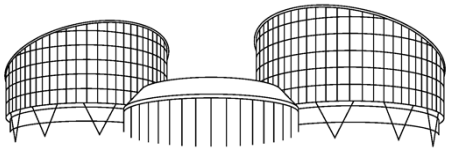

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LYUBOV STETSENKO v. RUSSIA

(Application no. 26216/07)

JUDGMENT

STRASBOURG

17 April 2014

FINAL

17/07/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Lyubov Stetsenko v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 26216/07) 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 Lyubov Stepanovna Stetsenko ("the applicant"), on 22 February 2007.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained that the prolonged non-enforcement of a binding judgment in her favour had resulted in a violation of her rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

4. On 17 November 2010 the President of the Section decided to grant this case priority under Rule 41 of the Rules of Court.

5. On 9 September 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Judgment in the applicant's favour and provision of the first flat

6. The applicant was born in 1923 and lives in Voronezh.

7. In 1982 a municipal authority registered the applicant on the waiting list for war veterans in need of improved housing conditions ("the housing list").

8. On 3 March 1995 the Sovetskiy District Court of Voronezh ("the District Court") gave judgment in the applicant's favour, obliging the Administration of Voronezh ("the town council") to:

> "... allocate a separate well-furnished flat for rent to [the applicant] for her whole family as from the date of the provision of the flat with living space of no less than nine square metres per person, with account to be taken of [the applicant's] right to additional living space and the possibility of providing a flat located close to her daughter's residence at 5 Komarova Street, Voronezh ..."

9. On 11 April 1995 the Voronezh Regional Court ("the Regional Court") upheld the judgment on appeal and on the same date it became binding.

10. On 3 May 1995 the District Court issued the applicant with a writ of execution (no. 2-286/95) and on an unspecified date bailiffs instituted enforcement proceedings.

11. On 29 June 1995, 13 October 1995 and 2 February 1996 the town council was fined for failure to enforce the judgment of 3 March 1995.

12. On 14 August 1995 the Voronezh expert medical commission registered the applicant as Category 2 disabled and declared her unfit for work. On the same day a municipal authority registered the applicant on another waiting list, this time for disabled war veterans in need of improved housing conditions.

13. On 26 February 1996 the Presidium of the Regional Court by way of supervisory review supplemented the judgment of 3 March 1995, by adding the words "in order of priority" to the operative provisions quoted above (see paragraph 8 above). On 16 May 1996 the Regional Court explained to the applicant that the amendment did not mean that the town council had been released from its obligation to enforce the judgment. Rather, it meant that its enforcement became dependent upon the moment she moved from third to first place on the housing list.

14. On 6 March 2000 the Presidium of the Regional Court by way of supervisory review supplemented the operative part of the judgment for a second time, with the words "in order of priority among those entitled to obtain housing on preferential terms".

15. By an order (no. 41) of the head of the Administration of the Sovetskiy District of Voronezh ("the district council") dated 18 January 2000, the applicant was provided with a two-room flat at 257, 3 Putilovskaya Street (hereinafter "Flat 1") measuring 55.17 square metres with 30.76 square metres of living space, for a family of three (the applicant, her son and her grandson). By the same order the applicant was struck off the housing list.

16. The applicant refused to participate in the privatisation of Flat 1 in favour of one of her two grandsons, Mr A.A. Stetsenko. On 23 March 2006 title to the flat was transferred, by way of privatisation, to him. On 30 June 2009 he signed an agreement gifting Flat 1 to his father, the applicant's son, Mr A.M. Stetsenko, who remains its current owner.

B. Provision of the second flat

1. The applicant's reinstatement to the housing list

17. The head of the district council amended his order no. 41 (see paragraph 15 above) on two occasions: on 17 October 2000 the applicant was reinstated to the housing list, and on 7 April 2004 she was struck off it again.

18. On 13 May 2002 the Voronezh neuropsychology clinic informed the district council that: a) since 1989 the applicant had been under psychiatric supervision, and b) because she suffered from a psychiatric condition she had the right to additional living space.

