

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

THIRD SECTION

CASE OF TURISHCHEV v. RUSSIA

(Application no. 16200/04)

JUDGMENT

STRASBOURG

7 November 2017

This judgment is final but it may be subject to editorial revision.



In the case of Turishchev v. Russia,

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

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 16200/04) 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 Vladimir Alekseyevich Turishchev ("the applicant"), on 21 March 2004.

2. 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.

3. On 21 October 2009 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Moscow.

A. Civil proceedings against the municipality and private persons

5. On 27 August 2002 the applicant brought civil proceedings against the Administration of the Mirninskiy Ulus of the Sakha (Yakutiya) Republic ("the Administration"), a private person S., her husband B., and a private company A. claiming a title to a flat, damages, and S.'s eviction from the flat.

6. On 18 September 2002 the Mirninskiy District Court of the Sakha (Yakutiya) Republic ("the District Court") refused to consider his action,

because there already had been a decision of 6 February 2001 taken by the District Court concerning the same dispute.

7. On 13 November 2002 the Supreme Court of the Sakha (Yakutiya) Republic overruled the refusal and remitted the case for a new examination, as the action included a new co-defendant, and, therefore, it could not be said that the dispute was among the same parties.

8. On 15 January 2003 the District Court ordered eviction of S. and her family from the flat and dismissed the claim against the Administration.

9. On 3 March 2003 the Supreme Court of the Sakha (Yakutiya) Republic quashed the judgment on appeal and returned the case for a fresh examination, as the lower court had failed to address issues related S.'s property rights.

10. On 29 July 2003 the District Court ordered an expert examination of the flat in order to determine its market value.

11. On 14 August 2003 the court proceedings resumed.

12. In the meantime, the applicant amended his claims and sought to obtain compensation for his belongings allegedly stolen in 1999, non-pecuniary damage, legal costs, travel expenses and reimbursement of the rent he had to pay after his eviction from the disputed flat back in 1999.

13. On 29 August 2003 the District Court examined the case, ordered the Administration to pay the applicant 800,000 Russian roubles (RUB) in respect of the flat's market value and dismissed the remainder of the claims. In particular, the claim for compensation for the allegedly stolen property was dismissed as unfounded.

14. On 20 October 2003 the judgment was upheld on appeal by the Supreme Court of Sakha (Yakutiya) and entered into force.

15. On 11 June 2004, upon the applicant's request, the bailiffs initiated the enforcement proceedings.

16. On 27 August 2004 the District Court granted the Administration's request for suspension of the enforcement of the judgment of 29 August 2003 until 15 January 2005 due to financial difficulties encountered by the debtor.

17. On 15 November 2004 the applicant's appeal against the above decision was dismissed.

18. On 18 March 2005 the monetary award in accordance with the judgment of 29 August 2003 was paid to the applicant.

19. On 29 September 2005, upon the applicant's extraordinary appeal, the Presidium of the Supreme Court of Sakha (Yakutiya) quashed the judgment of 29 August 2003 and the decision of 20 October 2003 and remitted the case for a fresh examination. The Presidium found that the courts had incorrectly applied the material law to various aspects of the case, and had failed to join the appropriate financial body as co-defendant.

20. It appears that the amounts paid to the applicant under the quashed judgment of 29 August 2003 have not been reclaimed.

21. On 15 November 2005 the District Court suspended the proceedings, due to B.'s illness and asked the applicant to clarify his claims.

22. On 21 December 2005 the applicant submitted the amended claims.

23. On 16 February 2006 the District Court joined, at the defendant's request, the Ministry of Finance as co-defendant in the proceedings and suspended the examination of the case on account of B.'s poor state of health.

24. On 14 February 2007 the case was assigned to a different judge of the District Court, for the sake of the court's impartiality.

25. On 21 March 2007 the District Court dismissed the applicant's action.

26. On 4 June 2007 the Supreme Court of Sakha (Yakutiya) upheld the judgment on appeal except for the parts concerning the eviction of S. and B., reimbursement of the rent, payments for utility services, a commission fee, and recovering of the cost of the apartment. The decision in those parts was remitted for a fresh examination due to failure by the lower court to assess certain evidence and misapplication of the material law.

