



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

FIRST SECTION

CASE OF SITNITSKIYE v. RUSSIA

(Application no. 17701/03)

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 Sitnitskiye 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *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. 17701/03) 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 three Russian nationals, Mr Viktor Bronislavovich Sitnitskiy, Ms Yuliya Viktorovna Sitnitskaya, and Mr Vitaliy Viktorovich Sitnitskiy (“the applicants”), on 26 April 2003.

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

3. On 30 May 2006 the Court decided to communicate the complaint concerning non-enforcement of a domestic judgment 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 applicants were born in 1953, 1985, and 1982 respectively and live in Krasnodar.

5. In 1999 the applicants lost their home in Volgogradsk in a terrorist bomb attack.

6. On 1 November 2002 the Leninskiy District Court of Krasnodar ordered the local authority to provide the applicants with a flat. On 19 December 2002 this judgment became binding.

7. On the applicants' request, on 19 February 2003 the court modified the operative part of the judgment and specified that the flat should measure at least 72 m².

8. The local authority applied for a supervisory review of the judgment, and the enforcement of the judgment was twice stayed: from 1 April to 4 August 2003 and from 23 October to 13 April 2004.

9. On 19 May 2004 the applicants submitted the writ of enforcement to the bailiff's service, and on 10 September 2004 the applicants received a flat of 82.28 m².

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 applicants complained under Articles 6 § 1 and 8 of the Convention, and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment. The Court will examine this complaint 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 § 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

12. The Government argued that this complaint was manifestly ill-founded. Only three months had passed from the day when the applicants had submitted the writ of enforcement to the bailiff’s service to the day when they received the flat. Besides, the flat they received was bigger than awarded, and this excess had compensated them for any possible delays.

13. The applicants maintained their complaint and emphasized the State’s responsibility to compensate victims of terrorism.

14. With regard to the argument that the applicants have received a flat bigger than awarded, the Court reiterates that to deprive an applicant of the status as a victim, the State must acknowledge a violation of the Convention and provide redress for it (see *Amuur v. France*, judgment of 25 June 1995, *Reports of Judgments and Decisions* 1996-III, § 36; and *Dalban v. Romania*, judgment of 28 September 1999, *Reports* 1999-VI, § 44). In the case at hand, however, the local authority has not tied the excessive size of the property to the delays in the enforcement. It follows that this complaint cannot be found incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3.

15. 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

16. 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).

17. In the case at hand the delay in the enforcement was one year and six months: from the day the district court modified the operative part of its judgment to the moment the applicants received the flat. This period is *prima facie* incompatible with the requirements of the Convention, especially since the award was meant to accommodate the homeless victims of terrorism. An intervention of the supervisory-review authorities does not

justify the delay (see *Timofeyev v. Russia*, no. 58263/00, § 42, 23 October 2003).

18. It follows that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

2. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The applicants also complained under Articles 6 and 8 of the Convention that the State failed to compensate their losses caused by the bombing and to recover compensation from the convicted terrorists.

20. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

21. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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.”

23. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the non-enforcement of the domestic judgment admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

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