19. By a judgment of 13 May 2002 the District Court ordered the town council to offer housing to the applicant with due regard to be taken of the date of her placement on the housing list as well as the benefits she was entitled to.

20. It follows from an extract from the housing register issued for the applicant on 14 April 2003 that Flat 1 was occupied by five members of her family and had 30.9 square metres of living space.

21. On an unspecified date the applicant challenged the orders according to which she had been struck off the housing list. By a judgment of 7 September 2004 the District Court reinstated her to the list on the grounds that Flat 1 was provided to her without due regard being taken of her right to additional living space.

22. The authorities informed the applicant on 11 March 2005 that she was first on the housing list, and on 14 September 2006 that she had actually moved to first place on 19 December 2003.

23. It follows from the materials in the case file that between November 2002 and May 2005 the authorities allocated flats to twenty-three people on the housing list, the largest of these flats being a four-room property with 64.62 square metres of living space.

2. Enforcement proceedings

24. On 22 July 2005 the Bailiff Service informed the applicant that they could not enforce the judgment of 3 March 1995 because they had not received the writ of execution.

25. On 4 August 2005 the applicant lodged an application with the District Court requesting it to issue a duplicate copy of the writ. The court

sent a request for information regarding the applicant's case file to the Bailiff Service. They replied on 31 August 2005 stating that they could not provide the information requested since the archives containing case files predating 1999 had been destroyed.

26. On 23 September 2005 the District Court ordered a duplicate copy of the writ to be issued on the grounds that the original had been lost. At an appeal hearing on 8 November 2005, the Regional Court quashed the lower court's ruling and remitted the case for fresh examination because it had failed to take into consideration other court proceedings the applicant was involved in concerning the provision of housing to her. Those proceedings ended on 31 October 2005 when the District Court gave judgment ordering the authorities to provide the applicant with another flat.

27. On 17 January 2006 the District Court suspended the proceedings until the judgment of 31 October 2005 became binding. At an appeal hearing on 14 February 2006 the Regional Court found that the grounds for the suspension of the proceedings were no longer valid since the judgment of 31 October 2005 had been quashed on appeal on 19 January 2006, but upheld the lower court's ruling.

28. On 13 March 2006 the District Court found that the judgment of 31 October 2005 had been quashed on appeal and resumed the proceedings. On 12 April 2006 it suspended them again, on the grounds that the Regional Court, which had quashed the judgment of 31 October 2005, had remitted the case to it for fresh consideration. At an appeal hearing on 30 May 2006 the Regional Court upheld the lower court's ruling.

29. On 14 February 2007 the District Court granted a request by the applicant for a duplicate copy of the writ of execution to be issued on the grounds that the original had been lost by the State authorities. In the ruling the court noted that the judgment of 3 March 1995 had not been enforced. On 15 March 2007 the ruling was upheld on appeal.

30. On 23 April 2007 the applicant received the duplicate copy of the writ. On 25 April 2007 the Bailiff Service instituted enforcement proceedings and set a five-day time-limit for enforcing the judgment of 3 March 1995.

31. On 18 June 2007 the applicant submitted an extract from the housing register issued on 5 June 2007 to the town council stating that Flat 1 was occupied by five members of her family and had 30.9 square metres of living space.

32. On 25 June 2007 the town council informed the Bailiff Service that there were no vacant four-room flats available at that time.

33. On 15 January 2008 the district council, acting on behalf of the town council, offered the applicant a four-room flat at 9, 13 Tsiolkovskogo Street (hereinafter "Flat 2") measuring 75.8 square metres with 55 square metres of living space, for a family of five (the applicant, her husband, her son and

her two grandsons). On 1 February 2008 she agreed to move into Flat 2, and on 4 February 2008 the district council took the decision to allocate it to her.

