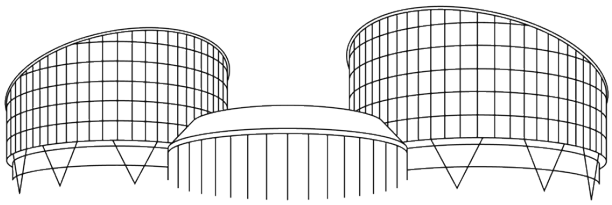

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANDREYEV v. RUSSIA

(Application no. 32991/05)

JUDGMENT

STRASBOURG

4 March 2010

FINAL

04/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Andreyev 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 9 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 32991/05) 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 Aleksandr Aleksandrovich Andreyev ("the applicant"), on 12 August 2005.

2. The applicant was represented by Mr S. Matytsyn, a lawyer practising in Voronezh. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 12 June 2008 the President of the First Section decided to give notice of the application to the Government. It was 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 1964 and lives in Voronezh.

5. On 12 July 2002 the applicant rented out his flat to M.

6. On 26 September 2002 M. allegedly forgot to turn off water in the bathroom and thus damaged neighbouring flats of Sh. and A.

7. Subsequently M. compensated damages to Sh., but refused to pay A., considering the sums claimed excessive.

8. On 20 November 2002 A. brought proceedings against the applicant for damages. M. took part in the proceedings as a co-defendant.

9. On 12 November 2003 the Justice of the Peace of the 3rd Court Circuit ordered the applicant to pay A. 40,983 Russian roubles (RUB) in damages and to pay the authorities RUB 1,639.49 of legal costs.

10. The applicant lodged an appeal and on 28 April 2004 the Sovetskiy District Court of Voronezh quashed the judgment, found that there was no fault by the applicant in the damage caused to the A.'s flat and awarded A. RUB 15,261 from M.

11. On 27 August 2004 A. lodged an application for supervisory review of the appeal judgment.

12. On 14 February 2005 the Presidium of the Voronezh Regional Court quashed that appeal judgment and upheld the judgment of 12 November 2003. The Presidium reassessed the evidence and found that though on 25 September 2002 the applicant concluded an agreement under which he should have obtained the right of property to the flat, this right was duly registered only on 10 April 2003. Therefore before that date the applicant could not rent out his flat to anyone. Thus he remained the flat's sole *de jure* owner and should have been responsible for it.

13. On 7 Mach 2007 the applicant transferred to the bailiffs RUB 42,322.49 in accordance with the Presidium decision of 14 February 2005.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law governing the supervisory review procedure at the material time is summed up in the Court's judgment in the case of *Kot v. Russia* (no. 20887/03, § 17, 18 January 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

15. The applicant complained under Article 6 of the Convention and under Article 1 of Protocol No. 1 that the final appeal judgment of 28 April 2004 had been quashed via supervisory review. In so 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.[...]"

16. The Government contested that argument. They argued, *inter alia*, that the supervisory review had been compatible with the Convention as it was aimed to correct a fundamental defect. They referred to a definition of a fundamental defect given in the case of *Luchkina* as "a jurisdictional error, serious breaches of court procedure or abuses of power" (*Luchkina v. Russia*, no. 3548/04, § 21, 10 April 2008). In the Government's view, the appeal court ignored that at the date of the infliction of the damage the applicant was still a *de jure* owner of the flat.

A. Admissibility

17. The Court notes that the 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

18. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental errors. The mere possibility of there being two views on the subject is not a ground for re-examination (see *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

19. The Court further reiterates that it has frequently found violations of the principle of legal certainty and of the right to a court in the supervisory-review proceedings governed by the Code of Civil Procedure in force since 2003 (see, amongst other authorities, *Bodrov v. Russia*, no. 17472/04, § 31, 12 February 2009).

20. In the present case the Presidium disagreed with the assessment made by the appeal court which is not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment (see *Kot,* cited above, § 29). It was not claimed before the supervisory-review instance that the previous proceedings had been tarnished by a fundamental defect, such as, in particular, a jurisdictional error, serious breaches of court

procedure or abuses of power (see, amongst other authorities, *Luchkina,* cited above, § 21). The court discerns no other fundamental defect to justify the quashing of the final judgment on supervisory review in the present case. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

21. The Court further observes that as a result of supervisory review the applicant was deprived of his possessions (see paragraph 13 above). Accordingly, there has also been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. Article 41 of the Convention provides:

> "If the Court finds that there has bee.n 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

23. The applicant claimed 52,000 Russian roubles (RUB) in respect of pecuniary damage (RUB 42,322.49 paid in accordance with the Presidium decision, plus relevant expenses and inflation losses). He also claimed 1,500 euros (EUR) in respect of non-pecuniary damage.

24. The Government noted that no satisfaction should be awarded since the applicant's rights were not violated and he had failed to substantiate his allegedly excessive and unreasonable claims.

25. The Court reiterates that in general the most appropriate form of redress in respect of violations found is to put applicants as far as possible in the position they would have been in if the Convention requirements had not been disregarded (see, amongst other authorities, *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85, and *Dovguchits v. Russia*, no. 2999/03, § 48, 7 June 2007).

26. The Court observes that in the present case the applicant was eventually forced to pay an amount of RUB 42,322.49 contrary to a final judgment in his favour which had relieved him of any payment obligation. There is therefore a causal link between the quashing of the final judgment and the pecuniary loss claimed by the applicant.

27. As to the claim for the inflation losses, on which the applicant submitted a detailed calculation, the Government made no comment in respect of the methods used by the applicant for that calculation. Nor have the Government provided the Court with any alternative one. Therefore the Court accepts the applicants' calculation in respect of the inflation losses.

28. The Court therefore awards the applicant the sum claimed (EUR 1,470), plus any tax that may be chargeable.

29. The Court furthermore finds that the applicant has suffered non-pecuniary damage as a result of the violation found which cannot be compensated by the mere finding of a violation. Having regard to the circumstances of the cases and making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicants also claimed RUB 5,000 for the costs and expenses incurred.

31. The Government asserted that the applicant had failed to substantiate the claims.

32. 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 documents in its possession and the above criteria, the Court considers it reasonable to grant the applicant's claim in full and to award him the sum of EUR 142.

C. Default interest

33. 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 of the Convention and of Article 1 of Protocol No. 1 in respect of the quashing of the final appeal judgment in the applicant's favour via supervisory review;

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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 1,470 (one thousand four hundred and seventy euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 142 (one hundred and forty two 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 4 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President