



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

FIRST SECTION

CASE OF YERKIMBAYEV v. RUSSIA

(Application no. 34104/04)

JUDGMENT

STRASBOURG

23 October 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 Yerkimbayev v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Registrar*,

Having deliberated in private on 2 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 34104/04) 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 Adilbek Omirbekovich Yerkimbayev (“the applicant”), on 19 August 2004.

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

3. On 18 October 2006 the President of the First Section decided to communicate the complaint concerning the length of the proceedings to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1962 and lives in Moscow.

5. The applicant and his wife obtained an occupation certificate for a municipal flat where another family, (“Family X”), lived at the material time. Family X had, in turn, received an occupation certificate for another flat. As the flat offered to Family X did not meet their expectations, the family refused to move out of the old flat.

6. On 15 October 1998 the applicant instituted proceedings in the Lyublinskiy District Court of Moscow seeking the eviction of Family X.

7. On 12 November 1998 the Municipal Housing Department of Moscow, who owned the flat at the material time, also lodged a claim for the eviction of Family X.

8. On 22 December 1998 the Lyublinskiy District Court in the absence of the defendants passed judgment in default, granting the applicant's request and ordering the eviction of Family X. However, the latter appealed against the above judgment which was annulled as a result on 8 February 1999.

9. On 10 March 1999 the defendants lodged a counter claim, requesting, *inter alia*, that the applicant's occupation certificate be declared void.

10. Meanwhile, in April 1999 the applicant and his wife privatised the flat in dispute and registered their property right in the State's Register.

11. As regards the twelve hearings fixed between 18 May 1999 and 26 May 2000, two were adjourned following requests by the defendants and four were adjourned because the representative of the Municipal Housing Department of Moscow failed to attend. The remaining six hearings were adjourned in view of the non-attendance of the Ministry of Finance, which was responsible for the allocation of municipal housing to the defendants and whose attendance was required to verify the issue of the lawfulness of the provision to the defendants' family of new housing and the taking away of the flat in dispute. It was not until the District Court imposed a fine on the Ministry amounting to 3,000 Russian roubles for non-attendance at the hearings that a representative of the Ministry finally appeared before the court.

12. On 26 May 2000 the Lyublinskiy District Court of Moscow granted the applicant's claim and dismissed that of the defendant.

13. On 26 October 2000 the judgment was upheld on appeal by the Moscow City Court and entered into force.

14. On 14 December 2000 the bailiffs opened enforcement proceedings.

15. On 20 December 2000 and 15 May 2001 the enforcement proceedings were suspended until 9 April 2001 and 13 July 2001 respectively, pending the examination of the request filed by the defendants for supervisory review of the judgment of 26 May 2000, as upheld on appeal on 26 October 2000.

16. On 17 August 2001 the enforcement proceedings were again suspended following the subsequent request from the defendants for supervisory review of the above judgment.

17. On 19 April 2002 the Deputy President of the Supreme Court of Russia brought an application for supervisory review of the judgment to the Presidium of the Moscow City Court.

18. On 13 June 2002 the Presidium of the Moscow City Court quashed the judgment by way of supervisory review and remitted the case for fresh examination by a differently composed bench.

19. On 4 November 2002 the Lyublinskiy District Court granted the defendants' counter claim and declared the occupation certificate issued to the applicant void. The court further obliged the Municipal Housing Department of Moscow to provide the applicant and his family with another flat.

20. Following the appeal lodged against the above judgment by the Municipal Housing Department of Moscow, on 18 March 2003 the Moscow City Court quashed the above judgment on appeal and remitted the case for fresh examination.

21. As regards the six hearings fixed between 14 May 2003 and 8 October 2003, one was adjourned because the judge was involved in another case, two were adjourned because of the non-attendance of the defendants and on their request, and three were adjourned because of the non-attendance of the Municipal Housing Department of Moscow.

22. On 8 October 2003 the Lyublinskiy District Court granted the applicant's claim and dismissed that of the defendants.

23. On 26 February 2004 the Moscow City Court upheld the judgment on appeal.

24. On 23 March 2004 the bailiffs opened the enforcement proceedings.

25. On 29 June 2004 the defendants were evicted. The applicant and his family moved into the flat.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

26. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

27. The Government contested that argument and submitted that the proceedings had not breached the reasonable time requirement of Article 6.

A. Admissibility

28. 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

1. The period to be taken into consideration

29. The Government submitted that the proceedings had begun on 15 October 1998 and ended on 26 February 2004 with the final judgment of the Moscow City Court.

30. The applicant maintained that the duration of the enforcement proceedings should also be included in the overall length.