34. Having been satisfied that Flat 2 had been provided to the applicant, the Bailiff Service decided to discontinue the enforcement proceedings on 8 February 2008.

35. On 5 March 2008 the applicant concluded a social tenancy agreement in respect of Flat 2.

36. On 21 March 2008 the municipality issued an order (no. 249) to strike the applicant off the housing list since she was no longer eligible for accommodation under a social tenancy agreement. The order stated, among other things, that the District Court judgment of 3 March 1995 had been enforced in full, and specified that the applicant had been provided with Flats 1 and 2.

C. The applicant's subsequent complaints about improper enforcement of the judgment in her favour

37. On 7 July 2008 the applicant challenged the Bailiff Service's decision to discontinue the enforcement proceedings, addressing her complaint to various levels of seniority. She argued that the property she had been allocated was three square metres smaller than the size she was entitled to. The Bailiff Service confirmed the lawfulness of their decision.

38. In August 2008 the applicant challenged the Bailiff Service's decisions in court. By a decision of 12 November 2008 the Leninskiy District Court of Voronezh found that the requirement contained in the writ of execution had been fully complied with and rejected the complaint. By a final decision of 21 April 2009 the Regional Court upheld the lower court's decision.

39. On an unspecified date the applicant refused to participate in the privatisation of Flat 2 in favour of her second grandson, Mr D.A. Stetsenko. On 30 December 2008 title to the flat was transferred, by way of privatisation, to him. He subsequently signed an agreement gifting Flat 2 to his father, the applicant's son, Mr A.M. Stetsenko, who remains its current owner.

40. On an unspecified date the applicant discovered various defects in Flat 2, including a lack of ventilation in the bathroom. On 29 September 2009 she asked the Bailiff Service to quash their decision of 8 February 2008 to discontinue the enforcement proceedings. On 22 October 2009 they agreed to do so. The town council challenged the decision in court. 22 January 2010 the Tsentralniy District Court of Voronezh dismissed the complaint. It stated:

> "... upon discontinuation of the enforcement proceedings [the applicant], in accordance with the established procedure, has not been deprived of the right to apply for another dwelling instead of the one provided, upon [her] return of the latter ..."

41. On 2 March 2010 and 19 April 2010 the Bailiff Service found that the town council had failed to enforce the judgment of 3 March 1995, and scheduled new deadlines for enforcement of 23 March and 29 April 2010 respectively.

42. On an unspecified date the Bailiff Service asked the District Court to explain whether proper enforcement of the judgment of 3 March 1995 required the allocation of a new flat to the applicant upon her return of Flat 2. On 16 June 2010 the court held that the issue raised had not been resolved in the relevant court proceedings and refused to reply to their request.

43. On 10 June, 29 June, 7 July and 22 July 2010 the Bailiff Service acknowledged that complaints by the applicant concerning their failure to take the necessary steps to enforce the judgment were well-founded and confirmed the unlawfulness of their failure to act.

44. On 29 July 2010 the Bailiff Service found that the town council had no valid excuse for the prolonged non-enforcement of the judgment and ordered it to pay a fine for failure to enforce it within the five-day time-limit set on 25 April 2007.

45. On 30 July 2010 the Bailiff Service set a new deadline for enforcement of 16 August 2010.

46. On 2 August 2010 the authorities allegedly offered the applicant another flat in exchange for Flat 2. The applicant expressed her willingness to be allocated the new flat, but stated that she could not return Flat 2 since it was no longer hers.

47. On 16 August 2010 the Bailiff Service found that the town council had no valid excuse for the prolonged non-enforcement of the judgment and ordered it to pay a further fine for failure to enforce it within the set time-limit.

48. On 18 August 2010 the Bailiff Service set a new deadline for enforcement of 31 August 2010.

49. On 14 September 2010 the Bailiff Service issued a decision to discontinue the enforcement proceedings, in which they acknowledged that by refusing to participate in the privatisation of Flat 2 in favour of her grandson, the applicant had exercised her right to obtain housing in accordance with the writ of execution of 3 May 1995, therefore obtaining another flat would not be possible.

