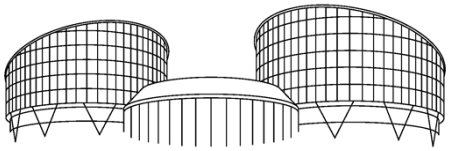

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOPNIN AND OTHERS v. RUSSIA

(Application no. 2746/05)

JUDGMENT

STRASBOURG

28 May 2014

FINAL

28/08/2014

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

In the case of Kopnin and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 2746/05) 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 the four Russian nationals listed below ("the applicants"), on 12 December 2004.

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 applicants complained that a lengthy period of non-enforcement of a domestic judicial decision delivered in their favour had violated their "right to a court" and their right to the peaceful enjoyment of their possessions.

4. On 19 June 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Mr Oleg Yuryevich Kopnin, Mr Yuriy Olegovich Kopnin, Ms Natalya Borisovna Kopnina and Ms Olga Olegovna Kopnina, who were born in 1958, 1986, 1961 and 1983 respectively and live in Stavropol. The first and the third applicants are former husband and wife and the second and the fourth applicants are their children.

6. The applicants lived in a building which the local authority had declared unsuitable for habitation in 1986. In 2003 the local authority declared that the building was at imminent risk of collapse (*грозящий обвалом*).

A. The domestic judgment in the applicants' favour and its execution

7. On 13 May 2004 the Stavropol Oktyabrskiy District Court ("the district court") acknowledged that the applicants' flat was unsuitable for habitation. Notably, the district court established that the building was in a critical state and that use of the kitchen and corridor in particular presented a risk, as those parts of the building were liable to collapse at any moment. It consequently ordered the Stavropol City Council ("the Council") to rehouse them within ten days in accommodation from its temporary housing stock (*маневренный фонд* – "temporary stock"), and subsequently to provide them with suitable housing in compliance with the applicable legislation. The court also awarded them 500 Russian roubles (RUB) in non-pecuniary damage on the grounds that living in such conditions had caused the applicants physical and mental distress. The judgment was not appealed against and became final on 24 May 2004.

8. On 17 June 2004 enforcement proceedings were initiated and on 14 July 2004 the applicants were offered to be rehoused in a flat from the Council's temporary stock. This offer was turned down by them on the grounds that the flat offered was unsuitable for habitation.

9. Following their refusal, on 27 September 2004 the enforcement proceedings were terminated by the bailiffs on account of the impossibility of enforcing the judgment, given that the Council had no other available housing or the financial resources to purchase any.

10. On an unspecified date the applicants challenged the bailiffs' inactivity and their decision to terminate the enforcement proceedings. On 2 December 2004 the district court found that the flat offered by the Council was unsuitable for habitation and did not meet the applicable health and safety requirements and building regulations. As a consequence, the district court quashed the decision of 27 September 2004 to terminate the enforcement proceedings. It also found that the Council's reference to the lack of other available housing in its temporary stock had no legal value and could not justify non-compliance with a final court judgment.

B. The applicants' further attempts to obtain the enforcement of the judgment of 13 May 2004

11. On 25 January 2005 the applicants complained under Chapter 25 of the Code of Civil Procedure of the Council's continuing failure to comply with the judgment of 13 May 2004. On the same date the district court

dismissed this complaint, on the grounds that it concerned the same parties and subject-matter as the action previously examined on 13 May 2004. The district court consequently indicated that the applicants should have used other remedies, such as compulsory enforcement under the Enforcement Act and Article 315 of the Criminal Code. On 4 March 2005 this decision was upheld by the Regional Court.

12. In March 2005 the Council offered three applicants, Mr Y. O. Kopnin, Ms N. B. Kopnina and Ms O. O. Kopnina, to move to another flat. They refused this offer on the grounds that the property was not compliant with the housing standards introduced by the new Housing Code which had entered into force on 1 March 2005.

13. On 13 April 2005 the applicants lodged a new claim with the district court seeking to oblige the Council to provide them with housing under its programme entitled "Rehousing of residents from derelict housing at risk of collapse in the Stavropol region for the period 2004-2005". On 28 April 2005 the district court rejected the applicants' claim. On 17 June 2005 this judgment was upheld on appeal by the Stavropol Regional Court.

