



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

FIRST SECTION

CASE OF BUTSEV v. RUSSIA

(Application no. 1719/02)

JUDGMENT

STRASBOURG

22 September 2005

FINAL

15/02/2006

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 Butsev v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 1719/02) 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 Viktor Grigoryevich Butsev (“the applicant”), on 7 March 2001.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 4 December 2003 the Court decided to communicate the complaints concerning alleged non-execution of judgment of 21 May 1999 to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in the town of Shakhty, the Rostov Region.

5. In 1987 the applicant took part in the emergency operations at the site of the Chernobyl nuclear plant disaster. As a result the applicant suffered from extensive exposure to radioactive emissions. In 1996 the applicant underwent medical examinations which established the link between the

applicant's poor health and his involvement in the Chernobyl events. The applicant was awarded compensation, to be paid monthly.

6. On an unspecified date the applicant sued a local pension authority (*Управление социальной защиты г. Шахты*, "the authority") for allegedly erroneous calculation of his monthly compensation and demanded arrears and damages.

7. By judgment of 21 May 1999 the Shakhy Town Court of the Rostov Region granted the applicant's claim and ordered the authority to recalculate his monthly compensation for the period between 14 May 1996 and 31 May 1999, to pay the applicant the arrears of RUR 134,442.46 in this respect and monthly compensation of RUR 4,547.75 with further indexation until any subsequent changes of legislation.

8. The judgment of 21 May 1999 was not appealed against by the parties and came into force ten days later, on 31 May 1999.

9. Some time thereafter the authority applied to the Town Court requesting to re-open the applicant's case by reference to newly discovered evidence, such as his pay statements for twelve months preceding the disabling incident.

10. On 10 July 2000 the Town Court granted the application and re-opened the proceedings.

11. It appears that the defendant authority and the Town Court failed properly to notify the applicant of the re-opening proceedings and the decision of 10 July 2000.

12. The applicant challenged the decision of 10 July 2000 by way of supervisory review by reference to this failure. His appeal also stated that the piece of evidence referred to by the authority could not be considered as newly discovered since it had been fully available to the Town Court during the first instance proceedings.

13. On 9 November 2000 the Rostov Regional Court acting as a supervisory review instance set aside the decision of 10 July 2000. The court upheld the applicant's arguments in full and by the same decision dismissed the authority's arguments as unfounded.

14. On 29 January 2001 the writ of execution in respect of the judgment of 21 May 1999 reached the bailiffs and on 31 January 2001 they opened the enforcement proceedings in this connection.

15. According to the Government, the authority complied with the judgment by five bank transfers, dated 29 March, 24 April, 30 May, 27 and 28 June 2002 respectively. As of 1 July 2002 the applicant has been in receipt of the monthly compensation of RUR 7,627.49, with no debts outstanding.

16. According to the applicant, to date the judgment of 21 May 1999 has not been enforced in part relating to indexation of his monthly compensation until any subsequent changes in the legislation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

17. The applicant complained that non-enforcement of the judgment of 21 May 1999 violated his “right to a court” under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions as guaranteed in Article 1 of Protocol No. 1 to the Convention. These Articles in so far as relevant provide 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.”

A. Admissibility

18. The Government submitted that the judgment in question had been enforced. They asserted that the applicant was no longer a victim of the violations alleged as he had been afforded redress at the national level and that his application should be declared inadmissible.

19. The applicant disagreed with the Government’s arguments and maintained his complaints. As regards the loss of the victim status, the applicant submitted that the judgment of 21 May 1999 has remained non-enforced in part relating to indexation of his monthly compensation and that, in any event, there was a substantial delay in the enforcement proceedings.

20. The Court, firstly, reiterates that “a decision or measure favourable to the 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 *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

21. In the instant case the Court notes at the outset that the parties disagreed as to whether the judgment of 21 May 1999 had been fully enforced. In particular, the applicant alleged that in the part relating to indexation the judgment of 21 May 1999 remained non-enforced. The Court considers however that there is nothing in the case-file or in the parties' submissions to support this allegation. It is undisputed between the parties that as of 1 July 2002 the applicant has been in receipt of the monthly compensation of a substantially higher amount than the one originally determined in the judgment of 21 May 1999 which, in the absence of any evidence to the contrary, conclusively indicates that the compensation was index-linked. Insofar as the applicant alleges that the indexation was insufficient, it is clear from the operative part of the judgment of 21 May 1999 that the District Court ordered the authority to index-link the applicant's monthly compensation but did not specify the manner of such indexation. It was open to the applicant to challenge this ruling on appeal or subsequently to apply to the District Court for interpretation of the relevant part of the judgment but he did not avail himself of these opportunities. The Court finds no indication that the manner in which the authority index-linked the applicant's monthly compensation was arbitrary or unreasonable and therefore concludes that the judgment of 21 May 1999 was enforced in full.

22. However, the Court observes that the mere fact that the authorities complied with the judgment after a substantial delay cannot be viewed in this case as automatically depriving the applicant of his victim status under the Convention. Neither the Government nor other domestic authorities have acknowledged that the applicant's Convention rights were unjustifiably restricted by the non-enforcement of the judgments of 21 May 1999. Furthermore, no redress has been offered to the applicant for the delay, as required by the Court's case-law (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005). Accordingly, the Court rejects the Government's objection as to the loss of victim status.

23. Furthermore, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

24. The Government submitted that in view of the fact that the judgment in question had been enforced there has been no violation of the applicant's Convention rights.

25. The applicant maintained his complaints.

1. Article 6 § 1 of the Convention

26. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III, and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

27. The Court further observes that a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov v. Russia*, cited above, § 35).

28. Turning to the instant case, the Court notes that the execution of the judgment of 21 May 1999 was delayed in total for three years and twenty eight days. No justification was advanced by the Government for this delay. By failing for such substantial periods of time to take the necessary measures to comply with the final judicial decision in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of their useful effect.

29. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1 to the Convention

30. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). The judgment of 21 May 1999 provided the applicant with an enforceable claim and not simply a general right to receive support from the State. The judgment had become final as no ordinary appeal was made against it, and enforcement proceedings had been instituted. It follows that the impossibility for the applicant to have the judgment enforced for a substantial period of time constituted an interference with his right to peaceful enjoyment of his possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

31. In the absence of any justification for such an interference (see paragraph 28 above), the Court concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant requested the Court to index-link his monthly compensation in line with the minimum monthly wage and claimed RUR 24,508.88 to be paid monthly and the arrears of RUR 628,575.75 for the period between 1 January 1999 and 31 October 2004 in respect of pecuniary and non-pecuniary damage.

34. The Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction. They also contended that in any event the applicant’s claims were excessive and if the Court decided to make an award it should not exceed the amount awarded by the Court in the *Burdov v. Russia* case.

35. The Court does not discern any causal link between the violations found and the amounts of the pecuniary damage alleged. Accordingly, it rejects this part of the claim. However, the Court considers that the applicant must have suffered distress and frustration resulting from the State authorities’ failure to enforce judgments in his favour, which cannot

sufficiently be compensated by the finding of a violation. However, the amount claimed appears excessive. The Court takes into account the award it made in the case of *Burdov v. Russia* (cited above, § 47), the nature of the award whose non-enforcement was at issue in the present case, the delay before the enforcement proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The applicant did not claim reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

37. 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 Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred euros) to be converted into Russian roubles at a rate applicable at the date of settlement in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount;
 - (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 22 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President