50. By its decision of 28 October 2010 the Tsentralniy District Court rejected a complaint by the applicant about that decision, referring to the fact that the flat in question had been privatised and its title transferred to the applicant's son and that, moreover, when the judgment was executed the health and safety technical regulations had not come into force. On 16 December 2010 the Regional Court dismissed an appeal by the applicant and upheld the lower court's decision.

II. RELEVANT DOMESTIC LAW

A. Enforcement proceedings

51. Under Articles 13, 209 and 338 of the Code of Civil Procedure, in force at the material time, a court judgment which has become final is binding and must be executed.

52. Section 9 of the Enforcement Proceedings Act 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with the writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow should the defendant fail to comply with the time-limit. Pursuant to section 13, enforcement proceedings must be completed within two months of the bailiff receiving the writ of execution.

B. Implementation of the right to a "social tenancy"

53. The RSFSR Housing Code (Law of 24 June 1983, effective until 1 March 2005) provided that a Russian citizen was entitled to possess a flat owned by the State, municipal authorities or other public bodies, under the terms of a tenancy agreement (Article 10). Priority was given to certain "protected" categories of individuals, such as disabled persons, war veterans, Chernobyl victims, police officers and judges.

54. A decision to grant a flat was implemented by the local municipal authority issuing the citizen with an occupancy voucher (*ордер на жилое помещение*) (Article 47). The voucher served as the legal basis for taking possession of the flat designated therein and for the signing of a tenancy agreement between the landlord, the tenant and the housing maintenance authority (Article 51, also Articles 672 and 674 of the Civil Code).

55. Members of the tenant's family (including his or her spouse, children, parents, disabled dependants and other persons) had the same rights and obligations under the tenancy agreement as the tenant (Article 53). The tenant had the right to accommodate other persons in the flat (Article 54). In the event of the tenant's death, an adult member of his or her family would succeed the tenancy (Article 88).

56. Flats were granted for permanent use (Article 10). The tenant could terminate the tenancy agreement at any time with the consent of his or her relatives (Article 89). The landlord could only terminate the agreement if one of the lawful grounds for termination existed and on the basis of a court order (Articles 89 and 90). If the agreement was terminated because the house was no longer habitable, the tenant and his or her family were to receive an alternative flat which was fully equipped (Article 91). Tenants or members of their family could only be evicted without being provided

alternative accommodation if they "systematically destroyed or damaged the flat", "used it for non-residential purposes" or "systematically breached the [accepted standards of behaviour] making life with others impossible" (Article 98).

57. The tenant had the right to exchange the flat for another flat in the State or municipal housing, including across regions (Article 67). An exchange involved a reciprocal transfer of rights and obligations under the respective tenancy agreements and became final from the moment of issuing new occupancy vouchers (Article 71). "Speculative" or sham exchanges were prohibited (Article 73 § 2).

C. Rent for State housing

58. The Federal Housing Policy Act (Law no. 4218-I of 24 December 1992) provided that payments for a flat comprised (i) a housing maintenance charge, (ii) a housing repair charge, and, in the case of tenants only, (iii) rent (section 15). Maintenance and repair charges were the same regardless of whether the flat was owned privately or by the State. Rent was fixed by regional authorities, taking into account the surface area and quality of the housing. It was usually considerably lower than the fair market rent. For example, the highest monthly rent for municipal housing in Moscow was 80 kopecks (0.02 euro) per square metre (Resolution of the Moscow Government no. 863-PP of 7 December 2004).

