

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

THIRD SECTION

CASE OF BIGASHEV v. RUSSIA

(Application no. 71444/13)

JUDGMENT

STRASBOURG

27 June 2017

FINAL

27/09/2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Bigashev v. Russia,

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

Helena Jäderblom, *President,*
Luis López Guerra,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 71444/13) 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 Rifkat Maksumovich Bigashev, on 21 October 2013.

2. The applicant was originally represented by Mr I.A. Zorin, who died in the course of the proceedings before the Court. On 18 January 2017 the Court granted the applicant's request to represent himself.

3. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

4. The applicant alleged, in particular, that the judgment issued in his favour had not been enforced within a reasonable time and that the domestic authorities had failed to protect his home and property from regular inundation by melted snow and groundwater.

5. On 6 July 2015 the complaints concerning the non-enforcement of the judgment and failure to protect the applicant's home and property were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1927 and lives in Izhevsk, the Republic of Udmurtiya.

A. Background to the case

7. The applicant is a retired person and a World War II veteran with a category 2 disability.

8. He is the owner of two-thirds of a house with outbuildings and an adjacent plot of land located in the vicinity of a public highway in Izhevsk. His wife lived there with him from 1958 until her death in 2011. They cultivated their garden to grow their own fruit and vegetables.

9. Between 2000 and 2002 the municipal authorities repaired the highway and raised the level of the road surface.

10. Since the completion of the repair works the applicant's house and plot of land have been submerged by melted snow and groundwater every year. The house has been seriously damaged and, according to the applicant, is no longer habitable.

B. First set of proceedings against the municipal authorities and ensuing enforcement proceedings

11. In 2004 the applicant brought proceedings against the municipal authorities and the municipal company that had repaired the road. He claimed that a drainage pipe had been installed in breach of technical requirements and in the absence of any specific project documentation. The authorities had not properly supervised or validated the works carried out, despite numerous technical shortcomings. This had resulted in his house being inundated by melted snow and groundwater in May 2002. Since then it had been regularly flooded. The applicant claimed compensation for the pecuniary and non-pecuniary damage he had sustained as a result of the flooding. He also asked the Industrialnyy District Court of Izhevsk ("the Industrialnyy District Court") to order the municipal authorities to develop specific project documentation for the installation of a new drainage pipe and carry out the necessary repairs to the road.

12. On 19 March 2007 the Industrialnyy District Court examined the applicant's claims. It established that between 2001 and 2002 the municipal authorities had carried out repair works to the public highway in the vicinity of the applicant's house and had installed a drainage pipe. Regarding the flooding of the applicant's house in May 2002, the court held that he had

not proved the extent of the damage and that "no casual connection had been established between the actions of the municipal authorities and the damage". Accordingly, there were no grounds to award the applicant compensation for pecuniary and non-pecuniary damage. The court also noted that according to an expert report issued in October 2006:

> "... the most probable cause of the inundation of the applicant's house in 2002 was its position below the level of the road, lack of preparatory and protective engineering measures, road construction in the absence of project documentation ..."

13. The Industrialnyy District Court concluded that the flooding resulted from a malfunctioning drainage pipe located under the road surface. The authorities were therefore under an obligation to arrange for works to be carried out related to the collection of wastewater from the road and the area near the applicant's house.

14. On 5 July 2007 the Supreme Court of the Republic of Udmurtiya ("the Supreme Court") quashed the part of the judgment of 19 March 2007 refusing to award the applicant compensation for pecuniary damage and adopted a new decision to that effect. It held that the case material confirmed that since 2000 the applicant's house had been regularly inundated by surface water coming from the road, which had not been properly maintained by the town administration. As a result, his property had been damaged. The Supreme Court awarded the applicant 68,900 Russian roubles (RUB) (about 1000 euros (EUR)) in compensation for the pecuniary damage sustained as a result of his house being flooded. It upheld the remainder of the judgment of 19 March 2007.

15. On 12 May 2009 the bailiffs' service initiated enforcement proceedings. On an unspecified date the town administration engaged the services of the municipal highway service to unclog the drainage pipe. According to the certificate of acceptance, the highway service finished the works in July 2009.

16. On 23 November 2009 the bailiffs' service terminated the enforcement proceedings. The applicant did not lodge an appeal against that decision.

C. Second set of proceedings against the municipal authorities

17. In April 2007 the applicant's house and plot of land were again flooded. He sued the municipal authorities, claiming that his home and property had been flooded because the town administration had not complied with its obligation to install a waste water collection system for the road. He also claimed compensation for pecuniary and non-pecuniary damage.

