



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

FIRST SECTION

CASE OF BAYGAYEV v. RUSSIA

(Application no. 36398/04)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

05/10/2007

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 Baygayev 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 N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 36398/04) 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 Sharani Shamayevich Baygayev (“the applicant”), on 20 September 2004.

2. The applicant was represented by Mr V. Postnikov, a lawyer practising in Tyumen. 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 9 May 2006 the Court decided to communicate the complaint concerning the non-enforcement of a final judgment 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 1939 and lives in Tyumen, the Tyumen Region. He is of Chechen origin.

5. In 1993 he bought a two-room flat measuring 44.4 square metres in Groznyy, the capital of the Chechen Republic of the Russian Federation. As a result of a military operation in Chechnya the applicant's housing was destroyed.

6. On 4 July 2003 the Russian Government adopted a Decree laying down the procedure for payment of compensation to citizens who had lost their housing or property situated on the territory of the Chechen Republic.

7. The Decree established a fixed compensation in the amount of 300,000 Russian roubles (RUR) for any destroyed housing.

8. On 4 November 2003 the Tsentralnyy District Court of Tyumen granted the applicant's claim against the Ministry of Finance of the Russian Federation and awarded him RUR 300,000 for the loss of housing. The judgment was not appealed against and entered into force on 20 November 2003.

9. On 27 November 2003 the Tsentralnyy District Court of Tyumen issued a writ of execution.

10. On an unspecified date the applicant and his representative requested the authorities to initiate criminal proceedings against the officials of the Ministry of Finance for the failure to enforce the judgment of 4 November 2003.

11. In 2005, following the request by the Department of Investigation and Administrative Practice of the Federal Bailiffs' service, the applicant and his representative went to Moscow and submitted written explanations as regards their complaints against the officials of the Ministry of Finance.

12. On 7 December 2005 the judgment of 4 November 2003 was enforced in full.

THE LAW

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

13. The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgment of 4 November 2003. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These Articles, in so far as relevant, 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

14. The Court notes that this 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

15. The Government acknowledged that the judgment of 4 November 2003 was not enforced in good time. They further conceded that the applicant's rights set out in Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention were violated as a result of the delayed enforcement of the final judgment.

16. The applicant maintained his claims.

17. The Court observes that on 4 November 2003 the applicant obtained a judgment by which the Ministry of Finance was to pay him a substantial amount of money. The judgment acquired legal force on 20 November 2003. It was enforced in full on 7 December 2005. Thus, it has remained unenforced for two years and eighteen days. No justification was advanced by the Government who acknowledged a violation of the Convention.

18. 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, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; *Makarov v. Russia*, no. 21074/03, 25 January 2007; and *Ponomarenko v. Russia*, no. 14656/03, 15 February 2007).

19. 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 a long period 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 the money he had reasonably expected to receive.

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

21. The applicant complained under Article 14 about discrimination against him. He alleged that the judgment in his favour had not been enforced in good time because he was of Chechen origin.

22. The Court considers that the facts as submitted do not disclose any appearance of discrimination against the applicant. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant submitted that the amount awarded to him had depreciated as a result of the lengthy non-enforcement of the judgment and became insufficient to purchase a flat similar to the one he had lost. He claimed 2,000,000 Russian roubles (RUR) in respect of pecuniary damage. The amount represented the average market value of a two-room flat in Tyumen after deduction of RUR 300,000 already paid by the Government. In support of his claims the applicant submitted the information provided by the Tyumen Real Estate Agency as regards the increase of the price of a square metre in Tyumen. In January 2004 the average price of a square metre was RUR 13,300. In December 2005 it increased up to RUR 24,100.

25. As regards the non-pecuniary damage, the applicant claimed 600 euros (EUR) for the compensation for distress and anguish caused by the lengthy non-enforcement of the final judgment, EUR 400 to compensate sufferings caused by impossibility to purchase housing, and EUR 600 for the damage sustained as a result of his visit to Moscow at the request of the Federal Bailiffs' service.

26. The Government argued that the applicant's claims for pecuniary damage were excessive and unreasonable. They submitted that it was open

to the applicant to apply to domestic courts to obtain indexation of the judgment award. The Government further argued that the applicant's claim for compensation of non-pecuniary damage caused by his visit to Moscow had no connection to the present case. They accepted the rest of the applicant's claims for non-pecuniary damage.

27. The Court reiterates, firstly, that an applicant cannot be required to exhaust domestic remedies to obtain compensation for pecuniary loss since this would prolong the procedure before the Court in a manner incompatible with the effective protection of human rights (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, § 40, and *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). Nor is there a requirement that an applicant furnish any proof of the non-pecuniary damage he or she sustained.

28. The Court accepts that the judgment debt depreciated as a result of the delayed enforcement. It further observes that the applicant's calculations are based on what the applicant presents as the evolution of the price per square metre on the local housing market. However, the Court is ill-equipped to engage in, or verify, the valuation of residential property across Russia; nor indeed would it be appropriate for the Court to do so, given that the applicant was free to choose his place of residence. The Court notes in addition that the judgment awarded a fixed amount which was not based on any price per square metre. Consequently, the Court cannot accept the applicant's claim in respect of pecuniary damage based on a price per square metre. Having regard to the refinancing rates determined by the Central Bank of Russia over the period of the non-enforcement, the Court awards the applicant EUR 2,400 in respect of pecuniary damage, plus any tax that may be chargeable on that amount, and dismisses the remainder of his claims for pecuniary damage.

29. The Court further 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 in good time. The Court takes into account the applicant's claim for non-pecuniary damage, the nature of the award at stake in the present case, the length of the enforcement proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 1,600 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicant also claimed EUR 620 for the costs and expenses incurred before the domestic courts and the Court and RUR 8,000 which represented the cost of his travel to Moscow at the request of the Federal Bailiffs' service and the cost of his phone conversations with the above mentioned service. He did not submit any materials in support of his claims.

31. The Government argued that the applicant claims were unsubstantiated.

32. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case the applicant failed to submit any materials to substantiate his claims. Therefore the Court rejects his claims for costs and expenses.

C. Default interest

33. 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 non-enforcement of the final judgment in the applicant's favour 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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 2,400 (two thousand four hundred euros) in respect of pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 5 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President