



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

FIRST SECTION

CASE OF DUNAYEV v. RUSSIA

(Application no. 70142/01)

JUDGMENT

STRASBOURG

24 May 2007

FINAL

24/08/2007

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 Dunayev v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 70142/01) 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 Valentin Andreyevich Dunayev (“the applicant”), on 16 May 2001.

2. The applicant, who had been granted legal aid, was represented by lawyers of the Stichting Russian Justice Initiative, an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a denial of access to a court on account of the appellate court's refusal to examine his written pleadings during the appeal hearing.

4. By a decision of 2 February 2006, the Court declared the application partly admissible.

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1938 and lives in the Tula Region.

A. The facts

7. The applicant instituted civil proceedings in Moscow, some 300 kilometres from his place of residence. He sued the Russian Ministry of Finance and the Russian Ministry of Defence in connection with military operations in Chechnya in 1995. He claimed, in particular, that his property, including his flat, had been destroyed during an attack by federal forces on the centre of Grozny in January 1995 and sought compensation for pecuniary damage. The applicant submitted that the damage had been inflicted as a result of the use by the State of hazardous devices (*источник повышенной опасности*), namely weapons and military equipment, and that he was therefore entitled to compensation under the relevant provision of law without having to prove that the defendant had been at fault. The applicant also stated that he had endured mental suffering when forced to live in the zone of active military action, and claimed compensation for non-pecuniary damage on that account.

8. On 14 December 2000 the Basmany District Court of Moscow (“the District Court”) examined the applicant's claims. It acknowledged that the applicant's property had been destroyed as a result of an attack in 1995, but noted that the applicant had failed to prove that his possessions had been damaged by Russian federal troops rather than by rebel fighters, as both parties to the conflict had used weaponry and ammunition of the same standard. The court also noted that under Articles 1069–1071 and 1100 of the Civil Code of Russia the State was only liable in damages for the unlawful acts of its agents. It further held that the military operations in Chechnya had been launched by presidential and governmental decrees which had been held to be constitutional by the Constitutional Court of Russia and were still in force. Accordingly, the court concluded that the actions of the Russian federal troops in Chechnya were lawful and dismissed the applicant's claim for compensation for pecuniary and non-pecuniary damage.

9. On the same date the applicant lodged a preliminary notice of appeal (*предварительная кассационная жалоба*) in which he requested the appellate court to quash the judgment and remit his case for fresh consideration. He also expressed his intention to adduce detailed arguments after acquainting himself with the text of the transcript of the first-instance

hearing and obtaining a full copy of the judgment. Thereafter the applicant left for his place of residence.

10. In a letter of 20 December 2000 the District Court informed the applicant that he could obtain a full copy of the judgment of 14 December 2000 and access to his case file at the court registry.

11. On 21 December 2000 the applicant applied in writing to the District Court for a copy of the transcript of the hearing on 14 December 2000, and a document that had been adduced by the defendants at the hearing. According to the applicant, he never received a response to his request.

12. On 17 January 2001 the applicant sent another request to the District Court, which also remained unanswered.

13. In a letter of 14 February 2001 the District Court forwarded a copy of the judgment of 14 December 2000 to the applicant and notified him that a hearing of his appeal was scheduled for 28 February 2001. The applicant received this letter on 21 February 2001.

14. On 27 February 2001 the applicant prepared detailed appeal submissions (*кассационная жалоба*), in which he claimed that the first-instance court had not established all the relevant facts and circumstances of the case, that the defendants had not adduced any evidence capable of refuting his arguments and that therefore the judgment of 14 December 2000 was unfounded and should be quashed. He further reiterated that his property had been destroyed during an attack in January 1995, and that under national law he was entitled to compensation for pecuniary damage. He also stated that he had endured mental suffering when forced to live in the zone of active military action, and therefore had the right to compensation for non-pecuniary damage. The applicant further argued that once the District Court had established that his property had, in fact, been destroyed, it should have indicated who was liable to compensate him for that damage. He claimed in this respect that since the military operations in Chechnya had been launched by the Russian State, it was the State which should compensate him for his losses. The applicant also insisted that during the military operations the State had used hazardous devices, namely heavy artillery and other indiscriminate weapons, and that under national law he was absolved of any obligation to prove that the damage had been caused by the defendants' fault.

15. At the end of his appeal submissions the applicant provided a list of the documents lodged, namely, three copies of his detailed appeal submissions of 27 February 2001, a copy of the preliminary notice of appeal dated 14 December 2000, a copy of the District Court's judgment of 14 December 2000, a motion to exempt the applicant from payment of the court fee, a copy of a certificate indicating the inflation rate in Russia for 1995-2000 and a copy of the summons for the appeal hearing as well as the envelope in which it had been sent marked with the date of receipt.

