



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

FIRST SECTION

CASE OF SHPAKOVSKIY v. RUSSIA

(Application no. 41307/02)

JUDGMENT

STRASBOURG

7 July 2005

FINAL

07/10/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision

In the case of Shpakovskiy v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 16 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 41307/02) 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 Yuriy Iosifovich Shpakovskiy (“the applicant”) on 9 November 2002.

2. The respondent Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 13 May 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Kostroma.

5. In 1998, after 23 years of military service, the applicant was dismissed due to a structural reorganisation. He became eligible for being granted social housing and was placed on a waiting list.

6. In 2001 he sued the Kostroma Town Administration, seeking to obtain social accommodation by the State. He invoked his statutory

entitlement to receive a flat within three months of the placement on the waiting list.

7. On 29 August 2001 the Sverdlovskiy District Court of Kostroma granted his claim and held that the Kostroma Town Administration was to provide the applicant with a flat in accordance with applicable housing standards. The judgment expressly referred to the three-month statutory time-limit for granting the accommodation.

8. The Kostroma Town Administration requested to stay the enforcement of the judgment for six months. On 10 January 2002 the Sverdlovskiy District Court of Kostroma dismissed their request and held that the time-limit fixed for the enforcement of the judgment was compulsory.

9. On 10 June 2003 the Kostroma Town Administration issued the applicant with an occupancy voucher in respect of a flat in Kostroma measuring 70.77 m².

II. RELEVANT DOMESTIC LAW

A. Entitlement to State housing

10. The Law on the Status of the Military provides that the military dismissed from the service due to a structural reorganisation after at least 10 years of service are entitled to social housing to be provided within three months.

B. Implementation of the right to a “social tenancy”

11. The RSFSR Housing Code (Law of 24 June 1983, effective until 1 March 2005) provided that Russian citizens were entitled to possess flats owned by the State or municipal authorities or other public bodies, under the terms of a tenancy agreement (section 10). Certain “protected” categories of individuals (disabled persons, war veterans, Chernobyl victims, police officers, judges, etc.) had a right to priority treatment in the allocation of flats.

12. A decision on granting a flat was to be implemented by way of issuing the citizen with an occupancy voucher (*ордер на жилое помещение*) from the local municipal authority (section 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 (section 51, and also Articles 672 and 674 of the Civil Code).

13. Members of the tenant's family (including the spouse, children, parents, disabled dependants and other persons) had the same rights and

obligations under the tenancy agreement as the tenant (section 53). The tenant had the right to accommodate other persons in the flat (section 54). In the event of the tenant's death, an adult member of the tenant's family succeeded him or her as a party to the tenancy agreement (section 88).

14. Flats were granted for permanent use (section 10). The tenant could terminate the tenancy agreement at any moment, with the consent of his or her family members (section 89). The landlord could terminate the agreement on the grounds provided for by law and on the basis of a court decision (sections 89-90). If the agreement was terminated because the house was no longer fit for living in, the tenant and family were to receive a substitute flat with full amenities (section 91). Tenants or members of their family could be evicted without provision of substitute accommodation only if they “systematically destroyed or damaged the flat”, “used it for purposes other than residence” or “systematically breached the [generally accepted rules of conduct] making life with others impossible” (section 98).

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

C. Rent for State housing

16. The Federal Housing Policy Act (Law no. 4218-I of 24 December 1992) provides that the payments for a flat comprise (i) a housing maintenance charge, (ii) a housing repair charge, and, in the case of tenants only, (iii) rent (section 15). The maintenance and repair charges do not depend on the flat's ownership, whether private or State. Rent is fixed by regional authorities, taking into account the surface area and quality of the housing. It is usually considerably lower than free-market rent. For example, the highest monthly rent for municipal housing in Moscow is 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

17. In 1991, the Privatisation of Housing Act (Law no. 1541-I of 4 July 1991) was adopted (it will remain effective until 31 December 2006). It grants Russian citizens the right to acquire title to State and municipal-owned flats of which they have taken 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 a lifetime (section 11) and requires the consent of all adult family members.

THE LAW

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

18. The applicant complained that the prolonged non-enforcement of the judgment of 29 August 2001 violated his “right to a court” under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions as guaranteed in Article 1 of Protocol No. 1 to the Convention. These Articles in so far as relevant provide 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

19. The Government contested the admissibility of the application on the ground that the applicant was no longer a victim. They submitted that the judgment in question had been enforced and that the applicant appeared to be fully satisfied with the apartment he had obtained. They asserted that the applicant had thus been afforded redress at the national level and that his application should be declared inadmissible or, alternatively, struck out of the list of cases.

20. The applicant did not accept that he had lost the victim status even though his award had finally been enforced. He observed that it had taken

the authorities two years to execute the judgment, during which period his housing conditions had been utterly inadequate.

