in court."

Article 53

"Every person shall have the right to be reimbursed by the state for the damage caused as a result of unlawful actions (inaction) of the state bodies and their officials."

The Civil Code of the Russian Federation, in force as of 1 March 1996, provides for compensation for damage caused by the act (or a failure to act) on behalf of the State:

Article 1069

"Damage caused to an individual or a legal person as a result of an act or a failure to act by the state or municipal bodies, or their officials, including that caused by a written act issued by a state or a municipal body contrary to a law or a legislative act, shall be reimbursed. The damage shall be reimbursed by the treasury of the Russian Federation, the treasury of the subjects of the Russian Federation or the municipal treasury respectively."

Article 1071 of the Civil Code authorises the relevant financial bodies to act on behalf of the respective treasury liable to pay damages.

Article 90 § 2 of the Federal Law on Enforcement Proceedings, in force as of 6 November 1997, provides that the damage caused by the bailiff shall be reimbursed in accordance with the civil legislation.

Article 446 of the Code of Civil Procedure, in force as of 1 February 2003, provides that a dwelling cannot be subject to a charging order for the purpose of enforcement, if it provides the only eligible residence for the debtor and his family.

No similar provision was in force before the entry into force of this Code.

COMPLAINTS

The applicant complains that in the course of execution proceedings, of which she was a beneficiary, the bailiff lifted an injunction unlawfully thus depriving her of her possessions. She invokes Article 1 of Protocol No. 1 to the Convention.

The applicant complains under Article 13 of the Convention that she had no effective domestic remedy as regards the above complaint.

In the observations submitted on 30 July 2003 the applicant complains finally, under Article 6 of the Convention, that the judgment of 14 February 2001 had not been made available to her before the appeal hearing on 11 April 2001.

THE LAW

1. The applicant complains that the bailiff's unlawful act caused her pecuniary damage. She invokes Article 1 of Protocol 1 to the Convention which provides 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."

The Government contend that the bailiff had lifted the injunction in respect of the defendant's flat lawfully, as in any event the law did not permit the debt to be charged against the flat in which the defendant lived

with her family. They also state that some part of the debt has been paid off, and the enforcement in relation to the rest is still pending.

The applicant contests the allegations that the lifting of the injunction was lawful. She refers to the findings of the domestic courts that the bailiff had acted unlawfully. She also contends that had the charging order not be lifted the bailiff would have had control over the sale of the flat and could have recovered the debt against the price difference between the flat sold and the new flat.

The Court recalls that an applicant may claim to be a victim of an alleged violation of Article 1 of Protocol No. 1 to the Convention where the alleged interference relates to his or her "possessions" or "property" within the meaning of that provision. "Possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" or assets, including claims, in respect of which an applicant can argue that he or she has at least a "legitimate expectation" that they will be realised (see, as a recent authority, *Jasiuniene v. Lithuania*, no. 41510/98, § 40, 6 March 2003).

The Court notes that the applicant's pecuniary right was conferred in the court proceedings. Her award, being final, binding and enforceable, may be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1 (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). However, she could only secure its enforcement through execution proceedings carried out by the state bailiff service, hence her enjoyment of possessions depended to a large extent on the authorities' conduct. The principle that the Convention rights must be effective requires that a system where a judgment beneficiary relies on a state-run enforcement agency, notably the bailiff service, would involve state responsibility for its efficient functioning. In other words, such system can be said to create a legitimate expectation, also protected by Article 1 of Protocol 1.

The Court concludes that in the present case the applicant's "possessions" for the purposes of Article 1 of Protocol 1 represented her pecuniary award, together with a legitimate expectation that the bailiff service would carry out its mandate to enforce it.

The Court observes that the applicant's complaint does not relate to her title to the award, which she has never lost. However she claims that her legitimate expectations were adversely affected by the bailiff who had lifted the charging order, which, in her view, would otherwise have realised sufficient assets.

The Court recalls that a finding of an interference with "possessions" is conditional on the applicant's ability to demonstrate an increased financial loss (see, *mutatis mutandis*, *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 29). In the context of protection afforded by Article 1 of Protocol 1 to a claim, a debt beneficiary can be said to have sustained loss if enforcement of the award has become

impossible to secure (the above-cited *Stran Greek Refineries* case, § 67). Accordingly, to substantiate her property complaint the applicant would first have to demonstrate that she had lost her chance of receiving her award, or a certain part of it, and then that the loss could be ascribed, solely or largely, to the impugned act. The Court notes that the loss alleged by the applicant is based on the assumption that the enforcement without lifting the charging order would have been more effective. However, no evidence has been adduced to the effect that the release of the flat entailed detrimental consequences for the enforcement proceedings as a whole. Neither the bailiff nor the domestic courts have determined at any stage that the enforcement was prevented because the debtor's funds were insufficient or because the debt had no prospects of being recovered for other reasons. On the contrary, in the present case the enforcement proceedings are still pending and not just as a mere formality: in fact, a part of the debt was repaid after the charging order had been lifted. Therefore the bailiff's act, even though found by the domestic courts to be unlawful, does not appear to have had a decisive impact on the debtor's realisable assets. In the circumstances the Court cannot establish that the bailiff's act constituted an interference with the applicant's possessions by the respondent State.

It follows that this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains that the appeal proceedings before the Omsk Regional Court on 11 April 2001 were unfair, as she had not been timely served the first instance judgment and could not prepare for the hearing. She invokes Article 6 of the Convention, which provides as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ..."

The Court notes that this complaint concerns the events of 11 April 2001, of which the applicant was immediately aware. However, this complaint was not lodged with the Court before 30 July 2003.

It follows that this part of the application is lodged out of the six month time-limit prescribed by Article 35 § 1 and must be rejected in accordance with Article 35 § 4 of the Convention.

3. The applicant complains that no effective domestic remedy was available to her in respect of the alleged violation of Article 1 of Protocol 1. She invokes Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government argue that the applicant had an opportunity to have her case examined by the courts, and that she did so. They invoke the proceedings in which the bailiff's act was declared unlawful and the subsequent proceedings for damages. They state that the damages were not

awarded as the enforcement proceedings were still pending, leaving a fair chance of recovering the debt.

The applicant maintains her complaint. She states that the domestic courts made no award to her, and therefore may not be regarded as effective remedy.

The Court recalls that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

The Court has found that the applicant's complaint under Article 1 of Protocol 1 to the Convention is manifestly ill-founded. For similar reasons, the applicant does not have an arguable claim and Article 13 is therefore inapplicable to his case. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President