



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

FIRST SECTION

CASE OF ANATOLIY VLADIMIROVICH ZAKHAROV v. RUSSIA

(Application no. 35932/04)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Anatoliy Vladimirovich Zakharov 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 11 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 35932/04) 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 Anatoliy Vladimirovich Zakharov (“the applicant”), on 23 August 2004.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 7 November 2006 the President of the First Section decided to communicate the complaint concerning non-enforcement of a domestic judgment to the Government. He 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 1939 and lives in Okha, a town in the Sakhalin Region.

5. The applicant owned a flat in a decrepit house. The local council decided to demolish the house, and on 27 June 2000 the applicant sued the council for a replacement flat.

6. On 28 October 2003 the Okha Town Court ordered the council to provide the applicant with a flat in Okha of the same quality as his

demolished flat. This judgment became binding on 24 February 2004 but was never enforced.

II. RELEVANT DOMESTIC LAW

7. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months.

THE LAW

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

8. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment. Insofar 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

9. 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

10. The Government admitted their responsibility for a delay of two years and four months, and acknowledged a breach of the Convention. In their subsequent observations they argued that the non-enforcement had been caused by the applicant's unreasonable rejection of suitable replacement flats, and denied a breach of the Convention.

11. The Court notes that the Government's observations are self-contradictory, and that the Government have provided no plausible explanation for this.

12. The Court thus considers that the Government have failed to rebut the applicant's complaint. Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

13. The applicant also complained under Articles 2, 5, 6, 8, 13, 14, and 17 of the Convention, and Article 1 of Protocol No. 12 about the length and unfairness of the proceedings, and misapplication of law by domestic courts.

14. 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.

15. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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

17. In respect of pecuniary damage, the applicant claimed 60,000 Russian roubles (RUB) and 22,590 euros (EUR). These sums respectively represented his expenditure on the purchase and renovation of the demolished flat, and remuneration for the time he had had to spend in courts vindicating his rights.

18. The Government argued that this claim had been excessive and unsubstantiated.

19. The Court notes that this claim is unsubstantiated and that it has no causal link with the violation found. At the same time, the Court reiterates that violations of Article 6 are best redressed by putting an applicant in the position he would have been if Article 6 had been respected. The Government shall therefore secure, by appropriate means, the enforcement of the domestic court's award (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005).

20. In respect of non-pecuniary damage, the applicant claimed EUR 30,000.

21. The Government argued that this claim had been excessive, and that any possible award should have been proportionate to the violation found and consistent with the Court's practice in this area.

22. The Court accepts that the applicant must have been distressed by the non-enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 3,500 under this head.

B. Costs and expenses

23. The applicant also claimed RUB 23,552.37 for the costs and expenses incurred before the domestic courts and the Court.

24. The Government argued that this claim had been excessive and unsubstantiated.

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 8 covering costs under all heads.

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 complaint concerning non-enforcement of the 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 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 applicant the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 8 (eight 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 2 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President