18. On 20 October 2008 Oktyabrskiy District Court of Izhevsk ("the Oktyabrskiy District Court") terminated the proceedings in respect of the

applicant's claim regarding the municipal authorities' obligation to repair the road, since it had already been examined and decided by the Industrialnyy District Court on 19 March 2007.

19. On 30 October 2008 the Oktyabrskiy District Court examined the remainder of the applicant's claims. It established that since 2000 the applicant's house had been regularly flooded because the town administration had not carried out the necessary repairs to the road. It further established that the town administration had not enforced the final judgment of 19 March 2007 and as a result the applicant's house had been regularly flooded since its adoption. Having regard to the above, the court concluded that the flooding of the house in spring 2007 had been the fault of the town administration, which had not properly maintained the road. The court awarded the applicant RUB 132,017 (about EUR 2,000) in compensation for pecuniary damage and dismissed his claim in respect of non-pecuniary damage.

20. On 21 January 2009 the Supreme Court upheld that judgment.

D. Third set of proceedings against the municipal authorities and ensuing enforcement proceedings

21. In September 2010 the applicant brought a new set of proceedings against the municipal authorities. He submitted that his house had been regularly flooded because of the failure of the local authorities to install a waste water collection system next to his house. The flooding had continued after the enforcement of the judgment of 19 March 2007. As a result of regular flooding his house had been almost destroyed, the living conditions did not conform to the established sanitary standards and the air inside and around the house was permanently damp. The applicant also claimed compensation for pecuniary and non-pecuniary damage.

22. The Oktyabrskiy District Court ordered an expert construction examination in the applicant's case. According to the expert report dated 9 January 2013, which relied on Russian Building Regulations pertaining to roads and urban development (see paragraphs 42-48 below):

> "... the installation of a drainage system ordered by the judgment of 19 March 2007 ... has not been carried out ... [the applicant's] house has been flooded since July 2009 [up to the date] of examination of [his] case in court. The waste water is collecting in [four neighbouring] streets, including the applicant's. The road next to the applicant's house is essentially horizontal and the diversion of [melted snow] ... has not been technically finalised (the diameter of the pipe has not been technically justified, its route and gradient not calculated) ... The water collection system which existed previously has been modified due to the unauthorised elevation of parts of the road and its surface and the newly constructed road ..."

In the expert's opinion, in order to protect the applicant's house from yearly flooding it was necessary to carry out a land survey, draft a plan of the project, make the necessary calculations and perform repairs.

23. On 21 January 2013 the Oktyabrskiy District Court examined the applicant's claims. It held that it was competent to do so in so far as they concerned the flooding of his house which occurred after enforcement of the judgment of 19 March 2007.

24. The court allowed the applicant's claims in part. It established, in particular, that after enforcement in 2009 of the judgment of 19 March 2007 the applicant's house had been regularly flooded as a result of the authorities' failure to comply with their obligation to properly maintain the applicant's street and the road near his house. The court ordered the municipal authorities to commission a project with a specialist firm for the construction of a drainage pipe on the part of the road adjacent to the applicant's house, and to carry out construction works in accordance with that project by 1 July 2013. It dismissed the applicant's claims in respect of pecuniary and non-pecuniary damage as there was "no causal link between the action or inaction of [the authorities] and the damage sustained [by the applicant]".

25. On 22 April 2013 the Supreme Court upheld the judgment of 21 January 2013. It appears that the applicant did not lodge an appeal against that decision.

26. On 16 August 2013 the Oktyabrskiy District Court issued a writ of execution.

27. On 4 September 2013 the bailiffs' service instituted enforcement proceedings.

28. On 24 February 2014, after three formal demands under the writ of execution and in the absence of any action on the part of the town administration, the bailiffs' service found it liable for the administrative offence of non-compliance with a writ of execution, and issued a fine of RUB 5,000 (about EUR 80).

29. In spring 2014 the applicant's house was again flooded.

30. On 13 and 16 September 2014 the town administration signed two municipal contracts under the terms of which it engaged two companies to perform road repairs and anti-flood works on the part of the road adjacent to the applicant's house. On 13 and 31 October 2014 respectively the works were completed.

31. On 5 November 2014 the bailiff terminated the enforcement proceedings following an on-site inspection and determined that the judgment of 21 January 2013 had been fully enforced.