14. On 30 May 2005 the applicants lodged another application with the district court. They submitted that the offer made by the Council in March 2005 had been unlawful and asked the court to oblige the Council to provide them with housing that complied with the standards set by the new Housing Code.

15. On 28 September 2005 the first applicant was provided with social housing in accordance with the new Housing Code.

16. On 20 December 2005 the district court approved a settlement agreement entered into between the other three applicants and the Council and terminated the proceedings they initiated in relation to the offer made by the Council in March 2005. On 28 December 2005 the three other applicants were provided with social housing in accordance with the new Housing Code.

17. On 28 March 2006 the sum of RUB 500 awarded in non-pecuniary damage by the judgment of 13 May 2004 was transferred to the first applicant's bank account.

II. RELEVANT DOMESTIC LAW

18. Paragraph 12 of the Rules on the recognition of a dwelling as unsuitable for habitation, approved by Decree no. 552 of the Government of the Russian Federation of 4 September 2003, state that if a dwelling is declared unsuitable for habitation, the local council must rehouse anybody living in that dwelling within ten days.

19. On 16 December 2004 the Chief Executive of Stavropol City Council issued Decree no. 6114, approving the Council's targeted programme on rehousing of residents from derelict housing and housing at

risk of collapse in Stavropol covering 2004, 2005 and the following period until 2010. The programme also established a schedule for the rehousing of people living in such housing. In accordance with the schedule, anybody living at the applicants' address should have been rehoused by 30 December 2004.

20. Under section 13 of the Federal Law on Enforcement Proceedings of 21 July 1997, enforcement proceedings should be completed within two months of receipt of the writ of enforcement by the bailiff.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENT OF 13 MAY 2004

21. The applicants complained that the lengthy period of non-enforcement of the judgment of 13 May 2004 had breached Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. As far 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

22. The Court 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.

B. Merits

23. The Government challenged the assertion that there had been a delay in the enforcement of the judgment of 13 May 2004. They first indicated that the applicants had been offered a new flat as far back as in July 2004, the only one which had been available within the Council's temporary stock. However, they had turned down this flat. The applicants had been provided with housing on 28 September 2005 (the first applicant) and on 28 December 2005 (the other applicants). The time taken by the Council to rehouse them had been consistent with its housing programme and with the regional programme on the rehousing of residents from derelict housing. In this regard, the Government indicated that, given the extent of the problem and the shortage of local authority housing, it had not been possible to rehouse the thousands of people concerned by the programmes at once without causing the Council's budget to be exceeded. The Government also submitted that the delay in the rehousing of the applicants had been caused by the applicants themselves, because they had initiated proceedings aimed at being provided with a specific apartment. Finally, the Government indicated that as regards the sum of RUB 500 awarded by the judgment of 13 May 2004 it had been transferred to the first applicant's bank account on 28 March 2006. They further pointed out that the applicants had never complained of a delay in payment at the domestic level.

24. The applicants maintained their complaints. They averred that the flat which they had been offered by the Council had been unsuitable for habitation.

25. 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 assess the complexity of the enforcement proceedings, the conduct of the applicant and the authorities, and the nature of the award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

26. As regards the authorities' obligation to provide the applicants with housing, the Court observes that the judgment of 13 May 2004 imposed two separate obligations on the Council. It was ordered, first, to rehouse the applicants within ten days in a flat from its temporary stock and, second, to provide them with suitable housing.

27. As regards the authorities' second obligation, it was implemented on 28 September 2005 in respect of the first applicant and on 28 December 2005 in respect of other applicants. The delay was thus one year and three months and one year and seven months, respectively. The first obligation on the authorities was never complied with.

28. The Court will now assess whether this delay in the execution of the judgment of 13 May 2004 was reasonable.

29. First of all, the Court is not convinced by the Government's argument that the delay in the proceedings was mostly due to the applicants' conduct.

