



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

FIRST SECTION

CASE OF SHAROV v. RUSSIA

(Application no. 38918/02)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

12/09/2008

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 Sharov 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 22 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 38918/02) 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 Vyacheslav Georgiyevich Sharov (“the applicant”), on 8 October 2002.

2. The applicant was represented by Mr I. Telyatyev, a lawyer practising in Arkhangelsk. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, the Representatives of the Russian Federation at the European Court of Human Rights.

3. On 3 July 2006 the Court decided to give notice of the application to the Government. It 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 1947 and lives in Arkhangelsk.

5. The applicant lived in a council house under the threat of collapse. As the local authority had failed to resettle the applicant, he brought a civil action.

6. On 18 December 2001 the Lomonosovskiy District Court of Arkhangelsk held for the applicant and ordered the authority to:

“provide [the applicant’s] family of four with a well-equipped flat of at least 48 m² meeting sanitary and technical standards.”

This judgment became binding on 21 January 2002.

7. On the applicant’s request, on 21 June 2002 the district court changed the mode of execution, and ordered the authority to pay to the applicant the price of a new flat. This decision was quashed on appeal, and after a rehearing, the award was increased. On 17 April 2003 the funds were credited to the bailiff’s account.

8. On 28 April 2003 the authority provided the applicant with a flat of 43.1 m², and the applicant agreed to move in. The authority asked the court to order it to pay to the applicant the price of the 4.9 m² shortfall in order to settle the judgment debt, but the applicant objected, and the court dismissed this request.

9. On the bailiff’s request, on 28 April 2005 the district court reverted the mode of execution from monetary to in-kind, and since the applicant had already received the flat, the bailiff closed the enforcement proceedings. On 6 February 2006 the Arkhangelsk Regional Court ordered the enforcement proceedings to resume because the flat received by the applicant was smaller than originally awarded.

II. RELEVANT DOMESTIC LAW

10. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment within three months.

THE LAW

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

11. The applicant complained that under Articles 2, 3, and 6 of the Convention, and under Article 1 of Protocol No. 1, about the non-enforcement of the judgment. The Court will examine this complaint only under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. As far as relevant, these Articles read as follows:

Article 6

“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

12. 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

13. The Government acknowledged that the judgment had not been enforced in full. Nevertheless, they put the blame for the non-enforcement on the applicant: he had refused to receive the price of the 4.9 m² shortfall, and had not agreed that he would move out of the currently occupied flat if the local authority offered him an appropriate flat.

14. The applicant insisted on his complaint. The authority had made no attempt to provide him with a flat conforming to the award and had not been willing to enforce the judgment. The applicant had had to accept the smaller flat because the old house risked collapse. The applicant had had to reject the price for the 4.9 m² shortfall because it was underestimated.

15. 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). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (*Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

16. The Court notes that the judgment remains unenforced, insofar as the applicant still has not received a flat of 48 m². The non-enforcement has lasted more than six years, which is *prima facie* incompatible with the Convention. The Government have not shown that the applicant has ever been offered a flat that would conform to the award.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed 36,027 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

20. The Government contested these claims as excessive and ill-founded.

21. As to pecuniary damage, the Court reiterates that the violations found are best redressed by putting the applicant in the position he would have been if the Convention had been respected. The Government shall therefore secure, by appropriate means, the enforcement of the domestic courts' award (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005).

22. As to non-pecuniary damage, the Court admits that the non-enforcement of the judgment has distressed the applicant. On an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

23. The applicant also claimed EUR 1,326 for the costs and expenses incurred before the Court.

24. The Government submitted that the applicant is entitled only to costs necessarily incurred and reasonable as to quantum.

25. 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 information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 900 for the proceedings before the Court.

C. Default interest

26. 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 and of Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court, and in addition pay the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 900 (nine 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President