



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

FIFTH SECTION

CASE OF NIKOLAY MATVEYEV v. RUSSIA

(Application no. 10418/04)

JUDGMENT

STRASBOURG

25 November 2010

FINAL

25/02/2011

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

In the case of Nikolay Matveyev v. Russia,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Rait Maruste,
Anatoly Kovler,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 2 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 10418/04) 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 Nikolay Nikolayevich Matveyev (“the applicant”), on 17 February 2004.

2. The applicant was represented by Mr I.L. Fedotov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2008 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1958 and lives in Syktyvkar, Komi Republic.

5. The applicant and his family were living in a wooden house owned by the municipality on the riverside in Sedkyrkeshch settlement of Syktyvkar. From 1995 the applicant had repeatedly informed the local authorities that the river was overflowing and the house was at risk of destruction.

6. In the spring of 1998 the town administration made the applicant a few offers of a temporary dwelling. However, the applicant found it

unsatisfactory and refused to move. On 18 May 1998 the applicant's house was flooded, and the applicant's family moved to his parents' flat.

7. On 13 July 1998 the applicant lodged a claim against the Syktyvkar town administration, seeking to be provided with a flat of a total surface area of not less than 36 sq. m. or to receive housing subsidy. He also sought compensation for pecuniary and non-pecuniary damage.

8. The first hearing was scheduled for 10 August 1998, but it did not take place due to the parties' default in appearance. The hearing of 26 April 1999 did not take place for the same reason.

9. On 20 May 1999 the town administration requested that examination of the case be postponed until their representative returned from vacation. The applicant and his representative appeared at the hearing of 7 June 1999, which was adjourned to 21 September and then to 26 October 1999 on account of involvement of the Sedkyrkeshch settlement administration as a co-respondent and to give the applicant time to specify his claims.

10. On 26 October 1999 the Syktyvkar Town Court ("the Town Court") partly found for the applicant and obliged the town administration to provide him with a flat. His other claims were dismissed.

11. On 7 December 1999 in a separate judgment the Town Court awarded the applicant legal expenses in the amount of 2,008 Russian roubles (RUB).

12. On 27 January 2000 the Supreme Court of the Komi Republic ("the appeal court") overturned the judgment of 26 October 1999 on appeal and remitted the case for fresh consideration.

13. The parties did not appear at the hearing of 28 March 2000, which was adjourned to 25 September 2000. On the latter date the hearing took place and was adjourned, with the applicant having been invited to specify his claims.

14. On 26 January 2001 the trial court required that the town administration supply certain documents.

15. The hearing of 30 October 2001 did not take place as the respondent's representative failed to appear. On 26 February and 10 October 2002 the hearings were adjourned to give the applicant time to adjust his claims for non-pecuniary damage and to resolve an unspecified motion. On 29 November 2002 the hearing was adjourned following a default in appearance of one of the lay judges sitting in the case.

16. On 22 January and 8 May 2003 the applicant challenged judge L. on account of procrastination in consideration of the case. On 16 September 2003 the case was assigned to judge N.

17. On an unspecified date the applicant renounced his claim for provision of housing, now seeking to be placed on the waiting list of persons entitled to State-funded housing subsidy, for the amount of the subsidy to be determined and to receive compensation for pecuniary and non-pecuniary damage. He also sought reimbursement of legal expenses.

18. On 2 October 2003 the court gave a new judgment in which it ordered the authorities to place the applicant on the waiting list and to determine the amount of subsidy due to him. It also granted the applicant's pecuniary claim for RUB 12,000. The rest of his claims for pecuniary and non-pecuniary damage were dismissed. On the same date the court terminated the proceedings concerning reimbursement of legal expenses ruling that the issue had already been decided on 7 December 1999.

19. On 20 November 2003 the appeal court upheld the judgment on appeal.

20. On 25 February 2004 the Presidium of the Supreme Court of the Komi Republic quashed the judgment of 7 December 1999 which had awarded the applicant legal expenses by way of supervisory review. On 18 March 2004 the applicant learned about this decision and brought new claims for reimbursement of legal expenses.

21. On 19 March 2004 the sum of RUB 12,000 was transferred to the applicant's bank account and the enforcement proceedings in this part were terminated.

22. The hearings of 9 and 23 April 2004, scheduled for examination of the legal expenses claim, did not take place as the applicant failed to appear.