30. As regards the applicants' refusal to accept the flat offered by the Council on 14 July 2004, the Court notes that this issue was examined by a domestic court, which found that the flat offered was unsuitable for habitation (see paragraph 10 above). Consequently, the applicants cannot be blamed for rejecting this offer (see, *a contrario*, *Bulycheva v. Russia*, no. 24086/04, § 31, 8 April 2010).

31. As regards the three applicants' alleged desire to obtain a specific apartment, the Court notes that pursuant to the judgment of 13 May 2004 the Council was to provide all applicants with suitable housing (see paragraph 7 above) whereas the offer made by the Council in March 2005 was addressed only to three of them. It thus can be seen as merely partial execution of the judgment of 13 May 2004. The Court further observes that three applicants rejected this offer on the ground that it was not in line with the living standards introduced by the new Housing Code and complained accordingly to the domestic courts (see paragraphs 12 and 14 above). On 28 December 2005 three applicants were provided with an apartment in accordance with the new Housing Code. The friendly settlement concluded in this respect with the Council was approved by the domestic courts and put an end to the judicial proceedings initiated by the applicants (see paragraph 16 above). In these circumstances, the Court considers that these three applicants cannot be blamed for refusing the offer made by the Council in March 2005 (see, *a contrario*, *Kotsar v. Russia*, no. 25971/03, § 27, 29 January 2009).

32. The Government further argued that the period within which the applicants were provided with housing had been consistent with the general timeframes established by the local and regional housing programmes. In this connection, they also referred to the Council's lack of available housing or financial resources to purchase a flat.

33. The Court has previously recognised that enforcement of a judgment concerning allocation of a flat may take a longer time than payment of a sum of money (see *Kravchenko and others*, no. 11609/05, § 35, 21 February 2011). However, in doing so, the Court has paid particular attention to whether the execution of the domestic judgment was subject to specific conditions, such as immediate enforcement (*Zheleznyakovy v. Russia* (dec.), no. 3180/03, 15 March 2007). The Court has also found that if a domestic judgment concerns a basic necessity for a person in need, even a one-year delay is incompatible with the Convention (*Lyudmila Dubinskaya v. Russia*, no. 5271/05, § 17, 4 December 2008, and *Kardashin v. Russia*, no. 29063/05, § 18, 23 October 2008).

34. The Court observes that both of the aforementioned considerations were present in the applicants' case.

35. First, in its judgment of 13 May 2004 the Stavropol Oktyabrskiy District Court specifically indicated that the applicants should be rehoused in accommodation from the Council's temporary stock within ten days. This part of the judgment was never enforced, because there was no available housing in the Council's temporary stock and the Council did not have the financial resources to purchase a flat. In this regard, the Court reiterates that it is not open to a State authority to cite a lack of funds or other resources, such as housing, as an excuse for not honoring a judgment debt (see *Malinovskiy v. Russia*, no. 41302/02, § 35, ECHR 2005-VII (extracts), and *Plotnikovy v. Russia*, no. 43883/02, § 23, 24 February 2005). The Court notes that the domestic court reached the same conclusion (see paragraph 10 above).

36. The Court further notes that in the present case the crux of the domestic judgment was to grant the applicants immediate relief by way of rehousing. The departure from the normal time-limits for execution of a judgment was justified by the existence of an imminent risk of collapse of the building the applicants were living in. Although the Court accepts that a delay in the execution of a judgment may be justified in particular circumstances, in the present case the delay was such that it rendered nugatory the effect of the domestic judgment, as far as the prompt rehousing of the applicants was concerned (see, *mutatis mutandis, Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

37. Second, given what was at stake for the applicants and bearing in mind the fact that the Council failed to comply with its first obligation under the judgment of 13 May 2004, the implementation of its second obligation thus required special diligence on its part. However, the Court does not discern any meaningful attempts by the Council to temporarily rehouse the applicants or to accelerate the process of providing them with new housing.