16. According to the applicant, a few hours before the court hearing on 28 February 2001, he attempted to file his detailed appeal submissions and to gain access to his case file at the registry of the Moscow City Court (“the City Court”), but was not allowed to do so. He then attempted to lodge his detailed appeal submissions at the hearing, but the presiding judge refused.

17. The Government referred to information provided by the Supreme Court of Russia that the applicant's appeal of 27 February 2001 had been accepted and examined by the City Court. They did not indicate the date on which the applicant's appeal had been received and registered by the City Court's registry.

18. By a decision of 28 February 2001 the City Court upheld the judgment of 14 December 2000. The applicant attended the hearing and presented his arguments. The City Court held that the conclusions of the court below were correct and well-founded, since the applicant had not adduced any evidence that the actions of the Russian federal troops within the territory of Chechnya were unlawful or that the alleged damage had been caused by them rather than by rebel fighters. It went on to address the applicant's argument that the weapons used were hazardous devices and that the damage should therefore be compensated irrespective of the question of fault. The City Court noted that this argument could not constitute a ground for quashing the judgment at first instance, as according to a decision of the Plenary of the Supreme Court of Russia, firearms could not be regarded as a hazardous device so that a claim for compensation for the damage caused by the shooting would only lie if the defendant was at fault. It concluded:

“The arguments advanced in the appeal do not point to any circumstances which have not been examined by the [first-instance] court or which could rebut the conclusions of the judgment. They seek to re-evaluate the adduced evidence and cannot serve as a basis for quashing the judgment.”

19. On 1 March 2001 the applicant sent a letter to the President of the City Court, complaining about the court's refusal to examine the detailed appeal submissions he had given to the presiding judge at the court hearing on 28 February 2001 and requesting that the appeal be registered and a copy of the court's decision of 28 February 2001 forwarded to him.

20. In a letter of 26 March 2001 the District Court sent a copy of the requested decision to the applicant without further explanation.

B. Documents submitted by the Government

21. In order to be able to assess the merits of the applicant's complaint, the Court invited the Government at the admissibility stage to submit documentary evidence to clarify whether the applicant's detailed appeal submissions had been received and registered by the Moscow City Court.

22. In reply, the Government submitted a copy of the applicant's preliminary notice of appeal of 14 December 2000 and of his detailed appeal submissions of 27 February 2001.

23. The first document, which is dated and signed by the applicant, bears the stamp of the Basmanny District Court of Moscow together with a reference number and the date of 14 December 2000. There are also a number of handwritten notes, dates and signatures on the document which make it clear that it was sent to, and received by, the Moscow City Court.

24. The copy of the applicant's detailed appeal submissions, which is dated and signed by the applicant, contains no official stamps or dates to indicate whether they were received by the Moscow City Court and, if so, on what date. The list of the enclosures at the end of the document has been crossed out and the word "refused" has been inserted by hand nearby. The date of this "refusal" is missing, but the signature is very similar to that of the presiding judge on a copy of the appeal decision of 28 February 2001.

II. RELEVANT DOMESTIC LAW

Code of Civil Procedure 1964, as worded at the material time

25. Article 282 enshrined the right of any party to a dispute and of other participants in proceedings to appeal against a first-instance judgment.

26. Article 283 provided that, as a rule, an appeal should be brought through the first-instance court that delivered the judgment. However, the fact that an appeal was lodged directly with an appellate court should not preclude the latter from examining it.

27. By virtue of Article 284, an appeal could be lodged within ten days after the first-instance judgment was finalised.

28. Article 286 laid down a number of formal requirements for lodging an appeal. In particular, the notice of appeal had to indicate the court to which it was addressed, the name of the person lodging it, the judgment being appealed against and the court which had delivered that judgment, the grounds of appeal and the list of documents enclosed with the appeal. An appellant could not refer to new evidence which had not been before the first-instance court unless he or she could substantiate that it had been impossible to adduce that evidence at first instance.

29. Article 291 secured the right of the other party to the dispute to submit written pleadings in reply to an appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained that he had been denied an opportunity to file written pleadings containing his detailed arguments before the appellate court. He relied on Article 6 § 1 of the Convention, the relevant part of which reads:

Article 6 § 1

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

A. Submissions by the parties

31. The applicant insisted that he had only been permitted to file a preliminary notice of appeal, which had merely indicated his intention to adduce detailed arguments upon receipt of a full copy of the judgment of 14 December 2000 and a transcript of the hearing. He said that on 28 February 2001, shortly before the hearing of the appeal, he had attempted to file his detailed appeal submissions of 27 February 2001 but the registry of the Moscow City Court had refused to register them. The applicant further claimed that at the appeal hearing he had given his detailed appeal submissions to the presiding judge, who had refused to examine them. The applicant therefore argued that although he had attended the appeal hearing, his right of access to a court secured by Article 6 § 1 of the Convention had nevertheless been unjustifiably restricted by his inability to have his written detailed appeal submissions examined by the Moscow City Court.

