



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

THIRD SECTION

CASE OF BAZHENOV v. RUSSIA

(Application no. 37930/02)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

20/01/2006

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 Bazhenov v. Russia,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr C. BÎRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. KOVLER,

Ms R. JAEGER,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 37930/02) 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 Sergey Serafimovich Bazhenov ("the applicant"), on 23 September 2002.

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 14 January 2004 the Court decided to communicate the complaint about lengthy non-enforcement of the judgments dated 19 June 2000, 14 March 2001 and 28 May 2002 to the Government. Under Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in the town of Tambov.

5. In the 1980s he took part in a rescue operation on the site of the Chernobyl nuclear disaster. As of late 1998 the applicant has been in receipt of social benefits in this connection.

1. Court proceedings for unpaid benefits

6. On an unspecified date the applicant sued the Tambov Pension Authority (*Управление социальной защиты населения мэрии города Тамбова*, “the authority”) seeking to recover the amount of allegedly unpaid social benefits.

7. By judgment of 19 June 2000 the Oktyabrskiy District Court of Tambov (“the District Court”) examined and granted the applicant’s action and ordered the authority to pay him the arrears of RUR 10,890.73.

8. The judgment was upheld on appeal by the Tambov Regional Court (“the Regional Court”) on 4 September 2000. It came into force on the same date. Immediately thereafter the applicant obtained an execution writ and instituted enforcement proceedings.

9. The amount due to the applicant pursuant to the judgment of 19 June 2000 and decision of 4 September 2000 was not paid to him until February 2004, which is three years and seven months after the entry of the judgment into force.

2. Court proceedings in connection with delayed enforcement of the judgment of 19 June 2000

10. In 2001 the applicant brought another action against the authority, claiming damages for non-enforcement of the judgment of 19 June 2000.

11. On 14 March 2001 the District Court examined and granted the applicant’s claims. It ordered the authority to pay a half percent penalty fee for each day of the delay between September 2000 and March 2001, totalling at RUR 36,383.07. This judgment was not appealed against by the parties and came into force on 26 March 2001.

12. Thereafter the applicant submitted an execution writ in respect of the judgment of 14 March 2001 to the bailiffs. By letter of 15 December 2002 the bailiffs returned the documents and invited him to submit them to a local branch of the Federal Treasury.

13. Upon the authority’s request, on 19 June 2003 the District Court corrected an arithmetical mistake in the judgment of 14 March 2001 by replacing the amount of award of RUR 36,383.07 with RUR 25,492.32.

14. The judgment of 14 March 2001, as corrected by the decision of 19 June 2003, was enforced in full in February 2004, which is two years and eleven months later after its entry into force.

3. Court proceedings in connection with delayed enforcement of the judgment of 14 March 2001

15. On 28 May 2002 the District Court examined and granted the applicant’s another claim for penalty, this time in connection with alleged non-enforcement of the judgment of 14 March 2001. The court ordered the

authority to pay the applicant a half percent penalty fee for each day of the delay between April 2001 and May 2002, totalling at RUR 20,858.98.

16. The judgment of 28 May 2002 was not appealed against by the parties and came into force on 13 June 2002.

17. By letter of 10 December 2002 the authority informed the applicant of receipt in June 2002 of an execution writ in respect of the judgment of 28 May 2002. The authority refused to pay the money due as the federal budget had allocated funds only as regards court decisions which had come into force prior to 1 January 2002. By the same letter the authority returned the writ and supporting documents to the applicant.

18. Thereafter the applicant twice submitted the writ to the bailiffs' service which, by letter of 18 February and 4 March 2003, returned the documents and informed him that the documents ought to be submitted directly to the local branch of the Federal Treasury.

19. On an unspecified date the authority brought an application seeking supervisory review of the judgment of 28 May 2002. A judge of the Regional Court on 17 June 2003 examined the application and decided to forward it for examination on the merits to the Presidium of the Regional Court.

20. By letter of 17 June 2003 the Regional Court notified the applicant of the supervisory review hearing of 26 June 2003.

21. On 26 June 2003 Regional Court quashed the judgment of 28 May 2002 by way of supervisory review and remitted the case for a fresh examination at the first instance. It appears that the applicant was absent from the hearing.

22. By letter of 30 June 2003 the Regional Court informed the applicant of the outcome of the supervisory review hearing of 26 June 2003.

23. According to the Government, on 16 July 2003 the first instance court discontinued the proceedings in the case for the applicant's failure to appear.

4. Second set of court proceedings in connection with delayed enforcement of the judgment of 19 June 2000

24. By default judgment of 3 July 2003 which came into force on 14 July 2003 the District Court ordered the authority to compensate the applicant for inflation losses in connection with the delays in enforcement of the judgment of 19 June 2000. The award of RUR 5,892.03 was to cover the period between September 2000 and June 2003.

25. It was paid to the applicant in full six months later, in February 2004.

5. Second set of court proceedings in connection with delayed enforcement of the judgment of 14 March 2001

26. On 12 February 2004 the applicant brought another action against the authority, claiming inflation compensation for the delay between 1 April 2001 and 31 December 2003 in enforcement of the judgment of 14 March 2001.