27. On 27 August 2007 the District Court suspended the proceedings pending S.'s return from vacation.

28. On 26 October 2007 the court ordered the applicant to clarify his claims and scheduled a new hearing on 23 November 2007.

29. On 23 November 2007 the court issued a special writ ordering the bailiffs to obtain clarifications of the claims from the applicant.

30. It appears that at some point the applicant provided the required information.

31. On 30 April 2008 the District Court dismissed the action as unfounded. The court explained that the applicant had other remedies to use under the civil law in order to protect his property rights. In particular, he could claim that an equivalent apartment or a compensation be provided to him.

32. By the final judgment of 13 August 2008 the Supreme Court of Sakha (Yakutiya) upheld the lower court's findings on appeal.

B. Civil proceedings concerning the statutory interest for a delay in enforcement of the judgment of 29 August 2003

33. In the meantime, the applicant sued the Administration for statutory interest for the delay in enforcement of the judgment of 29 August 2003.

34. On 7 February 2007 the District Court discontinued the proceedings as the judgment of 29 August 2003 had been quashed and a new decision in the case had not yet been adopted.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF PROCEEDINGS

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

Article 6 § 1

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

36. The Government contested that argument. They submitted that on several occasions the parties had requested the proceedings to be suspended, that the applicant several times had amended his claims, and challenged the decisions adopted in the case. They argued that the case was complex as the courts had to examine its voluminous materials submitted by the parties. Thus, the applicant's behaviour and the complexity of the case determined the length of proceedings.

37. The applicant submitted in reply that the proceedings had never been suspended upon his request, and that he had complained about the dilatory proceedings to various authorities.

38. The Court observes that the proceedings concerned began on 27 August 2002 and ended on 20 October 2003 when the judgment of 29 August 2003 came into force. On 29 September 2005, following the extraordinary appeal, the proceedings re-commenced. The new examination ended on 13 August 2008 when the decision of 30 April 2008 was upheld on appeal. Thus, the period to be taken into account amounts to approximately four years and one month. During this time the case was considered at three levels of jurisdiction.

39. 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.

40. The Court reiterates 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).

41. The Court observes that the proceedings concerned a request for eviction, and a title to an apartment, and it is not convinced by the Government's argument that the proceedings were particularly complex.

42. As to the applicant's conduct, it has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see, for example, *Ignatyeva v. Russia*, no. 10277/05, § 38, 3 April 2008). There is nothing in the present case to indicate that the applicant's behaviour was unreasonable or led to any substantial delays in the examination of the case.

43. Turning to the conduct of the authorities, while the Court it does not detect any obvious procrastination on the part of the courts in scheduling the hearings and resolving the parties' motions, it takes cognisance of the fact that the civil case was remitted for a fresh examination on four occasions by either the appeal court or the supervisory review court for various breaches of law.

44. According to the Court's well-established jurisprudence, the multiple repetition of re-examination orders within the same set of proceedings may disclose a deficiency in the judicial system (see *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008). In *Svetlana Orlova* case the Court found that the right to have one's claim examined within a reasonable time would be devoid of all sense if domestic courts examined a case numerous times, by shifting it from one court to another, even if at the end the accumulated length of proceedings did not appear particularly excessive (see *Svetlana Orlova v. Russia*, no. 4487/04, § 47, 30 July 2009).

45. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

46. There has accordingly been a breach of Article 6 § 1 of the Convention on account of the length of proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION ON ACCOUNT OF DELAYED ENFORCEMENT

47. The applicant complained that the authorities had paid him the amount in accordance with the judgment of 29 August 2003 with an unreasonable delay. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. The relevant parts of 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."

48. The Government disagreed. They submitted that on 27 April 2004 the District Court postponed the enforcement of the judgment until 15 January 2005. Once the adjournment period expired, the amount of RUB 800,000 was transferred to the applicant's account on 18 March 2005, i.e. within approximately two months. The Government further argued that the applicant did not use the domestic remedies available to him under the national legislation.

49. The applicant maintained his complaint. He confirmed that the amount under the initial judgment was indeed paid to him on 18 March 2005. In addition, he submitted that he had challenged the decision of 27 April 2004 to postpone the enforcement of the judgment. He further submitted that since the judgment of 29 August 2003 had been subsequently quashed the defendant authority could have sought the execution of the judgment to be overturned.