D. Privatisation of State housing

59. In 1991, the Privatisation of Housing Act (Law no. 1541-I of 4 July 1991) was adopted. It grants Russian citizens the right to acquire title to State and municipal-owned flats of which they were in possession on the basis of a social tenancy agreement (section 2). The acquisition of title does not require any payment or fee (section 7). The right to privatisation can be exercised once in the citizen's lifetime (section 11) and requires the consent of all his or her adult relatives.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

60. The applicant complained that the prolonged non-enforcement of the judgment of the Sovetskiy District Court of Voronezh of 3 March 1995 in her favour had resulted in a violation of her rights under Article 6 § 1 of the

Convention and Article 1 of Protocol No. 1, which read in their relevant parts 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. The parties' submissions

1. The Government

61. The Government submitted that the applicant had concealed the fact that she had obtained two flats and certain events which had taken place between 2005 and 2008. They argued that she had therefore abused her right of application and requested that her application be declared inadmissible in accordance with Article 35 § 3 (a) of the Convention.

62. The Government further submitted that the judgment of 3 March 1995 had been fully enforced on 4 February 2008 when the decision to provide the applicant with Flat 2 had been taken. They pointed out that she had accepted that flat without any hesitation, and had not applied for the third flat for another year and a half. The Government stressed that the authorities had suggested providing the applicant with a third flat subject to her returning Flat 2, but she had refused to do so.

63. The Government admitted that the period of non-enforcement of the judgment had been long, but maintained that several different factors had allowed the applicant to regain her right to enforcement of the judgment within a reasonable time.

64. Firstly, the judgment of 3 March 1995 was given prior to the entry into force of the Convention in respect of the Russian Federation on 5 May 1998. Therefore, only those facts which occurred after 5 May 1998 should be examined with respect to their conformity with the Convention.

65. Secondly, the floor area of the accommodation provided measured 130.97 square metres in total, which for a family of five meant over 26 square metres per person, thus exceeding by several times the minimum space standards for social housing.

66. Thirdly, despite the applicant's assertion that the flats provided did not meet the criteria specified in the court decision, neither property was returned into the ownership of the municipality. On the contrary, the applicant disposed of both flats and they eventually became the property of her son, who significantly improved his living conditions without having been recognised as someone in need of social housing.

67. In conclusion, the Government maintained that it did not appear from the circumstances of the case that the long period of non-enforcement of the court decision had imposed an excessive burden on the applicant which would lead to a violation of Article 1 of Protocol No. 1. Having received two flats the applicant had lost her victim status. By applying for a third flat, the applicant had clearly abused her right to lodge the application.

2. The applicant

68. The applicant retorted that the judgment of 3 March 1995 had not been enforced. She argued that there was nothing to suggest that Flat 1 had been provided to her with a view to enforcing that judgment. She referred to the ruling of the Sovetskiy District Court of 14 February 2007 which had stated that the writ of execution had been lost and that the judgment had not been enforced.

69. The applicant submitted that Flat 2 did not meet the criteria specified in the court decision on account of the number of defects she had discovered after moving in.

70. The applicant also maintained that, in contrast to what the Government had submitted, she had not disposed of both flats. She had simply chosen not to participate in their privatisation for the benefit of her two grandsons living with her.

71. The applicant also contested the Government's submission that prolonged non-enforcement of the judgment of 3 March 1995 had not imposed an excessive burden on her. She referred to the fact that she was of advanced age but before moving into Flat 2 for more than six years had had to share a flat with four other members of her family, with only 6 square metres of living space per person.

B. The Court's assessment

1. Admissibility

(a) Abuse of petition

72. The Court would highlight at the outset that according to Rule 47 § 7 of the Rules of Court applicants must keep the Court informed of all circumstances relevant to the application. It further reiterates that an application may be rejected as abusive under Article 35 § 3 of the

Convention, among other reasons, if it was knowingly based on false information (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005; *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004; and *Kerechashvili v. Georgia* (dec.), no. 5667/02, ECHR 2006-V). Incomplete and therefore misleading information may also amount to an abuse of the right of individual petition, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007, and *Hadrabova and Others v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007).