23. On 14 May 2004 the Town Court disallowed his claim. However, this judgment was overturned on appeal, and a new hearing was required. On 16 July 2004 the Town Court granted his claim and awarded him RUB 4,433. The award was enforced on 2 September 2004.

24. On 3 February 2005 the bailiff terminated the enforcement proceedings concerning the applicant's housing claims. It transpires from the text of the decision that on 24 November 2004 the town administration informed the bailiff service that it had determined the amount of the housing subsidy for the applicant, and on 30 December 2004 it stated that the applicant had been placed first on the shortlist of persons entitled to State housing subsidy following destruction of their homes by natural disaster. However, in a copy of the town administration's letter to the bailiff service of 24 November 2004 obtained by the applicant the author advised that the applicant had been placed on the list of persons in need of improved housing conditions at number 4,134.

25. The applicant appealed against the decision to terminate the enforcement proceedings. His complaint was first granted by the Town Court which noted that the bailiff had not been in possession of any evidence, other than the respondent's letters, that the in-kind awards had indeed been enforced. However, this judgment had been set aside on appeal on 28 March 2005.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF UNREASONABLE LENGTH OF THE PROCEEDINGS

26. The applicant complained that the length of the proceedings in his case had been incompatible with the “reasonable time” requirement as provided in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

27. The Government submitted that the complaint was manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. They did not elaborate on this argument.

28. The Court notes that this complaint does not appear to be 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

29. The Government submitted that the length of the proceedings in the applicant’s case had been objectively justified by the conduct of the parties who had not appeared in the hearings and lodged some procedural motions. The dispute also concerned a complex issue.

30. The applicant disagreed. In particular, he mentioned that he had not been duly summoned to the hearings and therefore could not attend them. Neither of the parties presented any evidence in support of their argument.

31. The Court observes that the proceedings in the applicant’s case commenced on 13 July 1998. It further observes that after delivery of a judgment on the merits of the dispute, on 16 July 2004 the first-instance court delivered a judgment on distribution of legal costs and expenses. Taking into account its previous findings (see, among other authorities, *Robins v. the United Kingdom*, 23 September 1997, § 29, *Reports of Judgments and Decisions* 1997-V) and the fact that the failure to allocate legal costs and expenses in the course of the substantive proceedings occurred through the oversight of the domestic authorities, the Court considers that the costs proceedings formed part of the principal dispute.

Thus, the proceedings in the applicant's case ended on 16 July 2004. Excluding the period of time from 20 November 2003 to 18 March 2004 when the case was not pending, the aggregate length of the proceedings amounted approximately to five years and eight months, during which period the case was considered four times at the first instance and three times at the appeal instance.

32. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

33. The Court considers that the applicant's case was not complex having involved a straightforward claim for housing and damages following one single incident.

34. Insofar as the applicant's behaviour is concerned, the Court accepts that the applicant did not appear in three hearings in the main proceedings and twice in the course of the proceedings concerning allocation of legal expenses. It notes at the same time that the Government did not counter the applicant's allegations that he had not been duly summoned to the hearings, nor did it supply any documents which would indicate otherwise. In addition, the respondent Government body also did not appear at the same hearings, which would in any event have rendered the applicant's attendance useless. As to the argument that the applicant delayed the proceedings by lodging motions and amending claims, the Court recalls that in the course of the proceedings the applicant lodged one motion, modified his claims on one occasion and was invited twice to specify his claims. It reiterates that an applicant cannot be blamed for taking full advantage of the resources afforded by the national law in defence of his interests (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A).

35. Turning to the conduct of the authorities, the Court notes firstly that throughout the proceedings the first-instance court scheduled one to three hearings per year, except in 1999. It further observes that hearings were adjourned on two occasions due to the respondent Government body's failure to appear and on one occasion due to the lay judge's failure to attend. Overall, it took the first-instance court over a year to deliver its judgment on the merits in the first round of proceedings and over four years to give its second judgment.

36. As regards what was at stake for the applicant, the Court recalls that for the duration of the dispute the applicant remained deprived of his own home and essentially sought the means to acquire new housing to replace the one that had been destroyed by the flood. The very nature of the dispute, in its opinion, called for a particularly expeditious treatment of the claim.

37. Regard being had to the infrequency of the scheduled hearings, the delays attributable to the authorities and the importance of the dispute for the applicant, the Court concludes that the “reasonable time” requirement has been breached in the present case.