A. Admissibility

50. As regards the Government's objection that the applicant had failed to use the domestic remedies available to him before the adoption of the pilot judgment *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009), the Court reiterates its previous finding that at the time when the applicant brought his application to the Court there was no effective remedy under Russian law capable of affording redress for prolonged non-enforcement of judicial decisions delivered against the State or its entities (see *Burdov (no. 2)*, cited above, § 117). As regards the domestic remedy introduced in response to the aforementioned pilot judgment (the Compensation Act, which entered into force on 4 May 2010), the Court reiterates its position that it would be unfair to request the applicants whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court to bring again their claims before domestic tribunals (see *Burdov (no. 2)*, cited above, § 144). In line with this principle, the Court decides to proceed with the examination of the present case (see, *mutatis mutandis*, *Utyuzhnikova v. Russia*, no. 25957/03, §§ 48-52, 7 October 2010; compare with *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, § 41, 23 September 2010) and, accordingly,

dismisses the Government's objection as regards the non-exhaustion of domestic remedies by the applicant.

51. 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

52. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III).

53. In the present case, the State avoided paying the judgment debt in the applicants' favour for approximately a year and five months, starting from 20 October 2003, when the judgment became binding, and until 18 March 2005, the date of its enforcement. According to the Court's case-law, this period is *prima facie* incompatible with the requirements of the Convention (see, among others, *Kozodoyev and Others v. Russia*, nos. 2701/04 and 4 others, § 11, 15 January 2009).

54. The Court is not convinced by the Government's argument that the enforcement of the judgment was postponed by the District Court for over a year. Noting, in particular, that the reason for the postponement was certain financial difficulties encountered by the debtor, the Court reiterates that under its case-law it is not open to a State to cite the lack of funds as an excuse for not honouring a court award. It is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet their obligation in this regard (see *Burdov (no. 2)*, cited above, § 70, with references therein).

55. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in cases raising issues similar to the ones in the present case (see *Aleksandrova v. Russia*, no. 28965/02, §§ 20-26, 6 December 2007; *Gizzatova v. Russia*, no. 5124/03, §§ 18-29, 13 January 2005; and *Yavorivskaya v. Russia*, no. 34687/02, §§ 24-29, 21 July 2005).

56. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

57. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention in the present case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. The applicant also complained under Article 13 of the Convention that there had been no effective remedy at his disposal in respect of the delayed enforcement of the judgment in his favour and the length of civil proceedings. Lastly, the applicant complained about certain alleged shortcomings in the civil proceedings, their unfairness, and about trespassing into his flat and theft of his belongings.

59. Having regard to all the material in its possession in so far as the complaints fall within the Court's competence, it finds that 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 must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant submitted the following claims for compensation in respect of pecuniary damage:

- 260,000 euros (EUR) (the cost of an equivalent flat in Moscow that the applicant had allegedly lost as a result of the proceedings);
- EUR 1,474.6 (the amount allegedly stolen from the applicant's apartment);
- EUR 75.7 (the cost of the belongings allegedly stolen from the applicant's apartment);
- EUR 48,661.87 (the expenses for accommodation in Moscow from 1998 until 2010);
- EUR 187.93 (the utility fees for an apartment in Mirnyy from June 1998 until February 1999).

He further claimed EUR 40,000 in respect of non-pecuniary damage.

62. The Government contested these claims as excessive and unsubstantiated.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects these claims. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the violation of his rights to

have his civil case examined within reasonable time and to have the binding decision in his favour enforced within the reasonable time. Ruling on an equitable basis, it awards him EUR 1,300 under that head.

B. Costs and expenses

64. The applicant also claimed EUR 177.92 for postal expenses incurred during the domestic proceedings and the proceedings before the Court, and copying.

65. The Government contested these claims as unsubstantiated. They argued that only 501.4 Russian roubles, the amount spent for posting letters to the Court and duly confirmed by the receipts, can be awarded to the applicant under this head.

66. 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 sum of EUR 100 in respect of costs and expenses, plus any tax that may be chargeable on this amount.

C. Default interest

67. 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 complaints concerning length of proceedings and delayed enforcement of the judgment in the applicant's favour admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of proceedings;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the delayed enforcement of the judgment in the applicant's favour;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 100 (one hundred 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 7 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President