73. Having examined the circumstances of the present case, the Court notes that in her application the applicant did not mention the fact that she had been provided with Flats 1 and 2. The Court observes, however, that the authorities never assumed that, by providing the applicant with Flat 1, they had enforced the judgment of 3 March 1995. The Court further notes that in her observations, the applicant contested the fact that by providing her with Flat 2 the authorities had properly enforced the judgment of 3 March 1995. She referred to various domestic proceedings she had initiated complaining of the authorities' failure to properly enforce that judgment in her favour (see paragraphs 37-50 above). The Court observes that Flat 2 was allocated to the applicant on 15 January 2008 (see paragraph 33 above), more than twelve years after the judgment of 3 March 1995 became binding.

74. In view of the above, the Court does not find it appropriate to reject the applicant's complaint as an abuse of the right of individual application within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

(b) Jurisdiction *ratione temporis*

75. The Court reiterates that the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention in respect of that Party (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III; *Šilih v. Slovenia* [GC], no. 71463/01, § 140, 9 April 2009; and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 130, ECHR 2009). From the ratification date onwards, all the State's alleged acts and omissions must conform to the Convention or its Protocols, and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I). The Court may, however, have regard to facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date

(see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 147-53, ECHR 2006-VIII).

76. The Court considers that the judgment of 3 March 1995 created a continuing obligation for the State to enforce the judgment. The delays in compliance with this obligation went far beyond 5 May 1998, when the respondent State ratified the Convention. The Court is competent *ratione temporis* to ascertain the State's responsibility for the delays that occurred after that date. It may also take into account the authorities' conduct occurring after the judgment became binding, even though it happened before the entry of the Convention into force in respect of the Russian Federation.

77. The Court therefore notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Article 6 § 1 of the Convention

78. The parties disagree about whether the judgment of 3 March 1995 was fully enforced: the Government argues that it was fully enforced on 4 February 2008 (see paragraph 62 above), whereas the applicant maintains that the judgment was never enforced in full (see paragraph 68 above).

79. Given these diverging positions, the Court considers it appropriate to recall the main principles established by its case-law that must guide its determination of the relevant issues under the Convention.

80. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe Article 6 as being concerned exclusively with access to court and the conduct of proceedings would indeed be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Hornsby v. Greece*, 19 March 1997, p. 510, § 40, *Reports of Judgments and Decisions* 1997-II).

81. An unreasonably long delay in the enforcement of a binding judgment may therefore breach the Convention (see *Burdov,* cited above). The reasonableness of such a delay is to be assessed having particular regard to the complexity of the enforcement proceedings, the applicant's own conduct and that of the competent authorities, and the amount and nature of the court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

82. The complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time. It is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet their obligation in this regard (see, *mutatis mutandis*, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV, and *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII).

83. Turning to the instant case, the Court notes that the judgment in the applicant's favour dated 3 March 1995 became final and binding on 11 April 1995. In determining whether or not it was enforced the Court will rely on the same conclusions arrived at by the Bailiff Service, since its role in this matter is essentially subsidiary to that of the domestic authorities who are better placed and equipped to assess the particular manner in which enforcement should be carried out.

84. The Court observes in this connection that the first decision to discontinue the enforcement proceedings was taken on 8 February 2008 after the applicant had received Flat 2; however, it cannot accept the Government's submission that the enforcement proceedings terminated after Flat 2 was provided to her, because on 22 October 2009 the Bailiff Service quashed their decision of 8 February 2008. It was not until 14 September 2010 that the bailiffs established that the judgment of 3 March 1995 had been complied with and discontinued the enforcement proceedings with final effect. During the period between taking the two decisions to discontinue the proceedings the bailiffs repeatedly set new deadlines for the proper enforcement of the judgment, and imposed fines upon the debtor authorities which, in their turn, offered another flat to the applicant.

85. The Court is not convinced by the applicant's argument that the judgment in her favour was not fully enforced on 14 September 2010. It refers in this connection to the findings of the Tsentralniy District Court, which heard the applicant's claims to this effect and came to the conclusion that the health and safety technical regulations invoked by the applicant had not come into force when the judgment was executed (see paragraph 50 above). The Court acknowledges the national authorities' discretion to decide on the manner in which enforcement of their judgments should be carried out, and lends credence to the domestic court's conclusions.