38. There has accordingly been a violation of Article 6 § 1 of the Convention on this account.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF NON-ENFORCEMENT

39. The applicant complained that the authorities’ continuing failure to enforce the judgment of 2 October 2003 in the part concerning placement on the list of persons entitled to State-funded housing subsidy had breached his rights under Article 6 § 1 of the Convention. The relevant provision reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

40. The Government submitted that the complaint was manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

The Court notes that this complaint does not appear to be 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

41. The Government stated that the judgment of 2 October 2003 had been fully enforced, including the part in question. They referred to a decision of the head of the town administration of 28 October 2004 to validate the minutes of a public housing commission according to which the applicant had been placed on the short list of persons entitled to housing subsidy. They did not provide a copy of this decision or any other document in support of their argument.

42. The applicant referred to the copy of the town administration’s letter of 24 November 2004 to the bailiff service which contained different information (see para. 24 above). He submitted that he was not aware of any evidence that he had indeed been placed on such a list. He had not received the housing subsidy by the time he submitted his observations to the Court.

43. 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).

44. The Court observes that in the present case the Government failed to produce any documentary evidence that the judgment of 2 October 2003 had been enforced in the part concerning the applicant's placement on the list of persons entitled to State-funded housing subsidy. It accepts the copy of the town administration's letter of 24 November 2004 submitted by the applicant as further proof that the judgment had not been duly enforced. With regard to this, the Court considers that full enforcement of the judgment of 2 October 2003 in the applicant's favour has been pending for over six years, which cannot be found compatible with the requirements of Article 6 § 1 of the Convention.

45. There has, accordingly, been a violation of Article 6 § 1 of the Convention on this account.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

46. The applicant complained that the excessive length of the proceedings in his case and the State's failure to enforce the court judgment in his favour amounted to a breach of Article 8. The provision reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

47. The Government contested that argument.

48. The Court notes that this complaint is linked to the ones examined above and must therefore likewise be declared admissible.

49. The Court notes that the applicant's complaint relates to the same facts that have already been examined above under Article 6 of the Convention. Having regard to its findings of violations of Article 6 (see paras. 37 and 44 above), the Court considers that it is not necessary to examine whether, in the instant case, the same facts also disclose a violation of Article 8 (see *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I; *Ruianu v. Romania*, no. 34647/97, § 75, 17 June 2003).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 82,116 euros (EUR) in respect of pecuniary damage calculated as the amount of the housing subsidy allegedly due to him and the interest accrued on it for the period of non-enforcement of the judgment of 2 October 2003. He further claimed EUR 100,000 in respect of non-pecuniary damage.

52. The Government contested the amounts as excessive and unfounded.

53. The Court notes that the domestic court did not award the applicant a housing subsidy, nor did it determine its amount. Therefore, it does not discern a causal link between the violation found and the pecuniary damage alleged and rejects this claim. On the other hand, the Court recalls that that in general the most appropriate form of redress in respect of violations found is to put applicant as far as possible in the position he or she would have been in if the Convention requirements had not been disregarded (see, among many other authorities, *Dovguchits v. Russia*, no. 2999/03, § 48, 7 June 2007). Having regard to the violation found on account of the State’s failure to enforce the judgment in the applicant’s favour, this principle is applicable in the present situation.

54. Therefore the Court considers that the Government shall secure, by appropriate means, the enforcement of the judgment of 2 October 2003 in the part concerning placement of the applicant on the waiting list for housing subsidy (see *Lesnova v. Russia*, no. 37645/04, § 25, 24 January 2008).

55. As to the applicant’s claim for non-pecuniary damage, the Court accepts that in his situation the applicant suffered considerable frustration and distress both on account of the excessively long proceedings brought to acquire a right to new housing and the Government’s lengthy failure to enforce the award in his favour. In these circumstances, deciding on an equitable basis the Court awards the applicant EUR 8,600.

B. Costs and expenses

56. The applicant also claimed EUR 2,226 for the costs and expenses incurred before the Court.

57. The Government disputed the amount as unsubstantiated.

58. 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. The Court observes that the applicant failed to submit any justification for the amounts claimed. Therefore, the Court rejects this claim.

C. Default interest

59. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the State's failure to enforce the judgment in the applicant's favour;
4. *Holds* that there is no need for separate examination of the applicant's complaint under Article 8 of the Convention;
5. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the judgment of 2 October 2003 in the part concerning the placement of the applicant on the waiting list for housing subsidy ;
 - (b) 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 8,600 (eight 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;
 - (c) 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;

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

Done in English, and notified in writing on 25 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President