



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

FIRST SECTION

CASE OF MAYAMSIN v. RUSSIA

(Application no. 3344/04)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

29/09/2008

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 Mayamsin v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 3344/04) 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 Valentin Vasilyevich Mayamsin (“the applicant”), on 28 November 2003.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, Representative of the Russian Federation at the European Court of Human Rights.

3. On 20 March 2007 the Court decided to communicate the complaint concerning non-enforcement of a judgment 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

4. The applicant was born in 1943 and lives in Khabarovsk.

5. Since 1975 the applicant and his family had been living in a dilapidated dwelling. In 1995 the police refused to certify his residence at that address.

6. On 12 July 1999 the Industrialny District Court of Khabarovsk granted the claim by the applicant and three family members against the Khabarovsk Town Council and held that the Town Council should provide them with one or more comfortable flats having an aggregate surface of no less than 12 sq. m per each family member. On 28 September 1999 the Khabarovsk Regional Court upheld the judgment on appeal.

7. On 26 November 1999 enforcement proceedings were instituted. On 10 March 2000 the proceedings were suspended for six months at the request of the Town Council. On 28 February 2001 a further suspension was granted for an indefinite period of time until such moment as a flat of no less than 48 sq. m had become available. The latter decision was quashed on 30 December 2002.

8. On 27 January 2003 the Town Council offered three flats to the applicant and his family members. They rejected the offer on the ground that two of the flats did not meet the sanitary standards.

9. The applicant and his family members asked the court to amend the operative part of the judgment and order the Town Council to pay them the market value of the flat(s). On 23 May 2003 the Industrialniy District Court rejected their request, finding that they had unreasonably refused the three flats which the Town Council had offered them. On 1 July 2003 the Khabarovsk Regional Court upheld that decision on appeal.

10. On 8 September 2003 the Khabarovsk Town Council asked the court to discontinue enforcement proceedings on the ground that the applicant and his family had unreasonably turned down their offer. On 22 September 2004 the Industrialniy District Court rejected the Town Council's request. It found that, pursuant to the experts' report of 27 January 2004, the flats offered by the Town Council did not meet the sanitary and technical requirements. On 2 November 2004 the Khabarovsk Regional Court upheld that decision on appeal.

11. On 23 July 2005 the Town Council made a new offer of two flats to the applicant and his son. The son accepted the offer but not the applicant because the flat was in a state of disrepair.

12. On 11 August 2006 the applicant accepted the flat after the repairs had been carried out.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENT OF 12 JULY 1999

13. The applicant complained about the prolonged failure to enforce the judgment of 12 July 1999, as upheld on 28 September 2000. He invoked Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ... 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

14. The Government submitted that the applicant had lost his status as a “victim” of the alleged violation long before he had lodged his application with the Court because he had been offered seven flats which had met the conditions laid down in the judgment of 12 July 1999. They claimed that the applicant had abused his right of individual petition.

15. The applicant disagreed.

16. The Court observes that the domestic courts determined that the flats which had been offered to the applicant and his family had not met the sanitary requirements (see paragraph 10 above). Even though the applicant eventually received a flat in 2006, it only happened after a substantial delay, for which no redress was granted to him. The Court finds that the applicant may still claim to be a “victim” of the alleged violation and rejects the Government’s objection.

17. 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

18. The applicant maintained that enforcement of the judgment had taken too long.

19. The Government submitted that the length of the enforcement proceedings should be calculated from 25 November 1999 when the bailiffs had received the writ of execution, to 27 January 2003 when the three flats had been offered to the applicant and his family. From that length they deducted the six months, during which the enforcement had been stayed pursuant to the decision of 10 March 2000, and a further period starting from 28 February 2001 when the proceedings had been adjourned *sine die* and until that decision had been quashed on 30 December 2002. The

Government accepted their responsibility for an overall period of non-enforcement of six months.

20. The Court observes that on 12 July 1999 the applicant and his family members obtained a judgment in their favour against the town council which became enforceable on 28 September 1999. By terms of the judgment, the council was to provide them with flats. Leaving aside the family members who are not the applicants in the present case, the Court notes that an acceptable flat was made available to the applicant only on 11 August 2006, that is six years and ten months later. The Court rejects the Government's argument that they may only be held liable for the period of non-enforcement up to the date when the first offer of a flat was made. As noted above, the domestic courts were not convinced by the authorities' allegation that the applicant's refusal of the offer had been unreasonable. They found that the flats offered had not met the sanitary standards (see paragraph 10 above). Likewise, the Court does not consider it necessary to deduct the period following the judicial decision of 28 February 2001 because that decision did not become final and was eventually quashed on appeal. Even assuming that the six-month suspension in 2000 had a valid justification, the Russian authorities are still responsible for the delay spanning over more than six years, during which the judgment in the applicant's favour remained without enforcement.

21. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the ones in the present case (see *Reynbakh v. Russia*, no. 23405/03, § 23 et seq., 29 September 2005; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005; *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 30 et seq., 17 March 2005; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

22. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing to comply with the enforceable judgment in the applicant's favour the domestic authorities violated his right to a court and prevented him from gaining possession of the asset he could reasonably have expected to receive.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant also complained under Article 6 of the Convention that the Khabarovsk courts lacked impartiality and independence and that

the proceedings on his claims had been unfair and excessively long. He further complained under Articles 9, 10, 14 and 17 of the Convention and Protocol No. 12 that he had been persecuted for his beliefs and discriminated against. Finally, he complained under Article 2 of Protocol No. 4 that, lacking residence registration, he could not buy a plane ticket.

25. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that those complaints 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 414,000 euros (EUR) in respect of pecuniary damage and EUR 5,800,000 in respect of non-pecuniary damage.

28. The Government considered that these claims were excessive, unsubstantiated and speculative.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant suffered distress and frustration because of the State authorities' failure to enforce the judgment in his favour within a reasonable time. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis and taking into account the length of the enforcement stage, the Court awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicant also claimed compensation for costs and expenses, the amount of which he did not specify.

31. The Government pointed out that the amount had not been specified.

32. In accordance with Rule 60 §§ 2 and 3 of the Rules of Court, the Court makes no award in respect of costs and expenses because the applicant failed to submit itemised particulars of his claim.

C. Default interest

33. 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 in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 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 3,900 (three thousand nine 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 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President