32. The applicant appealed against that decision, complaining that the judgment in question had not been fully enforced.

33. On 4 February 2015 the Oktyabrskiy District Court dismissed his appeal, finding that the judgment had been fully enforced.

34. On 29 April 2015 the Supreme Court quashed that decision and adopted a new decision allowing the applicant's complaint regarding the bailiff's decision to terminate the proceedings. It held, in particular, that that decision had been unlawful and ordered the bailiffs' service to reopen the enforcement proceedings. On 27 May 2015 the chief bailiff overturned the decision to terminate the enforcement proceedings in the applicant's case.

35. On 8 July 2015 the Oktyabrskiy District Court examined the applicant's claim concerning the failure of the town administration to enforce the judgment of 21 January 2013 within a reasonable time. The applicant claimed RUB 98,000 (about EUR 1,600) in respect of non-pecuniary damage. The court acknowledged that he had undeniably sustained non-pecuniary damage and awarded him RUB 10,000 (about EUR 160). It also noted that the necessary repairs had been carried out in October 2014 and that the applicant's representative, Mr K., had stated in the proceedings that the flooding of the house had stopped.

36. On 19 October 2015 Mr K. acknowledged in writing that the judgment had been enforced. On 20 October 2015 the bailiff terminated the enforcement proceedings.

E. Proceedings before the municipal authorities seeking to declare the applicant's house unfit for habitation

37. On 16 September 2013 the applicant applied to the Interdepartmental Commission ("the Commission") attached to the Industrialnyy District administration to have his house declared unfit for habitation on account of the damage caused by regular flooding.

38. On 11 October 2013 the Commission held that over the years the applicant's house had lost a number of its features. However, it was still possible to recover them by carrying out structural repairs.

39. On 18 October 2013 the head of the Industrialnyy District administration approved those conclusions and held that the applicant's house was in need of structural repairs, that it was possible to carry them out and that they should be carried out by the owner.

40. On 26 December 2014 the Industrialnyy District Court dismissed a complaint by the applicant regarding the Commission's decision. On an unspecified date the Supreme Court upheld that decision on appeal.

F. Application for social housing

41. On 10 January 2011 the applicant and his wife applied to the municipal authorities to be placed on the municipal housing list. It appears that up to the date of examination of his case by the Court the applicant has not been provided with any accommodation.

II. RELEVANT DOMESTIC LAW

A. Building Regulations 2.05.02-85*. Roads. Adopted by Ruling No. 233 of the State Committee for Construction of the USSR on 17 December 1985 (as in force at the material time)

42. The Introduction to the regulations provided that:

"The present regulations apply to newly constructed and reconstructed public roads ..."

43. Regulation 1.9 provided that:

"Technical solutions proposed in the project description [report] for the construction of a road should be justified by alternatives comparing technical and economic factors [such as]: ... losses linked to the impact on the environment during construction and exploitation ... and other factors...

44. Regulation 1.13 provided that:

"... construction of a road surface [should not cause] a drastic change to the groundwater and surface water gradient... "

B. Building Regulations 2.06.15-85. Engineering Protection of Areas from Flooding and Submergence. Adopted by Ruling No. 154 of the State Committee for Construction of the USSR on 19 September 1985 (as in force at the material time)

45. The Introduction to the regulations provided that:

"The following building regulations apply to newly constructed engineering systems, facilities and structures that serve to protect urban areas from flooding and submergence."

46. Regulation 1.2 provided that:

"The main means of engineering protection include ... artificial elevation of road surface levels, ... drainage systems, ... and other protective structures ...

...

Engineering protection on construction sites must provide ... mechanisms that can effectively shield areas ... from flooding and submergence caused by ... [the] construction and operation of ... buildings, structures and public utility networks.

Integrated systems of territorial engineering protection should be planned without regard to the administrative division of protected areas and facilities ..."

47. Regulation 1.9 provided that:

"Engineering protection of an area from flooding and submergence should prevent ... social and environmental harm ... which comprises the deterioration of ... [the] hygiene and ... sanitary conditions of the life [of the population]..."

48. Regulation 3.22 provided that:

> "The configuration of protective structures should match the type of submergence (permanent, seasonal, accidental) and the magnitude of the damage. The protective structures should serve to eliminate the main causes of the submergence..."

C. Russian Civil Code

49. Article 1064 provides that damage caused to the property of an individual or legal entity must be compensated in full by the person responsible for the damage. The latter may be released from the obligation to provide compensation if he or she can prove that the damage was caused through no fault of his or her own; however, the law may provide for compensation in respect of damage even in the absence of fault on the part of the person who caused it. Damage inflicted by lawful actions must be compensated for in the cases prescribed by law.