31. The Court is of the view that the period between 15 October 1998 and 29 June 2004 should be regarded as a whole because it was incumbent on the State to enforce the judgment once it was issued. Therefore the periods when the enforcement proceedings were pending must be regarded as an integral part of the “trial” for the purposes of Article 6 and should be included in the overall length (see *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1383-84, §§ 20-24, and pp. 1410-11, §§ 16-20, respectively; and, more recently, *Sokolov v. Russia*, no. 3734/02, § 32, 22 September 2005, and *Romanenko and Romanenko v. Russia*, no. 19457/02, § 26, 19 October 2006). The Court considers, therefore, that the proceedings lasted from 15 October 1998 to 29 June 2004 when Family X was evicted from the flat in dispute and the applicant’s family was able to move in.

32. The proceedings therefore lasted over five years and eight months for three levels of jurisdiction.

2. Reasonableness of the length of the proceedings

33. The Government argued that the proceedings in the applicant’s case were complex given the number of persons involved and the nature of the dispute. The applicant averred that the parties involved in the case were limited to himself, the defendants’ family and the Municipal Housing Department of Moscow, which was not a high number. The Ministry of Finance was neither a party to the proceedings nor had the status of an intervenor in the proceedings. It was not the owner of the flat in question or lay any claim in respect of it. Neither could it provide the court with any information as to the lawfulness of the provision to the defendants’ family of the new housing and the taking away of the disputed flat. Therefore, the delays caused by the non-attendance of the representative of the Ministry of Finance should be attributed to the domestic authorities. The applicant further maintained that the case was of no particular complexity. The task of the courts was limited to determining the legalities relating to the provision

of municipal housing in Moscow at the material time, evaluating whether or not the new flat provided to the defendants' family complied with the above legalities (simple arithmetical calculation) and whether the defendants' claims could be granted in accordance with the law.

34. The Government submitted that except for the delay from 17 August 2001 to 19 April 2002 caused through the fault of the domestic authorities, the hearings had been scheduled at regular intervals and the courts had not remained idle. The applicant agreed that the above delay had been attributable to the domestic authorities since he had had no means of speeding up the examination of the defendants' request to initiate supervisory review proceedings in the Supreme Court.

35. The Government further noted that courts at three levels of jurisdiction had been actively involved in the applicant's case.

36. The applicant finally submitted that throughout the whole period during which the proceedings were pending he and his wife had had nowhere to live and had had to move in with their daughter's family in the latter's communal flat. Consequently, the daughter's family had been forced to rent another flat. The rental payments had been shared between the two families.

37. The Court observes that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

38. The Court observes that the proceedings relating to the dispute between the applicant and the defendants over a municipal flat were not particularly complex. It furthermore considers that the applicant's conduct did not noticeably contribute to the length of the proceedings.

39. As regards the conduct of the domestic authorities, the Court notes that it led to some substantial delays in the proceedings. In particular, the Court observes that in the period from 18 May 1999 to 26 May 2000 the case was adjourned on twelve occasions, ten of which were as a result of the State bodies involved in the proceedings – the Municipal Housing Department of Moscow and the Ministry of Finance – failing to appear before the court. The Court notes further in this respect that it was not until the Ministry of Finance had failed to attend six times in a row that the domestic court imposed a fine on them for non-attendance.

40. The Court further observes that the Government accepted the responsibility of the domestic authorities for the eight months' delay in the period from 17 August 2001 to 19 April 2002 when the enforcement proceedings were suspended due to examination of the request for supervisory review filed by the defendants before the Supreme Court.

41. The Court is mindful of the Government's argument as regards the fact that the case spanned three levels of jurisdiction. Nevertheless, this alone cannot justify the overall length of the proceedings (see *Angelova v. Russia*, no. 33820/04, § 46, 13 December 2007).

42. Finally, the Court considers that the subject matter of the case called for particular diligence on the part of the domestic courts. As is apparent from the applicant's submissions, he had no other place of residence, and therefore the outcome of the proceedings, as well as their promptness, was of crucial importance to him.

43. Having regarded to the above, and to the fact that the proceedings lasted more than five years and eight months in a relatively simple case, the Court considers that the length of the proceedings did not satisfy the "reasonable-time" requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. The applicant further complained under Article 6 § 1 of the Convention about the quashing of the judgment of 26 May 2000, as upheld on appeal 26 October 2000, by way of supervisory review, and under Article 1 of Protocol No. 1 that, being the owner of the disputed flat, he could not benefit from it for five years.

45. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they 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 should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

48. The Government considered these claims excessive. They considered that a token amount of EUR 30 would constitute equitable satisfaction for the non-pecuniary damage suffered by the applicant.

49. Making its assessment on an equitable basis, the Court awards the applicant 2,900 euros in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

50. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and before the Court.

51. Accordingly, the Court does not award anything under this head.

C. Default interest

52. 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 the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 2,900 (two 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 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President