



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

FIRST SECTION

CASE OF TIBILOV v. RUSSIA

(Application no. 38943/04)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

02/01/2009

This judgment may be subject to editorial revision.

In the case of Tibilov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

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. 38943/04) 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 Albert Amiranovich Tibilov (“the applicant”), on 3 October 2004.

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

3. On 5 April 2007 the President of the First Section decided to give notice of the application 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 1947 and lives in Sochi, a town in the Krasnodar Region.

5. As an employee of the State-owned Scientifico-industrial Centre for Mountain Horticulture and Industrial Floriculture, the applicant was entitled to a service flat. The flat was not provided, and the applicant sued the Centre.

6. On 19 July 1993 the Khosta District Court of the Krasnodar Region ordered the Centre to provide the applicant with a flat for a family of four. This judgment became binding on 31 August 1993, but was not immediately enforced.

7. As in the meantime the Centre had been reorganised, on 10 June 2003 the District Court redirected the enforcement proceedings to the Centre's successor – Russia's Academy of Agricultural Sciences.

8. On the applicant's request, on 5 September 2003 the District Court changed the mode of enforcement to a cash payment. The court found that the applicant had been entitled to a three-room flat and that such a flat could cost 1,368,000 Russian roubles (RUB). The court relied on a professional evaluation of December 2002 submitted by the applicant.

9. On 21 January 2004 the writ of enforcement was passed to the Ministry of Finance and on 8 February 2005 the Ministry paid the debt.

10. On 25 March 2005 a court awarded the applicant RUB 272,000 to compensate his inflationary loss caused by the delayed payment.

11. On 15 April 2005 the applicant bought a one-room flat for 45,494 US dollars.

II. RELEVANT DOMESTIC LAW

12. 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

13. The applicant complained about the 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. 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

14. 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

15. In their original observations, the Government admitted that the applicant’s rights had been violated, since the State had been responsible for a delay of seven years and seven months. In their further observations, the Government argued that the application should have been declared inadmissible, since the State had been responsible for a delay of three years (which was reasonable), and since the applicant had missed the six-month time-limit.

16. The Court notes that the Government’s observations are self-contradictory, and that they have provided no plausible explanation for this contradiction.

17. 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. 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. In respect of pecuniary damage, the applicant claimed 74,006 euros (EUR). This amount was meant to compensate his loss caused by rising real estate prices. In particular, he argued that the money he received in the end had not paid the full price of the one-room flat he had had to buy, still less the price of the three-room flat to which he had been originally entitled. He also argued that, when changing the mode of enforcement, the domestic court had undervalued the price of the three-room flat.

20. The Government argued that this claim had been excessive and unsubstantiated, given the applicant’s improvised way of estimating inflation. Besides, it had been wrong to index-link the alleged loss to real estate, since the mode of enforcement had been changed to a cash payment.

21. The Court rejects this claim. As to real-estate price inflation, the Court notes that when changing the mode of enforcement, the domestic court referred to current prices and thus compensated any preceding inflationary loss. The award entirely corresponded to the applicant’s claim, and hence cannot be contested by the applicant. As to monetary inflation, the Court notes that it has been already compensated by the domestic decision of 25 March 2005.

22. In respect of non-pecuniary damage, the applicant claimed EUR 10,914.73.

23. The Government argued that this amount had been excessive and unsubstantiated.

24. The Court accepts that the applicant must have been distressed by the delayed enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

25. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award under this head.

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 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 3,000 (three thousand 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 2 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President