50. Article 1069 stipulates that damage caused to a citizen by the unlawful actions of a State agency or State official is to be compensated by the federal or regional treasury.

51. Articles 151 and 1099 to 1101 provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that compensation for non-pecuniary damage is to be provided irrespective of any award for pecuniary damage.

THE LAW

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

52. The applicant complained that the judgment of 21 January 2013 issued in his favour had not been enforced fully or in a timely manner and that the authorities' prolonged failure to comply with the binding and enforceable judgment also violated his right to the peaceful enjoyment of his home. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which read as follows in the relevant part:

Article 6

> "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."

A. Admissibility

1. Loss of victim status

53. The Government submitted that the applicant had lost his victim status because the judgment issued by the Oktyabrskiy District Court on 21 January 2013 had been fully enforced and that he had been awarded monetary compensation on 8 July 2015 by the Oktyabrskiy District Court for the delay in enforcement comparable to the awards made by the Russian courts in similar cases.

54. The applicant disagreed and maintained that he had not lost his victim status.

55. The Court reiterates that for an applicant to be able to claim to be the victim of a violation, within the meaning of Article 34 of the Convention, not only must he have victim status at the time the application is lodged, but that status must continue to remain at all stages of the proceedings. A decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

56. The Court notes that even though the domestic court acknowledged that the applicant's right to timely enforcement of the judgment had been breached, it does not consider the compensation of roughly EUR 160 (see paragraph 35 above) awarded to him as non-pecuniary damage adequate redress in respect of the amount he claimed. In the Court's view, the sum claimed by the applicant (RUB 98,000 (about EUR 1,600)) was not unreasonable given his personal circumstances and as compared to the Court's awards in cases involving delays in the enforcement of judgments imposing an obligation in kind (*Gerasimov and Others v. Russia*, nos. 29920/05 and 10 others, § 151, 1 July 2014, with further references). However, the Oktyabrskiy District Court awarded him only a small fraction of the amount claimed.

57. Accordingly, the Court considers that the national authorities did not afford adequate redress to the applicant in respect of his complaint about non-enforcement of the judgment in his favour and he can still claim to be a victim of the alleged violation.

2. Non-exhaustion of domestic remedies

58. The Government submitted that the applicant had failed to exhaust the domestic remedies available to him with regard to his complaint because he had not appealed against the appeal judgment issued on 22 April 2013 by the Supreme Court of the Republic of Udmurtiya upholding the Oktyabrskiy District Court's refusal to make an award for pecuniary and non-pecuniary

damage (see paragraph 25 above). They relied on the cases of *Abramyan and Others v. Russia*, no. 38951/13 and *Yakubovskiye v. Russia,* no. 59611/13, 12 May 2015, in which the Court held that the two-tier cassation appeal procedure introduced in Russia for civil cases following legislative amendments no longer constituted an extraordinary means of reopening proceedings, and any individual who intended to lodge an application in respect of a violation of his or her Convention rights should first use the remedies offered by it, including a second cassation appeal to the Supreme Court of Russia. They also submitted that the applicant had not challenged the inaction of the bailiffs' office concerning the non-enforcement of the judgment of 21 January 2013 or the decision of the Interdepartmental Commission of 11 October 2013.

59. As regards the alleged failure by the applicant to appeal against the judgment of 22 April 2013, the Court notes that the new cassation appeal procedure was introduced in Russia in 2010, which took effect on 1 January 2012. It therefore appears that that procedure, that is to say submitting cassation appeals to both the regional court and the Supreme Court of Russia, was available to the applicant when the Supreme Court of the Republic of Udmurtiya dismissed his appeal on 22 April 2013.

60. However, the Court also reiterates that, according to its case-law, the issue of whether domestic remedies have been exhausted is normally determined with reference to the date on which the application was lodged with the Court. In cases where the effectiveness of a given remedy have been recognised in the Court's case-law after the lodging of an application, the Court has deemed it disproportionate to require applicants to turn to that remedy for redress a long time after they have lodged their applications with the Court, especially after the time-limit for using that remedy has expired (see *Novruk and Others v. Russia*, nos. 31039/11 and 4 others, § 75, 15 March 2016, and *Kocherov and Sergeyeva v. Russia*, no. 16899/13, § 67, 29 March 2016, with further references).

