THIRD SECTION

CASE OF ALIVERDIYEV v. RUSSIA

(Application no. 67394/17)

JUDGMENT

STRASBOURG

16 June 2020

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

In the case of Aliverdiyev v. Russia,

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

 Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having deliberated in private on 19 May 2020,

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

1. PROCEDURE

1.  The case originated in an application (no. 67394/17) 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 Dzhamidin Tagirovich Aliverdiyev (“the applicant”), on 29 August 2017.

2.  The Russian Government (“the Government”) were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

3.  On 9 January 2018 notice of the complaint concerning the applicant’s eviction was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4.  The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

1. THE FACTS
	1. THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1961 and lives in the Republic of Dagestan.

6.  Between 1991 and 2009 the applicant worked in the Prosecutor’s office of the Astrakhan region (“the prosecutor’s office”).

7.  On 8 July 2003 the Governor of the Astrakhan region decided that, in order to provide accommodation for prosecutors, the regional authorities should purchase such accommodation and transfer it to the regional prosecutor’s office for operational management as tied accommodation.

8.  On 14 July 2003 the regional authorities bought a two-room flat in Akhtubinsk, Astrakhan Region.

9.  According to the applicant, in July 2003 the prosecutor of Akhtubinsk allocated that flat to the applicant, as he was in need of housing.

10.  In December 2003 the Governor amended his decision of 8 July 2003 and ordered that the purchased accommodation should be transferred to the prosecutor’s office for complimentary usage for a period of five years and not for operational management as tied accommodation.

11.  On 22 January 2004 the regional authorities and the regional prosecutor’s office concluded an agreement concerning complimentary usage by the prosecutor’s office of regional property, including the flat provided to the applicant. The agreement was concluded for a period of five years and entered into force on the date of signature by the parties.

12.  In 2009 the applicant retired but continued living in the flat. The prosecutor’s office did not ask him to vacate the flat when he retired.

13.  In 2015 the regional authorities contacted the prosecutor’s office with the request that the 2004 agreement either be terminated or that an additional agreement be concluded in order to extend the 2004 agreement.

14.  In September 2015 the prosecutor’s office replied that the agreement had come to an end in 2009, and there had therefore been no need to terminate it or to sign any additional agreement.

15.  In March 2016 the regional authorities brought court proceedings seeking the eviction of the applicant and his family from the flat. They submitted that the flat in question had been the property of the Astrakhan region and had been transferred to the prosecutor’s office in 2004 for temporary use as tied accommodation for a period of five years. The agreement had come to an end on 22 January 2009. The applicant and his family had no legal grounds for occupying the flat and they therefore had to be evicted.

16.  The applicant lodged a counter-claim against the regional authorities, seeking acknowledgement that he had *de facto* been using the flat as a social tenant and the conclusion of a social tenancy agreement with him. He submitted the following arguments:

- in 2003 the prosecutor of Akhtubinsk had allocated the flat to him because he had been in need of housing;

- he had not been aware of the agreement of 22 January 2004 concluded between the prosecutor’s office and the regional authorities;

- the flat had been allocated to him for an indefinite period of time without any indication of the temporary nature of such allocation;

- he and his family had been living in that flat since 2003 and had been paying charges for it and had paid for its renovation;

- his eviction would be in breach of the Housing Code.

17.  The applicant also asked the court to dismiss the eviction claims as lodged out of time. In particular, the 2004 agreement had come to an end in January 2009 and the three-year time-limit for lodging the eviction claim had therefore expired in 2012.

18.  The regional authorities submitted that it was not until 2015 that the prosecutor’s office had informed them that the agreement had come to an end in 2009. The three-year time-limit had therefore started running only in 2015.

19.  On 1 June 2016 the Akhtubinskiy District Court (“the District Court”), in the Astrakhan region, held that the regional authorities had lodged their eviction claim in time and ordered the applicant and his family to be evicted. The District Court dismissed the applicant’s counter-claims. The District Court held, in particular, that the flat had been the property of the Astrakhan region and had been allocated to the applicant as tied accommodation for a five-year period provided for by the agreement of 22 January 2004. The applicant had retired from the prosecutor’s office, the five-year term had expired and therefore his right to occupy that flat had come to an end.

20.  In his appeal against the judgment of 1 June 2016 the applicant submitted that the court had not examined his arguments, had arbitrarily deprived him and his family of home and put him ‒ a retired person with a minor child ‒ on the street. In particular, the flat in question had not been officially registered as a tied accommodation and he had been *de facto* using it as a social tenant.

21.  On 28 September 2016 the Astrakhan Regional Court (“the Regional Court”) dismissed the applicant’s appeal. The Regional Court held, in particular, that between 2002 and 2009 the applicant had not been on the housing list and therefore he had not been in need of housing. The applicant had not provided any evidence to confirm that the prosecutor’s office had concluded a tenancy agreement with him in respect of the flat.

22.  On 27 December 2016 a judge of the Regional Court refused the applicant’s request for the case to be referred on appeal to the court of cassation.

23.  On 3 April 2017 a judge of the Supreme Court refused to refer the applicant’s cassation appeal to the Civil Chamber of the Supreme Court.

1. THE LAW
	1. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24.  The applicant complained under Article 8 of the Convention of a violation of his right to respect for his home as a result of his ordered eviction from his flat. Article 8 of the Convention reads as follows:

“1.  Everyone has the right to respect for his private and family life, his home and his correspondence.

2.  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.”

