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

FIRST SECTION

**CASE OF LYUDMILA DUBINSKAYA v. RUSSIA**

*(Application no. 5271/05)*

JUDGMENT

STRASBOURG

4 December 2008

**FINAL**

*04/03/2009*

*This judgment may be subject to editorial revision.*

**In the case of Lyudmila** Dubinskaya v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
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. 5271/05) 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 a Russian national, Ms Lyudmila Borisovna Dubinskaya ("the applicant"), on 14 November 2003.

2. The applicant was represented by Ms K. Moskalenko, a lawyer practising in Strasbourg. The Russian Government ("the Government") were represented by Ms V. Milinchuk, Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 October 2007 the President of the First Section decided to communicate the complaint concerning non-enforcement of a domestic judgment 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 Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Volgodonsk, a town in the Rostov Region. In 1999 she lost her home in a terrorist bomb attack.

5. On 1 November 2002 the Leninskiy District Court of Krasnodar ordered a local authority to provide the applicant with a flat within three

months of the judgment's entry into force. This judgment entered into force on 19 December 2002.

6. On 19 February 2003 the District Court clarified the judgment and indicated that the flat had to measure at least 72 m².

7. In 2002–04 the local authority several times applied for a supervisory review of the judgment, and pending this procedure the enforcement was stayed.

8. On 12 March 2004 the local authority offered the applicant a flat, but she refused it. On 9 August 2004 the local authority offered another flat (measuring 76.78 m²) and the applicant accepted it. On 28 September 2004 the applicant's ownership was formalised.

## II. RELEVANT DOMESTIC LAW

9. 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

10. The applicant complained under Articles 6 § 1 and 8 of the Convention, and Article 1 of Protocol No. 1 about the delayed 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

11. The Government argued that this complaint was inadmissible. The applicant had complained to the Court more than six months after the judgment had become binding and had been clarified. The applicant had not exhausted domestic remedies, because she could have brought an action for non-pecuniary damages. The judgment had been enforced in time. Any delays had been caused by objective circumstances: the stays of the enforcement pending supervisory review and the applicant's rejection of the first settlement offer. The flat the applicant had received in the end had exceeded the award.

12. The applicant maintained her complaint. She had not missed six months because this time-limit had not applied to such lasting situations as non-enforcement. The period of enforcement had been unreasonable, given that she had been a mother and a homeless victim of terrorism. The stays of the enforcement had not justified the delay, because the supervisory review had been aimed at an unlawful quashing of the judgment.

13. The Court considers that the six-month rule does not apply to the present case because on the date of introduction of the application the judgment was outstanding (see *Nazarchuk v. Ukraine*, no. 9670/02, § 20, 19 April 2005). The Court also considers that a claim for non-pecuniary damages at the domestic level has not been shown to be sufficiently certain in practice so as to offer the applicant reasonable prospects of success as required by the Convention. Therefore, the Court rejects the Government's corresponding arguments.

14. The Court notes that this complaint 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

15. 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).

16. In the present case, the period of non-enforcement was one year and nine months: from the date the judgment became binding (see *Akashev v. Russia*, no. 30616/05, § 21–23, 12 June 2008) to the date the applicant's ownership of the flat was formalised.

17. The stays of the enforcement pending supervisory review does not justify the delay (see *Timofeyev v. Russia*, no. 58263/00, § 42, 23 October 2003). The Court does not know why the applicant rejected the first flat offered to her. It may well be that this rejection was unreasonable. But the fact remains that this offer came more than one year after the judgment had become binding. This period is incompatible with the Convention, given that the award concerned a basic necessity for a person in need – a flat for a homeless victim of terrorism.

18. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

19. The applicant complained under Article 8 of the Convention that as a victim of terrorism she received insufficient support from the State.

20. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do 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.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 80,000 euros (EUR) in respect of non-pecuniary damage alone.

23. The Government contested this claim as unreasonable.

24. The Court accepts that the applicant must have been distressed by the delayed enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 1,600 under this head.

### B. Costs and expenses

25. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award.

### C. Default interest

26. 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 complaint concerning non-enforcement of the judgment admissible and the remainder of the application inadmissible;

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 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 1,600 (one thousand six 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.

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| Søren Nielsen<br>Registrar | Christos Rozakis<br>President |