61. In the present case, the applicant lodged his application on 21 October 2013, more than a year and a half before the Court recognised the new cassation appeal procedure as an effective remedy on 12 May 2015. Moreover, the Government did not allege that at the time of the events under consideration any relevant domestic case-law had existed to enable the applicant to realise that the new procedure met the requirements of Article 35 § 1 of the Convention, and anticipate the new exhaustion requirement rather than following the approach that had been applied by the Court until recently and only lodging an appeal with the Supreme Court of the Republic of Udmurtiya. Moreover, he could no longer avail himself of the remedy in question, as the six-month time-limit set by the new law of 2010 for using it had expired (see *Kocherov and Sergeyeva,* cited above, §§ 67-68). In such circumstances, the Court considers that the applicant was

not required to pursue the procedure stipulated in the case of *Abramyan and Yakubovskiye,* cited above, prior to lodging his application to the Court.

62. As regards the Government's claim concerning the alleged failure by the applicant to challenge the inaction of the bailiffs' office and the decision of the Interdepartmental Commission of 11 October 2013, it can clearly be seen from the material in the case file that the applicant brought proceedings in respect of both complaints but they were dismissed by the domestic courts (see paragraphs 32-34 and 40 above).

63. Accordingly, in the light of the above considerations, the Court rejects the Government's objection as to the alleged non-exhaustion of domestic remedies.

3. Conclusion

64. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

65. The Government submitted that all judgments issued in favour of the applicant, including the judgment of 21 January 2013 ordering repair works, had been enforced fully and in a timely manner. They also submitted that the fact that the applicant owned the house in question had not been in dispute but stated that his right to peaceful enjoyment of his home had not been breached. In particular, in the judgments of 30 October 2008 and 8 July 2015 respectively his claims in respect of pecuniary and non-pecuniary damage had been allowed. The authorities had taken all necessary action to protect his property and all impediments to his living in his house had been eliminated. His representative had acknowledged that the flooding of the house had stopped. He had received monetary compensation in the amount of RUB 132,017 for damage to his house pursuant to the judgment of 30 October 2008 and RUB 10,000 in respect of non-pecuniary damage in accordance with the judgment of 8 July 2015. As for the Oktyabrskiy District Court's refusal on 21 January 2013 to allow his claim in respect of pecuniary damage, he had failed to submit documents proving the extent of damage to his house.

66. The applicant maintained his complaints.

67. The Court notes at the outset that, according to the contents of two expert reports of 2006 and 2013 relied upon by the domestic courts, the road constructed by the municipal authorities next to the applicant's house lacked the proper project documentation and authorisation and was in clear disregard of the applicable domestic regulations (see paragraphs 12, 24 and 42-48 above). In May 2002, when the roadworks were completed, the

applicant's house was flooded for the first time (see paragraph 11 above). According to the judgments of the domestic courts in 2007, 2008 and 2013, the flooding occurred due to the failure of the local authorities to properly maintain both the nearby road and the water collection system underneath it and to carry out the associated repairs (see paragraphs 12, 19 and 24 above). In May 2009, that is to say more than two years after they had been ordered to do so by the Industrialnyy District Court in March 2007, the municipal authorities allegedly cleaned the drainage pipe for the first time (see paragraph 15 above). However, the flooding of the applicant's house continued and the forensic expert determined in 2013 that the drainage pipe had not in fact been installed in 2009 or properly maintained as the authorities had claimed (see paragraph 24 above).

68. Furthermore, as regards the judgment of 21 January 2013, the Court notes that, according to its text the town administration should have completed all the required works by 1 July 2013 (see paragraph 24 above). However, for an unspecified reason the writ of execution was not issued until 16 August 2013. Furthermore, the bailiffs' service opened enforcement proceedings on 4 September 2013 and sent three official demands under the writ of execution to the town administration, which repeatedly failed to act and in this regard was found liable for an administrative offence and fined (see paragraphs 27-28 above). The works were not completed until October 2014. The delay in the enforcement of the judgment was therefore a year and three months and was caused by the combined failure of the domestic authorities' to open the enforcement proceedings in a timely manner and of the town administration to take prompt action.