21. The Court reiterates that “a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention” (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

22. In the instant case, the judgment remained unenforced for two years, a significant period which extends far beyond the deadline specified by the court. However neither the Government nor the domestic authorities acknowledged that the applicant's Convention rights had been unjustifiably restricted. Moreover, no compensation for the delay was offered to the applicant.

23. The Court therefore finds that the mere fact that the authorities have complied with the judgment after a substantial delay cannot be viewed in this case as depriving him of the victim status under the Convention. It rejects the Government's objection to the admissibility of this application.

24. The Court notes that the application 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

25. The Government did not dispute the validity of the judgment of 29 August 2001. To justify the two-year delay in its enforcement, they claimed that no apartments had been available in the area during that period.

26. The applicant disputed the Government's submissions. He claimed that eligible apartments could have been made available at the material time.

1. Article 6 § 1 of the Convention

27. 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 a court and the conduct of proceedings would 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, and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

28. The Court further reiterates that it is not open to a State authority to cite the lack of funds or other resources as an excuse for not honouring a court award. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov v. Russia*, cited above, § 35).

29. Turning to the instant case, the Court notes that the terms of the judgment of 29 August 2001, including the time-limit for enforcement, were sufficiently clear and required a prompt action on the part of the authorities. Nevertheless, it remained inoperative for two years, allegedly because of the lack of eligible housing. The Court observes that the justification advanced by the Government for the delay is not corroborated by any evidence. In particular, they have not demonstrated that any attempts were made by the authorities in 2001-2002 to provide the applicant with housing compatible with the terms of the judgment or, if this was impossible, to make alternative arrangements for accommodation or a compensation.

30. By failing for such a substantial period of time to take the necessary measures to comply with the final judicial decision in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of their useful effect.

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

2. Article 1 of Protocol No. 1 to the Convention

32. The Court reiterates first that the right to any social benefit is not included as such among the rights and freedoms guaranteed by the Convention (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). The Court further recalls that a right to live in a particular property not owned by the applicant does not as such constitute a “possession” within the meaning of Article 1 of Protocol 1 to the Convention (see *H.F. v. Slovakia* (dec.), no. 54797/00, 9 December 2003;

Kovalenok v. Latvia (dec.), no. 54264/00, 15 February 2001, and *J.L.S. v. Spain* (dec.), no. 41917/98, 27 April 1999).

33. However pecuniary assets, such as debts, by virtue of which the applicant can claim to have at least a “legitimate expectation” of obtaining effective enjoyment of a particular pecuniary asset (see *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, Series A no. 222, p. 23, § 51; *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31, and, *mutatis mutandis*, *S.A. Dangeville v. France*, no. 36677/97, §§ 44-48, ECHR 2002-III) may also fall within the notion of “possessions” contained in Article 1 of Protocol No. 1. In particular, the Court has consistently held that a “claim” — even concerning a particular social benefit — can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

34. Turning to the facts of the present case, the Court notes that by virtue of the judgment of 29 August 2001 the town council was to put at the applicant's disposal a flat with certain characteristics. The judgment did not require the authorities to give him ownership of a particular flat, but rather obliged them to issue him with an occupancy voucher in respect of any flat satisfying the court-defined criteria. On the basis of the voucher, a so-called “social tenancy agreement” would have been signed between the competent authority and the applicant, acting as the principal tenant on behalf of himself and the members of his family (see paragraph 12 above). Under the terms of a “social tenancy agreement”, as established in the RSFSR Housing Code and the applicable regulations, the applicant would have had a right to possess and make use of the flat and to privatise it in accordance with the Privatisation of State Housing Act.

35. Accordingly, from the time of the judgment of 29 August 2001 the applicant had an established “legitimate expectation” to acquire a pecuniary asset. The judgment was final as no ordinary appeal lay against it, and enforcement proceedings were instituted.

36. The Court is therefore satisfied that the applicant's claim to a “social tenancy agreement” was sufficiently established to constitute a “possession” falling within the ambit of Article 1 of Protocol No. 1.

37. The Court finds that the fact that it was impossible for the applicant to obtain the execution of the judgment of 29 August 2001 for a substantial period of time constituted an interference with his right to peaceful enjoyment of his possessions, for which the Government have not advanced any plausible justification (see paragraph 29 above).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 30,000 euros (EUR) in respect of compensation for non-pecuniary damage.

41. The Government made no comments in this respect.

42. The Court accepts that the applicant suffered distress because of the State authorities' protracted failure to enforce a judgment in his favour. However, the amount claimed in respect of non-pecuniary damage appears excessive in view of the fact that the judgment has already been enforced in a manner satisfactory for the applicant. Making its assessment on an equitable basis, it awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

43. The applicant made no claims under this head.

C. Default interest

44. 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;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;

(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 7 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President