



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

FIRST SECTION

CASE OF MAKAROV v. RUSSIA

(Application no. 21074/03)

JUDGMENT

STRASBOURG

25 January 2007

FINAL

25/04/2007

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 Makarov 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 4 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 21074/03) 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, Nikolay Fedorovich Makarov, (“the applicant”), on 4 June 2003.

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 24 October 2005 the Court decided to give notice of 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Tambov.

5. He was engaged in emergency operations at the site of the Chernobyl nuclear plant disaster. As a consequence, he was entitled to certain social benefits.

6. In 1998 the administration of Tambov placed the applicant on a special “waiting list” for getting free accommodation.

7. As the town administration did not provide him with a flat within three months after placing him on a waiting list, the applicant brought a court action against the administration.

8. By judgment of 2 March 1999 the Leninskiy District Court of Tambov ordered that:

“...the Mayor of Tambov should allocate to the Administration of the Leninskiy District of Tambov well equipped dwelling premises having a living surface of no less than 27 square metres and comprising additional dwelling premises in the form of a separate room for the further allocation to Mr Makarov.

The head of the administration of the Leninskiy District of Tambov should provide Mr Makarov, whose family comprises three members, a well equipped flat having a living surface of no less than 27 square metres and comprising additional dwelling premises in the form of a separate room in the boundaries of Tambov”.

9. No appeal was brought against the judgment and it entered into force on 13 March 1999.

10. Enforcement proceedings were initiated by the bailiffs' service of the Leninskiy District of Tambov. However, the judgment could not be enforced because the town administration possessed no available housing or financial resources to purchase a flat.

11. On 12 March 2001, 31 March and 30 October 2003 the bailiffs' service fined the Mayor of Tambov for the failure to provide the applicant with accommodation. Those decisions were quashed by the Leninskiy District Court, upon the mayor's appeal. The District Court held that the Mayor of Tambov could not enforce the judgment due to the lack of available accommodation.

12. Following those decisions the bailiff returned the writ of execution to the applicant.

13. On 22 January 2004 the writ of execution was again forwarded to the bailiffs' service and new enforcement proceedings were instituted.

14. In December 2004 the town administration unsuccessfully applied to a court seeking to change the method of the enforcement of the judgment of 2 March 1999.

15. On 24 January 2006 the bailiff fined the town administration for the failure to provide the applicant with a flat. The Leninskiy District Court of Tambov upheld the decision and confirmed that the town administration had taken no steps to enforce the judgment.

16. The judgment of 2 March 1999 remains unenforced to date.

THE LAW

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

17. The applicant complained that the judgment of 2 March 1999 has not been enforced. The Court considers that these complaints fall to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). The relevant parts of these provisions 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.”

A. Admissibility

18. The Court notes that the application 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

19. The Government acknowledged that the judgment of 2 March 1999 had not been enforced. They further conceded that the applicant's rights set out in Article 6 of the Convention and Article 1 of Protocol No. 1 had been violated as a result of the non-enforcement of the final judgment.

20. The applicant maintained his claims.

21. The Court observes that on 2 March 1999 the applicant obtained a binding and enforceable judgment, by which he and his family members

were to be granted a flat. The judgment has remained without enforcement to date, i.e. for more than seven years since it entered into force. No justification was advanced by the Government when acknowledged a violation of the Convention.

22. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues to the ones in the present case (see *Malinovskiy v. Russia*, no. 41302/02, ECHR 2005-..., *Mikryukov v. Russia*, no. 7363/04, 8 December 2005).

23. Having examined the material submitted to it, the Court sees no reason for reaching a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving a flat he had reasonably expected to receive.

24. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. As regards pecuniary damage, the applicant considered that the Russian authorities were under obligation to enforce the judgment. He also claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government submitted that no compensation should be awarded in respect of pecuniary damage since the applicant was still entitled to receive a flat in the domestic enforcement proceedings. As regards non-pecuniary damage, the Government considered that the applicant's claim was excessive and unreasonable. They believed that the award should not exceed the amount awarded in the *Malinovskiy* case (cited above, § 22).

28. The Court notes that the State's outstanding obligation to enforce the judgment at issue is undisputed. Accordingly, the applicant is still entitled to receive a flat in the domestic proceedings. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position in which he would have been had the requirements of Article 6 not been disregarded (see *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005, with further

references). The Court finds that in the present case this principle applies as well, having regard to the violation found. It therefore considers that the Government should secure, by appropriate means, the enforcement of the award made by the domestic court.

29. The Court considers that the applicant must have suffered certain distress and frustration resulting from the State's authorities' failure to enforce a judgment in his favour. However, the amount claimed appears excessive. The Court takes into account the award made by the Court in the *Burdov* case (cited above, § 17), the nature of the award at stake in the present case, namely a benefit linked to the applicant's disability as a Chernobyl victim, length of the enforcement proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicant did not claim reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court considers that there is no call to award him any sum on this account.

C. Default interest

31. 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 § 1 of the Convention and Article 1 of Protocol No.1;
3. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, is to secure, by appropriate means, the enforcement of the award made by the domestic court, and, in addition, to pay the applicant EUR 3,900 (three thousand and nine hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the

rate applicable at the date of settlement, plus any tax that may be chargeable on that 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 25 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President