69. In the case of *Gerasimov and Others* (cited above, § 170) the Court held that where a judgment ordered specific action to be taken by the State and where a significant interest was at stake for the applicants, such as the need for basic utility services and renovations and the provision of a heating supply in time for the cold season, a delay in the enforcement of the judgment of more than six months was unreasonably long and inconsistent with the Convention requirements and special diligence was required on the part of the authorities to enforce the judgment. The Court notes that, as in the case of *Gerasimov and Others*, cited above, the applicant had a significant interest in having repairs done by the date specified in the judgment issued in his favour, that is by 1 July 2013 in the present case, or as soon as possible after that date, and the authorities should have promptly taken all necessary measures as the applicant's house had been regularly flooded for at least ten years before the judgment was issued and his living conditions had deteriorated significantly as a result of the inaction of the authorities. The Court observes that it was not until October 2014 that a proper drainage system was finally installed and the flooding of the applicant's house stopped.

70. It, therefore, appears from the material in the case file that not only did the municipal authorities engage in unauthorised road construction next to the applicant's house without the proper project documentation between 2000 and 2002 but they also repeatedly failed to enforce the judgments in his favor or enforced them belatedly, including the judgment of 21 January 2013 (see paragraphs 67-68 above) and it took them more than a decade to carry out the necessary, expert-designated and relatively straightforward drainage repairs and at last to protect the applicant's house from flooding.

71. In these circumstances, the Court finds that, the delay in the enforcement of the binding judgment in the applicant's favour fell short of the Convention requirements set out above and, notwithstanding compensation awarded to the applicant by the domestic courts in respect of pecuniary and non-pecuniary damage, it constituted an unjustified interference with his property rights under Article 1 of Protocol No. 1 to the Convention.

72. There has therefore been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

73. The applicant also complained that there had been a breach of Article 8 of the Convention on account of the authorities' failure to protect his home from flooding:

> "Everyone has the right to respect for ... his home ...
>
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

74. The Government submitted that the applicant had failed to exhaust the domestic remedies available to him with regard to his complaint, for the reasons reiterated above (see paragraph 58 above). They also stated that his right to home had not been breached.

75. The applicant claimed that he had exhausted the domestic remedies available to him and submitted that his house had become uninhabitable as a result of negligence of the authorities.

76 The Court notes that it has already examined the issue of exhaustion of domestic remedies as regards the applicant's complaint under Article 1 of Protocol to the Convention (see paragraphs 58-63 above) and for the same reasons, it rejects the Government's plea of non-exhaustion as regards the complaint brought by the applicant under Article 8 of the Convention. It further notes that this complaint is not manifestly ill-founded within the

meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

77. However, having regard to the facts of the case, the submissions of the parties and its findings under Article 6 § 1 of the Convention and Article 1 of Protocol 1 to the Convention (see paragraphs 65-72 above), the Court considers that there is no need to give a separate ruling on the remaining complaint in the present case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 2,700,000 Russian roubles (RUB) (about 43,000 euros (EUR)) in respect of pecuniary damage and explained that the sum requested corresponded to the price of a new two-room apartment in his town which he was going to buy to replace the house destroyed at the fault of the authorities. He submitted no documents demonstrating the actual material damage to his house and personal possessions. Furthermore, the applicant claimed EUR 12,000 in respect of non-pecuniary damage.

80. The Government argued that the applicant's claim in respect of pecuniary damage was unsubstantiated. They also submitted that the sum claimed in respect of non-pecuniary damage was excessive and that the applicant had no right to claim it.

81. The Court observes that the applicant failed to substantiate with documents his claim of pecuniary damage incurred and, for that reason, rejects it. On the other hand, it finds that given the anguish and frustration caused by the lengthy non-enforcement of the judgment issued in his favour and the destruction of what has been his house since 1958 the applicant has undeniably sustained non-pecuniary damage. The Court therefore awards the applicant EUR 1,950 in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicant also claimed RUB 127,484 (about EUR 2,000) for the costs and expenses incurred before the domestic courts and the Court. He submitted three retainer agreements dated 15 September 2010, 20 February 2011 and 24 October 2013, receipts signed by his lawyer

Mr I.A. Zorin confirming payments under the retainer agreements and receipts confirming that he had incurred RUB 484 (about EUR 8) in postal expenses.

83. The Government submitted that the retainer agreements of 15 September 2010 and 20 February 2011 do not show that the applicant had received legal services in connection with the proceedings before the Court. They accepted his claim for postal expenses.

84. 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 are 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 award the applicant the sum of EUR 2,000 covering costs under all heads.

C. Default interest

85. The Court considers it appropriate that the default interest rate 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 to the Convention;

3. *Holds* that there is no need to examine the applicant's complaint under Article 8 of the Convention;

4. *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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,950 (one thousand nine hundred fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand 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.

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President