



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

FIFTH SECTION

CASE OF TAYANKO v. RUSSIA

(Application no. 4596/02)

JUDGMENT

STRASBOURG

2 September 2010

FINAL

02/12/2010

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

In the case of Tayanko v. Russia,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Anatoly Kovler,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 4596/02) 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 Yuzef Ivanovich Tayanko (“the applicant”), on 18 September 2001.

2. The applicant was represented by Mr S.A. Markin, a lawyer practising in Ryazan. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 October 2005 the Court 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Ryazan.

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

6. In 1986 the applicant was engaged in emergency operations at the site of the Chernobyl nuclear plant disaster. The applicant's entitlement to certain social benefits is linked to the category of disability assigned to him due to deterioration of his health as a result of these events.

A. Proceedings for allocation of a flat

7. In 1999 the applicant, who has been residing in a hostel room of 11 square metres with his wife and two daughters, asked the relevant local authority to provide him with free housing. The authorities found that his housing conditions were substandard and he was placed on a waiting list for concluding a social tenancy agreement.

8. On an unspecified date the applicant brought proceedings against the Ryazan Town Administration to challenge its failure to make free housing available to him within three months after placing him on the waiting list.

9. On 5 July 2000 the Sovetskiy District Court of Ryazan ruled in the applicant's favour and ordered the Ryazan Town Administration to provide the applicant with an appropriate housing for a family of four, in accordance with the housing and sanitary standards.

10. On appeal, the Ryazan Regional Court upheld the judgment on 13 September 2000.

11. On 5 February 2001 enforcement proceedings were opened. However, on 9 February 2001 they were stayed pending the examination of the authorities' request for supervisory review.

B. First round of the supervisory review proceedings

12. On 21 February 2001 the Prosecutor of the Ryazan Region lodged with the Ryazan Regional Court a request for supervisory review of the judgment in the applicant's favour.

13. On 10 April 2001 the Ryazan Regional Court declined the Prosecutor's request and refused to initiate the supervisory review procedure.

14. On 22 June 2001 the applicant brought proceedings against the bailiffs' service challenging their failure to enforce the judgment of 5 July 2000.

15. On 16 July 2001 the Prosecutor of the Ryazan Region lodged another request for supervisory review of the judgment of 5 July 2000 with the Supreme Court of Russia.

16. On an unspecified date the Prosecutor's request was granted and a hearing before the Supreme Court of Russia scheduled. The applicant and his lawyer were not informed of the institution of the supervisory review proceedings and were not summoned to the hearing before the Supreme Court.

17. On 10 August 2001 the Supreme Court of Russia held a supervisory review hearing in the presence of a representative of the defendant, the Ryazan Town Administration, and a prosecutor of the Prosecutor General's Office, who argued that the applicant should be provided with a flat in accordance with the order of precedence on the waiting list for improvement

of housing conditions. Having heard the defendant's representative and the prosecutor and having examined the facts of the case, the Supreme Court modified the judgment of the Sovetskiy District Court of Ryazan of 5 July 2000 and held that the applicant was to be provided with a flat in accordance with the order of precedence on the waiting list.

18. On 3 April 2002 the Sovetskiy District Court of Ryazan discontinued the proceedings against the bailiffs' service for the reason that the applicant had withdrawn his complaint of 22 June 2001.

19. Subsequently, on an unspecified date, the applicant filed with the same court another complaint against the bailiffs' service.

20. On 25 April 2002 the bailiffs' service recommenced the enforcement proceedings, based on the new judgment delivered on 10 August 2001 by the Supreme Court of Russia that required that the flat be provided in accordance with the order of precedence on the waiting list.

21. On 26 April 2002 the Sovetskiy District Court of Ryazan discontinued the proceedings concerning the applicant's complaint against the bailiff's service because he withdrew the complaint for the second time.

C. Second round of the supervisory review proceedings

22. On 11 September 2003 the applicant requested the Presidium of the Supreme Court to initiate supervisory review of the Supreme Court's decision of 10 August 2001 and to quash it.

23. On 15 October 2003 the Supreme Court of Russia granted the applicant's request and initiated supervisory review proceedings.

24. On 12 November 2003 the Presidium of the Supreme Court of Russia quashed the decision of 10 August 2001 and affirmed the validity of the Sovetskiy District Court's judgment of 5 July 2000. The Presidium noted that, in accordance with law and that judgment, the applicant was to be provided with housing immediately. It underlined that applicant, a disabled person, resided with his family in a hostel.