38. As regards the authorities' obligation to pay the applicants the sum of RUB 500 awarded by the judgment of 13 May 2004, the Court notes that the delay in enforcement of this part of the judgment amounted to one year and ten months. The Court has previously found with regard to the enforcement of monetary awards that a delay of one year and six months cannot be considered as compliant with the Convention (*Shilov and Baykova*, no. 703/02, §§ 27-30, 29 June 2006). In this context, the Government's argument that the applicants had not complained of the non-execution of this part of the judgment at the domestic level is irrelevant.

39. In view of the above, the Court finds that by failing to take sufficient measures required by the binding judgment of 13 May 2004, the State authorities prevented the applicants from benefiting from it for a substantial period of time, in violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicants complained of an absence of effective domestic remedies in the event of a lengthy period of non-enforcement of a judgment in their favour. They relied on Article 13 of the Convention.

41. The Government contested that argument, arguing that the pilot judgment delivered in the *Burdov (no. 2)* case (*Burdov v. Russia (no. 2)*, no. 33509/04, ECHR 2009) had modified the Russian authorities' approach to the assessment of the remedies existing in the Russian Federation. The Government provided further examples of the domestic case-law in support of their view that the remedies criticised in the pilot judgment had become effective.

42. The Court reiterates that it has previously concluded that there was no effective domestic remedy in Russia, either preventive or compensatory, that allowed for adequate and sufficient redress in the event of violations of the Convention on account of the prolonged non-enforcement of judicial decisions delivered against the State or its entities (see *Burdov v. Russia (no. 2)*, cited above, § 117). As regards the examples of domestic practice provided by the Government, the Court has found that the existence of such isolated examples cannot either alter the Court's conclusion reached in the *Burdov (no. 2)* judgment mentioned above, or newly demonstrate that this remedy was sufficiently certain in practice so as to offer the applicants reasonable prospects of success as required by the Convention (see *Butenko v. Russia*, no. 2109/07, § 20, 20 May 2010).

43. The Court further notes that, in any event, all the examples of case-law provided by the Government were delivered subsequent to the proceedings involving the applicants. They are thus without effect on the Court's previous conclusions. Moreover, the Court reiterates that in the present case the applicants exhausted one of the remedies suggested by the Government, namely a complaint under Chapter 25 of the Code of Civil Procedure (see paragraph 11 above). However, it does not seem that this expedited the proceedings or led to the payment of meaningful compensation. In these circumstances, the Court does not see any reason to depart from its previous practice.

44. There has, accordingly, been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

45. The applicants further complained under Article 2 of the Convention that the lengthy period of non-enforcement of the domestic court judgment in their favour had exposed them to a particular risk to their lives.

46. However, in the light of all the material in its possession, the Court finds that this complaint does not disclose any appearance of a violation of

the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicants claimed 20,000 euros (EUR) for physical and mental distress.

49. The Government argued that the claim was excessive.

50. The Court considers that the applicants must have suffered distress and frustration resulting from the lengthy period of non-enforcement of the domestic judicial decision in their favour, which, according to its well-established case-law, cannot be compensated for solely by the finding of a violation of the Convention. In this respect, the Court refers to its practice regarding awards of just satisfaction for non-pecuniary damage (see lastly *Kalinkin and others*, cited above, § 59). Given what was at stake for the applicants, the Court observes that the prompt execution of the domestic judgment ordering that the applicants be temporarily rehoused from a house unsuitable for habitation and which presented an imminent threat of collapse had particular importance for them: this factor is not without impact on the non-pecuniary damage suffered by the individuals concerned as a result of the violations found.

51. In addition, the Court should bear in mind that no effective domestic remedies were at the applicants' disposal. Consequently, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the first applicant EUR 1,500 and the three other applicants 2,000 EUR jointly in respect of non-pecuniary damage.

B. Costs and expenses

52. The applicants did not seek reimbursement of costs and expenses relating to the proceedings before either the domestic courts or the Court, and this is not a matter which the Court is required to examine on its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

53. 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 complaint concerning the lengthy period of non-enforcement of the judgment of 13 May 2004 and lack of an effective domestic remedy in this respect admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Russian roubles at the rate applicable at the date of the settlement:
      (i) to the first applicant EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) to the three other applicants jointly EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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 28 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President