27. By decision of 26 February 2004 the District Court granted his claims and awarded the applicant RUR 10,944.36 as a compensation for the inflation losses sustained by the applicant as a result of the said delay.

28. This decision came into force on 9 March 2004. It is not clear from the case-file whether this judgment has been enforced.

II. RELEVANT DOMESTIC LAW

29. A special law adopted in 1995 entitles the participants of the liquidation of the consequences of the Chernobyl nuclear accident to additional social benefits, including monthly payments.

30. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that a coercive action will follow, should the defendant fail to comply with the time-limit.

31. Under Section 13 of the Law, the enforcement proceedings should be completed within two months upon receipt of the writ of enforcement by the bailiff.

32. Under special rules governing enforcement of execution writs against the recipients of allocations from the federal budget, adopted by the Federal Government on 22 February 2001 (Decree No. 143, as in force at the relevant time), a creditor is to apply to a relevant branch of the Federal Treasury holding debtor's accounts (Sections 1 to 4).

33. Within the next five days the branch examines the application and notifies the debtor of the writ, compelling the latter to abide by the respective court decisions (Sections 7 to 12). In case of the debtor's failure to comply within two months, the branch may temporarily freeze the debtor's accounts (see Section 13).

THE LAW

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

34. The applicant complained that non-enforcement of the judgments of 19 June 2000, 14 March 2001 and 28 May 2002 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. 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

35. The Government submitted that the first two judgments in question had been enforced while the third judgment had been quashed. 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. Furthermore, the Government informed the Court of the applicant’s refusal to accept the settlement of the case on the terms proposed by the Government. By reference to this refusal and the admissibility decision in the case of *Aleksentseva and Others v. Russia* ((dec.), no. 75025/01 *et seq.*, 4 September 2003) the Government argued that the applicant was no longer a victim and abused his right of individual petition and therefore invited the Court to declare the application inadmissible.

36. The applicant disagreed with the Government’s arguments and maintained his complaints.

37. As regards the argument about the alleged loss of the victim status by the applicant the Court 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).

38. On the facts, the Court observes that the mere fact that the authorities complied with the first two judgments 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 these two judgments and no redress has been offered to the applicant for the delays, as required by the Court’s case-law (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005). As regards the quashing of the third judgment, dated 28 May 2002, by way of supervisory review, this measure was clearly unfavourable to the applicant and it thus did not deprive him of the victim status in respect of the problem of the delayed enforcement.

Accordingly, the Court rejects the Government’s objection as to the loss of victim status.

39. As regards the Government’s remaining arguments, the Court observes the parties’ mere disagreement on the terms of a friendly settlement of the case is not the ground for declaring the respective grievances inadmissible. Whilst under certain circumstances an application may indeed be struck out under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003-...), this procedure is not, as such, intended to circumvent the applicant’s opposition to a friendly settlement.

40. Furthermore, the Court observes that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court.

41. On the facts, the Court observes that the Government failed to submit with the Court any formal statement capable of falling into the latter

category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Aleksentseva and Others* cited above and *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

42. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

43. The Government submitted that in view of the fact that the first two judgments in question had been enforced while the third judgment had been quashed there has been no violation of the applicant's Convention rights.

44. The applicant maintained his complaints.

1. Article 6 § 1 of the Convention

45. 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).

46. 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).

47. Turning to the instant case, the Court notes that the judgments dated 19 June 2000, 14 March 2001 and 28 May 2002 remained without

enforcement for the respective periods of three years and seven months, two years and eleven months and one year and one month. No justification was advanced by the Government for these delays. By failing for such substantial periods of time to take the necessary measures to comply with the final judicial decisions in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of their useful effect.

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

2. Article 1 of Protocol No. 1

49. 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 judgments of 19 June 2000, 14 March 2001 and 28 May 2002 provided the applicant with an enforceable claim and not simply a general right to receive support from the State. The judgments had become final as no ordinary appeal was made against them, and enforcement proceedings had been instituted. It follows that the impossibility for the applicant to have either decision 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.

50. In the absence of any justification for such an interference (see paragraph 49 above), the Court concludes that there has been a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant also complained about the supervisory review proceedings of 26 June 2003 as a result of which the judgment of 28 May 2002 had been quashed and the case was remitted for a fresh examination at the first instance.

52. At the outset the Court notes that according to the documents at its disposal the applicant first learned about the outcome of supervisory review proceedings in his case from the letter of the registry of the Regional Court dated 30 June 2003. The Court next observes that the complaint about the supervisory review proceedings in his case was originally raised by the applicant in his letter to the Court dated 20 April 2004, which is more than nine months later. As there is nothing in the case-file or in the applicant’s submissions to suggest that the dispatching of the letter of 30 June 2003 took unusually long or that there existed any other exceptional circumstance preventing the applicant from complying with the six-months time-limit set

out in Article 35 § 1 of the Convention, it follows that the complaint was introduced out of time.

53. It must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

56. The Government submitted that the applicant's claims were excessive and that no award should be made as the judgments in the applicant's favour had in any event been enforced.

57. 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 accepts that the applicant suffered some distress as a result of the violations at issue and therefore awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

58. The applicant did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

C. Default interest

59. 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 complaint about lengthy non-enforcement of the judgments dated 19 June 2000, 14 March 2001 and 28 May 2002 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *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 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President