32. In their memorial of 9 June 2005 the Government submitted with reference to the information provided by the Supreme Court of Russia, that, as a general rule, no transcript of a hearing before an appellate court was made, and that it was probable that the Moscow City Court had examined and dismissed the applicant's motion for leave to file the detailed appeal submissions at the hearing on 28 February 2001. Nevertheless, the appellate court had examined the preliminary notice of appeal which the applicant had lodged earlier.

33. In their memorial of 3 May 2006 submitted after the adoption of the decision on admissibility, the Government said that they had been informed by the Supreme Court of Russia that the Moscow City Court had accepted the applicant's appeal submissions of 27 February 2001 and included them in the case file. They added that the applicant had attended the appeal hearing on 28 February 2001 and had been able to present his arguments.

The Moscow City Court “[had taken] into consideration the arguments advanced by the applicant in his detailed appeal”. The Government accordingly argued that the applicant's right of access to court had not been infringed.

B. The Court's assessment

34. The Court reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts (see, *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2956, § 37; and *Kozlica v. Croatia*, no. 29182/03, § 32, 2 November 2006). The right of access to a court by its very nature calls for regulation by the State and may be subject to limitations. Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see, among other authorities, *Kreuz v. Poland*, no. 28249/95, §§ 52-57, ECHR 2001-VI; and *Liakopoulou v. Greece*, no. 20627/04, §§ 19-25, 24 May 2006).

35. Turning to the present case, the Court notes at the outset that the parties disagreed as to whether the Moscow City Court had accepted and examined the applicant's appeal submissions of 27 February 2001. The Court observes that the Government submitted a copy of the applicant's appeal submissions that had allegedly been included in the case file and examined by the City Court. It notes that the copy does not bear an official stamp or any other formal mark to indicate the date on which the appeal submissions were received or registered by the court or the registration number they were given. In other words, the copy of the applicant's appeal submissions submitted by the Government contains no indication that they were in fact registered and accepted for examination. Moreover, the word “refused” and a signature resembling that of the presiding judge appear at the end of the copy submitted by the Government. Even if the exact meaning of that inscription is uncertain, it clearly cannot mean that the applicant's appeal submissions were accepted for examination.

36. In such circumstances, the Court finds the Government's arguments unconvincing and considers it established with sufficient certainty that the Moscow City Court refused to accept the applicant's appeal submissions of 27 February 2001 for examination. In the Court's view, such a refusal constituted a restriction on the applicant's right of access to a court.

37. The Court further observes that despite the applicant's queries in this respect, the domestic authorities gave no explanations as to the reasons for which the applicant's appeal submissions of 27 February 2001 were not accepted for examination. It also notes the inconsistency in the

Government's position on the matter. Indeed, initially they did not dispute that the applicant's written pleadings of 27 February 2001 had not been admitted for examination, but claimed that the Moscow City Court must have formally declined the applicant's motion to consider his appeal. They did not advance any justification for the domestic authorities' actions despite the Court's query in this respect and eventually changed their position, insisting that the applicant's appeal had been examined.

38. In the absence of any plausible explanation for the restriction imposed on the applicant's right of access to a court in the appeal proceedings, the Court finds that there has been a violation of Article 6 § 1 of the Convention in this respect.

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 307,067 US Dollars (USD) in respect of pecuniary damage and USD 1,000,000 in respect of non-pecuniary damage. The Government contested the applicant's claims as having no causal link with the violation alleged and argued that a finding of a violation would be sufficient just satisfaction in the present case.

41. Having regard to the circumstances of the case, the Court accepts the Government's argument and notes that there is no causal link between the violation found and the extensive pecuniary damage alleged. The Court further considers that the applicant must have suffered distress and frustration resulting from the unjustified restriction imposed on his right of access to a court, and that this cannot be sufficiently compensated for by the finding of a violation. However, the amount claimed appears excessive. Taking into account the relevant aspects of the case and making its assessment on an equitable basis, the Court awards EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

42. The applicant also claimed 1,570.54 Russian roubles (RUR) in respect of costs and expenses incurred in the proceedings before the domestic courts. The Government made no specific comments on this.

43. According to the Court's case-law, an applicant is entitled to the reimbursement of his 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 information in its possession and the above criteria, the Court considers it reasonable to award the full amount claimed by the applicant. Accordingly, it awards the applicant RUR 1,570.54 for costs in the domestic proceedings, plus any tax including value added tax that may be chargeable on that amount.

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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (ii) RUR 1,570.54 (one thousand five hundred and seventy roubles and fifty-four kopecks) in respect of costs and expenses;
 - (iii) any tax including value-added tax that may be chargeable on the above amounts;
 - (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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President