* + 1. Admissibility

25.  The Court notes that the applicant had already lived in the flat in question for more than ten years when his eviction was ordered. Therefore, that flat was his “home” for the purposes of Article 8 of the Convention.

26.  The Court notes that the application 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.

* + 1. Merits
			1. The Government

27.  The Government submitted that the court ruling of 1 June 2016 constituted an interference with the applicant’s right to respect for his home. However, that interference had been in accordance with the law, had pursued the legitimate aims stipulated in the second paragraph of Article 8 of the Convention, and had been “necessary in a democratic society”.

28.  The domestic courts had taken into account that the owner of the flat had been the Astrakhan region, who had transferred the flat to the prosecutor’s office for complimentary usage for a period of five years under the agreement concluded in 2004. The prosecutor’s office had provided the flat to the applicant as tied accommodation for the period of his service. The agreement had come to an end in 2009, the applicant had retired from the prosecutor’s office and, therefore, he had been under an obligation to vacate the flat. The applicant had not been in need of housing since he had not been on the housing list.

29.  In 2003, when the applicant had been provided with the disputed flat, he had been living together with his family in another flat. In 2006 his wife and children had acquired property rights to that flat by way of privatisation. The applicant decided not to take part in the privatisation. However, in accordance with domestic law he had kept the right to live in that flat.

* + - 1. The applicant

30.  The applicant submitted that his eviction had been unlawful and disproportionate. The prosecutor’s office had provided him with the flat because he had been in need of housing after his divorce. His former wife had stayed living with their children in the flat referred to by the Government. His employer had not informed him that the disputed flat had been tied accommodation provided for a limited period of time and had not asked him to vacate it after his retirement in 2009. He had not been aware of the agreement of 22 January 2004 prior to the eviction proceedings. He had no other housing at his disposal.

* + - 1. The Court’s assessment

31.  The Court considers that the eviction order amounted to an interference with the applicant’s right to respect for his home, as guaranteed by Article 8 of the Convention. The Court accepts that the interference had a legal basis in domestic law and pursued the legitimate aim of protecting the rights of the Astrakhan region, the owner of the flat. The central question in this case is, therefore, whether the interference was proportionate to the aim pursued and thus “necessary in a democratic society”.

32.  The Court set out the relevant principles in assessing the necessity of an interference with the right to “home” in the case of *Connors v. the United Kingdom*, (no. 66746/01, §§ 81-84, 27 May 2004), which concerned the eviction of a Roma family from a local-authority caravan site. Subsequently, in *McCann v. the United Kingdom* (no. 19009/04, § 50, ECHR 2008), the Court held that the reasoning in the case of *Connors* was not confined to cases involving the eviction of Roma or to cases where the applicant had sought to challenge the law itself (rather than its application in his particular case), and furthermore held as follows:

“The loss of one’s home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding the fact that, under domestic law, his right of occupation has come to an end.”

33.  In the present case the applicant raised before the domestic courts the issue of his right to respect for his home and submitted arguments questioning the proportionality of his eviction (see paragraphs 16 and 20 above).

34.  The Government claimed that the interference with the applicant’s right to respect for his home had been proportionate and “necessary in a democratic society” in order to protect the rights of the Astrakhan region, the owner of the flat, and also because the applicant had had an alternative place in which to live. While the availability of alternative accommodation might be relevant for the assessment of the proportionality of an eviction, the Court observes that those matters were not examined by the domestic courts in the present case. The Court further observes that the domestic courts did not weigh the interests of the Astrakhan region against the applicant’s right to respect for his home. Once they had found that the applicant’s right to reside in the contested flat had come to an end following the termination of the agreement concluded between his former employer and the regional authorities, they gave that aspect paramount importance, without seeking to weigh it against the applicant’s arguments. The national courts thus failed to balance the competing rights and therefore to determine the proportionality of the interference with the applicant’s right to respect for his home.

35.  The Court has already found violations of Article 8 of the Convention in other cases where the applicants did not have the benefit, in the context of eviction proceedings, of an examination of the proportionality of the interference in question (see, among other authorities, *McCann*, cited above, §§ 50-55; *Ćosić v. Croatia*, no. 28261/06, §§ 20-23, 15 January 2009; *Kryvitska and Kryvitskyy v. Ukraine*, no. 30856/03, §§ 50‑52, 2 December 2010; and *Yevgeniy Zakharov v. Russia*, no. 66610/10, §§ 35-37, 14 March 2017). It finds no reason to arrive at a different conclusion in the present case. The Court therefore concludes that there has been a violation of Article 8 of the Convention.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36.  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.”

* + 1. Damage

37.  The applicant claimed 3,000.000 Russian roubles (RUB) in respect of pecuniary damage which corresponded to the price of a two-room flat. Alternatively he claimed to return him the disputed flat. The applicant further claimed 9,000 euros (EUR) in respect of non-pecuniary damage.

38.  The Government submitted that the applicant’s claim for pecuniary damage had been unsubstantiated since the flat in question had not been in his property. The Government submitted that the applicant’s claims for non‑pecuniary damage had been excessive and had not corresponded to the Court’s case-law.

39.  The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 7,800 in respect of non‑pecuniary damage.

* + 1. Costs and expenses

40.  The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

* + 1. Default interest

41.  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.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds*
	1. that the respondent State is to pay the applicant, within three months, EUR 7,800 (seven thousand eight hundred euros),plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
	2. 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;
5. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 16 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Alena Poláčková
 Deputy Registrar President