86. It follows that the judgment of 3 March 1995 in the applicant's favour was not enforced until 14 September 2010. Therefore, the judgment remained unenforced for a period of fifteen years and five months, of which twelve years and four months fall within the Court's jurisdiction.

87. The Court observes that on the face of it, a delay that long is excessive.

88. In addition, it follows from the materials in the case file that during the period 19 December 2003 until at least May 2005 the authorities provided flats to other people on the housing list, even though the applicant was in first place (see paragraphs 22 and 23 above). When she tried to obtain a duplicate copy of the writ of execution, it took almost two years for the authorities to grant her request. The Government provided no explanation for those failings.

89. The fact that the applicant was provided at some point with Flat 1 did not release the authorities from their obligation to enforce the judgment of 3 March 1995 fully and properly. The domestic decisions clearly demonstrate that the judgment was only enforced on the provision of Flat 2. The Court notes that the applicant was a disabled war veteran deemed unfit for work, who was at the material time already of an advanced age and suffering from a psychiatric condition entitling her to additional living space (see paragraphs 12 and 18 above). It also notes the particular living conditions she had to live in with other members of her family (almost 6 square metres per person), from 14 April 2003 until at least 5 March 2008 (see paragraphs 20 and 35 above). In these circumstances the Court is not persuaded by the Government's submission that the long period of non-enforcement of the judgment did not impose an excessive burden on the applicant.

90. By persistently failing, for a number of years, to comply with the final judicial decision in the present case, the Russian authorities have deprived the provisions of Article 6 § 1 of all useful effect.

91. There has accordingly been a violation of Article 6 § 1 of the Convention.

(b) Article 1 of Protocol No. 1

92. The Court considers that, in view of the particular circumstances of the present case, it is not necessary to examine the complaint under Article 1 of Protocol No. 1 separately.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

95. The Government argued that this claim was unreasonable and wholly excessive.

96. The Court considers that the applicant must have suffered distress and frustration as a result of the prolonged non-enforcement of the final and binding judgment in her favour. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 for non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

97. The applicant also claimed 73,000 Russian roubles (RUB) for the costs and expenses incurred before the domestic courts and RUB 30,850 for those incurred before the Court. The applicant submitted six contracts, according to which she had commissioned her son to represent her before the domestic courts and the Court. She also submitted six promissory notes, according to which she had promised to pay a total of RUB 103,850 to her son for his services.

98. The Government claimed that the costs claimed by the applicant were unsubstantiated.

99. According to the Court's case-law, an applicant is entitled to reimbursement of his or her 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.

100. The Court notes that the applicant was not represented by a professional lawyer. It also notes that she failed to submit any evidence of actual payment for her son's services.

101. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings and in the proceedings before the Court.

C. Default interest

102. The Court considers it appropriate that the default interest rate 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;

3. *Holds* that it is not necessary to examine the applicant's complaint under Article 1 of Protocol No. 1 separately;

4. *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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

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

I.B.L.
S.N.

CONCURRING OPINION OF JUDGE DEDOV

It is hard to believe that the first flat did not satisfy the applicant's needs for the purposes of execution of the 1995 judgment. However, that position was confirmed by further judgments in 2002 and 2007. All three judgments became final. As regards the authorities, they failed firstly to challenge the initial judgment with a view to restricting the extent of the entitlement of members of the applicant's family to a flat together with the applicant, inter alia under Article 2 of the Russian Family Code; secondly to terminate execution of the judgment once the applicant had accepted the first flat; and thirdly to prevent the privatisation of the first flat in 2006. As a result, the applicant has received two flats. Such an anomalous situation occurred on account of deficiencies in the national procedure for the allocation of tenancies which should be corrected by the State, and not by the Court.