



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

FIRST SECTION

CASE OF SHILOV AND BAYKOVA v. RUSSIA

(Application no. 703/02)

JUDGMENT

STRASBOURG

29 June 2006

FINAL

29/09/2006

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 Shilov and Baykova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 8 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 703/02) 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 Russian nationals, Mr Aleksandr Aleksandrovich Shilov and Mrs Lidiya Ivanovna Baykova (“the applicants”), on 11 September 2001.

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

3. On 19 November 2003 the Court decided to communicate the application 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1948 and 1938 respectively and live in the town of Yaroslavl.

1. The dispute with the Ministry of the Interior

5. The applicants are co-owners of a house situated near a local police and fire station.

6. They sued the Ministry of the Interior (“the Ministry”, *Министерство внутренних дел РФ*) for damages and new housing, alleging that the building and maintenance works which had been carried out by the station seriously damaged a local drainage system and lead to systematic seasonal flooding of their house.

2. Court proceedings

7. By judgment of 5 December 2000 the Krasnoperekopskiy District Court of the town of Yaroslavl partly granted their claims and ordered the Ministry to provide the families of the first and second applicant with housing measuring at least 30.6 and 35.56 square metres respectively and consisting of at least two rooms.

8. The court also ordered the Ministry to pay the applicants 3,353 Russian roubles (“RUR”) and RUR 26,165 respectively in damages.

9. The judgment of 5 December 2000 was upheld by the Yaroslavl Regional Court on appeal on 12 March 2001.

3. Enforcement proceedings

10. On 11 July 2001 the applicants instituted enforcement proceedings in respect of the judgment of 5 December 2000, as upheld on 12 March 2001.

11. By money transfers of 18 July 2001 and 3 September 2002 the second applicant received RUR 431.60 and RUR 25,733.40.

12. By money transfer of 4 September 2002 the first applicant received RUR 3,353.

13. Insofar as the judgment ordered the Ministry to grant the applicants free housing, on 28 August 2002 the housing committee of the regional branch of the Ministry of Interior, a body in charge of distribution of flats in residences built at the expense of the Ministry, decided to provide the applicants with two flats, measuring 55.6 and 53.1 square metres respectively.

14. On 3 October 2002, once the construction of the block of flats had been finalised, both applicants received permission to move in.

II. RELEVANT DOMESTIC LAW

15. 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.

16. 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.

THE LAW

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

17. The applicants complained about the Ministry's failure to enforce the judgment of 5 December 2000, as upheld on appeal on 12 March 2001.

18. They referred to Article 6 of the Convention and Article 1 of Protocol No. 1 which, insofar as relevant, provided as follows:

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. 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.”

19. The Government submitted that the court judgment referred to by the applicants had been enforced, that at the time of institution of the enforcement proceedings the Yaroslavl Regional Branch of the Ministry of the Interior had not had any housing of its own and that the judgment had been enforced in this respect once the appropriate flats had been built. The Government contended that the delay of execution had not been excessive.

20. The applicants maintained their complaints.

A. Admissibility

21. Insofar as the applicants' award related to the grant of housing, the Court observes, and it is not contested by the parties, that the court decision was executed in full.

22. The Court further recalls that a delay in the execution of a judgment may be justified in particular circumstances (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III and *Timofeyev v. Russia*, no. 58263/00, § 37, 23 October 2003).

23. On the facts, the overall length of enforcement in respect of the award of the flat was of a year and seven months, which at first sight appears excessive (see *Burdov* and *Timofeyev* cited above, by contrast to *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004 and *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005).

24. However, the finding of violation of the Convention in the above mentioned cases was due to delayed enforcement of monetary awards and not, as in the present case, the grant of housing. In this respect, the Court accepts the Government's argument that the Ministry of the Interior experienced objective difficulties with enforcement of court awards insofar as they related to the grant of housing as at the relevant time the Ministry had not owned any readily available residential premises.

25. In view of the above and also having regard to the fact that the applicants could move in immediately after the flats became available, the Court finds that this part of the judgment was enforced within a "reasonable time" and that there was no interference with the applicants' property rights in this respect. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

26. The Court notes that the remaining complaint about the enforcement of court award relating to the payment of money 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

27. The Court first notes that in respect of the first applicant the judgment of 5 December 2000, as upheld on 12 March 2001, in the part relating to the award of money, remained without enforcement from the latter date until 4 September 2002, i. e. for a period of approximately one year and six months. The enforcement of the monetary award granted by the same judgment in respect of the second applicant was delayed in its major part for approximately the same period.

28. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many cases raising issues similar to the ones in the present case (see, among other authorities, *Burdov*, cited above, and, more recently, *Petrushko*, cited above, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

29. Having examined the material submitted to it, the Court notes that the Government did 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 finds that by failing for such substantial periods to comply with the enforceable judgment in the applicants' favour the domestic authorities prevented them from receiving the money which they were entitled to receive under final and binding judgments.

30. There has accordingly been a violation of Articles 6 § 1 of the Convention and 1 of Protocol No. 1 in respect of both applicants.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicants also complained that the court proceedings were unfair, that the courts erroneously applied domestic law and that the awards were insufficient. In respect of these complaints, the Court recalls that, in principle, it is not called upon to examine the alleged errors of law and fact committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected (see, e.g., *Daktaras v. Lithuania* (dec.), no. 42095/98, 11.01.2000).

32. In the proceedings at issue the domestic courts at two levels of jurisdiction carefully examined the material in their possession and reached reasoned conclusions as to the merits of the applicants' claim. Throughout the proceedings the applicants were fully able to state their case and contest the evidence that they considered false.

33. The Court has not found any evidence which in these circumstances would lead to the conclusion that these aspects disclose any appearance of a violation of the provisions of the Convention.

34. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Accordingly, it must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. Each of two applicants claimed a new flat in respect of pecuniary damage and 1,000 US dollars in respect of non-pecuniary damage.

37. The Government regarded these claims as excessive and groundless.

38. 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 applicants suffered some distress as a result of the violations at issue and therefore awards each applicant EUR 300 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

40. 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 concerning the enforcement of court judgment of 5 December 2000, as upheld on 12 March 2001, in the part relating to the payment of money admissible and the remainder of the application inadmissible;
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 each of the two applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 300 (three hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement, 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President