25. On 21 January 2004 the enforcement proceedings based on the writ of execution of 25 January 2001 issued in accordance with the judgment of 5 July 2000 were recommenced.

26. On 3 March 2004 the bailiff requested the local authorities to provide the applicant with housing in accordance with the judgment of 5 July 2000.

27. On 18 March 2004 the local authorities informed the bailiff that they had decided to allocate a certain flat for the applicant in a new block of flats and that the applicant would be allowed to move in once it is put into operation.

28. On 16 February 2005 the applicant moved in that flat with his family.

D. Proceedings for damages

29. On 12 July 2002 the applicant brought proceedings against the Ryazan Town Administration, the bailiff's service, the Prosecutor's Office and the Ministry of Finance claiming damages for the lengthy non-enforcement of the judgment in his favour.

30. On 8 August 2002 the Sovetskiy District Court of Ryazan returned the particulars of claim of 12 July 2002 to the applicant and ordered him to correct certain inconsistencies by 15 August 2002.

31. It appears that the applicant did not comply with the court's order.

II. RELEVANT DOMESTIC LAW

32. The relevant domestic law governing the supervisory review procedure at the material time is summed up in the Court's judgment in the case of *Ryabykh* (see *Ryabykh v. Russia*, no. 52854/99, §§ 31-42, ECHR 2003-IX).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

33. The applicant complained under Article 6 of the Convention and Article 1 of the Protocol No. 1 that the supervisory review decision of 10 August 2001 violated the principle of legal certainty. The applicant further complained under Article 6 of the Convention that in breach of the right to a fair and public hearing neither he nor his lawyer were summoned to the supervisory review hearing held by the Supreme Court of Russia on 10 August 2001. 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. [...]”

A. Admissibility

34. The Government asserted that the applicant could not claim to be a victim as the Presidium decision of 10 August 2001, which had allegedly been taken in violation of the principle of legal certainty, was quashed on 12 November 2003, and that a court judgment in civil proceedings, acknowledging an alleged breach of the Convention rights, may constitute in itself sufficient redress (*Enders v. Germany*, no. 25040/94, Commission decision of 12 April 1996; *Katayeva and Katayev v. Russia* (dec.), no. 45550/99, 6 July 2004).

35. The Court reiterates that a decision favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, and afforded redress for, the breach of the Convention (see, amongst many other authorities, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

36. In the present case the authorities have, indeed, acknowledged a violation of the applicant's rights in the first set of re-trial proceedings and restored the validity of the first judgment in the applicant's favour.

37. Still, the second set of re-trial was insufficient by itself to eliminate the adverse effects of the quashed decisions, and the notion of “redress” required some form of tangible compensation (see *Chervonenko v. Russia*, no. 54882/00, § 37, 29 January 2009; conversely, *Katayeva and Katayev*, cited above). Indeed, the modification made in the first round of the supervisory review proceedings frustrated the applicant's reliance on the judgment in his favour and brought to naught its beneficial effect for a prolonged period of time, that is from 10 August 2001 when the Presidium of the Supreme Court modified the said judgment, to 12 November 2003 when the validity of this judgment was restored. Yet, no redress was offered for the losses sustained (see paragraph 59 below). Therefore the applicant may still claim to be a victim.

38. The Court concludes 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

1. Article 6 of the Convention

(a) Supervisory review: legal certainty

39. The Government argued that the first set of re-trial proceedings had been compatible with the Convention since the Presidium had only changed the way of enforcement, but not the judgment of 5 July 2000 in substance. The applicant maintained his complaint.

40. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental errors. The mere possibility of there being two views on the subject is not a ground for re-examination (see *Ryabykh*, cited above, §§ 51-52).

41. The Court reiterates that it has frequently found violations of the principle of legal certainty and of the right to a court in the supervisory-review proceedings governed by the Code of Civil Procedure in force before 2003 (see, among other authorities, *Ryabykh*, cited above, §§ 51-56; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005).

42. In the present case the final and binding judgment was amended to the applicant's detriment on 10 August 2001 upon an application by a State official, who was not a party to the case. Furthermore, no fundamental error has been demonstrated by the Government to justify the modification of this final and binding judgment. The Presidium's disagreement with the assessment made by the inferior court is not in itself an exceptional circumstance warranting the modification of the judgment to the applicant's detriment (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

43. The Government's assertion that on 10 August 2001 the Presidium had not changed the substance of the judgment of 5 July 2000, is not persuasive. The Court observes that the judgment of 5 July 2000 presupposed that the applicant should have been provided with housing immediately (as later reaffirmed by the Presidium on 12 November 2003, see paragraph 24 above). The amendment made on 10 August 2001 entailed necessity to comply with the order of precedence. Apparently there is a difference between an immediate and a conditioned order to provide housing (see *Zheleznyakovy v. Russia* (dec.), no. 3180/03, ECHR 15 March 2007). Hence that amendment frustrated the applicant's reliance on this final and binding judgment and his legitimate expectation to receive housing without delay.

44. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

(b) Supervisory review: procedural issues

45. As to the alleged violation of the applicant's procedural rights in the supervisory review proceedings, the Court considers that given the finding of a violation by the very use of supervisory review, it is unnecessary to examine this complaint (see *Ryabykh*, cited above, § 59).

2. Article 1 of Protocol No. 1

46. The Court considers that the applicant's claim to a “social tenancy agreement” was sufficiently established in the judgment of 5 July 2000 to constitute a “possession” falling within the ambit of Article 1 of Protocol No. 1 (see *Malinovskiy v. Russia*, no. 41302/02, § 46, ECHR 2005-VII (extracts)). The judgment thus created an asset within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002, and *Malinovskiy*, cited above, § 43). As a result of the first set of re-trial proceedings the applicant, a disabled person residing with his wife and two daughters in a 11 square metres' hostel room (see paragraphs 7 and 24 above), could not, for a significant period of time, rely on and benefit from the final judgment of 5 July 2000 as to his immediate provision of housing (see, *mitatis mutandis*, *Dovguchits v. Russia*, no. 2999/03, § 35, 7 June 2007).

47. Accordingly, there has also been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

48. The applicant complained in substance under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgment of 5 July 2000 was not enforced in good time.

49. The Government argued that the period of non-enforcement was short and there were no periods of the authorities' inactivity.

50. 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.

51. The Court observes that the judgment of 5 July 2000 remained unenforced for more than four years and that the major part of this delay was due to the modification of this judgment via the first round of supervisory review. Given its finding of violation of the right to court on account of supervisory review (see paragraphs 40-44 above) the Court does not consider it necessary to examine separately the issue of non-enforcement of the same judgment.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant also lodged several other complaints concerning the above proceedings, referring to Articles 3, 6, 13 and 14 of the Convention.

53. 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 aforementioned provisions. 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

54. 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

55. The applicant claimed 1,026,683 Russian roubles (RUB) in respect of pecuniary damage he had sustained as a result of non-enforcement of the judgment of 5 July 2000.

56. He also claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

57. The Government contested the claims.

1. Pecuniary damage

58. The applicant submitted documents according to which he spent RUB 79,000 for housing during the period from 10 August 2001 when the Presidium of the Supreme Court modified the judgment in the applicant's favour to his detriment, to 12 November 2003 when the validity of this judgment was restored.

59. The Court observes that, indeed, had this judgment been stayed in force as it was, and had the applicant been provided with housing in accordance with that judgment, he would not have sustained these losses. There has been therefore a causal link between the violation found and the applicant's claim for the pecuniary damage in this part.

60. The Court further notes that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50),

judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found. The Court considers it appropriate to award the applicant the equivalent in euros of the sum spent for housing during the period the final judgment in his favour was amended to his detriment (see paragraph 59 above), that is EUR 2,328, in respect of pecuniary damage, plus any tax that may be chargeable to the applicant.

61. As regards the remainder of the claim for pecuniary damage, the Court does not discern any causal link between it and the violation found; it therefore rejects this part of the claim.

2. Non-pecuniary damage

62. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress and frustration resulting from modification, to his detriment, of the final judgment of 5 July 2000 via supervisory review. However, the amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

63. The applicant also claimed RUB 175,000 for the costs and expenses.

64. The Government contested the claim as unsubstantiated.

65. According to the Court's case-law, an applicant is entitled to the reimbursement of 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 300.

C. Default interest

66. 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 complaints concerning modification, to the applicant's detriment, of the final judgment of 5 July 2000 via supervisory review

and its non-enforcement admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of modification, to the applicant's detriment, of the final judgment of 5 July 2000 via supervisory review;
3. *Holds* that there is no need to examine the complaints under Article 6 of the Convention concerning non-enforcement of that judgment and the alleged violation of the applicant's procedural rights in the supervisory review proceedings;
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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 2,328 (two thousand three hundred twenty eight euros), plus any tax that may be chargeable to the applicant, in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (iii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President