



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

FIFTH SECTION

CASE OF BAKHAREV v. RUSSIA

(Application no. 21932/03)

JUDGMENT

STRASBOURG

19 July 2007

FINAL

19/10/2007

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 Bakharev v. Russia,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. KOVLER,

Mr J. BORREGO BORREGO,

Mr M. VILLIGER, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 21932/03) 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, Mr Anatoliy Yemelyanovich Bakharev, (“the applicant”) on 24 June 2003. He was represented before the Court by Mrs E.A. Ponomareva, a lawyer practising in Barnaul.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. On 13 October 2006 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 1954 and lives in Barnaul, the Altay Region.

5. On an unspecified date in 2002 the applicant, acting as a participant of rescue operation on the site of the Chernobyl nuclear disaster in the 1980s, applied to a local council, requesting them to grant him a flat.

6. Having faced a refusal, the applicant filed a suit in court.

7. By judgment of the Industrialnyy District Court of Barnaul of 14 October 2002 the local authorities were ordered to grant the applicant a flat of at least 18 square metres. It became final on 27 November 2002.

8. On 16 December 2002 the writ of execution was issued and sent to the bailiffs.

9. It appears that on 13 January 2005 the local authorities, acting in agreement with the applicant and with his financial participation, purchased a three-room flat of 28 square metres for the applicant.

10. The contract has been registered on 14 January 2005.

11. Four days later, on 18 January 2005, the local authorities transferred the money for the flat to the seller's account.

12. According to the Government, the judgment of 14 October 2002 should be considered as fully enforced on the latter date.

THE LAW

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

13. The applicant complained about the non-enforcement of a court judgment in his favour. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1, which, 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

14. The Government accepted that there had been a delay in the enforcement of the court award in favour of the applicant and acknowledged that there had been a breach of the above-mentioned Convention provisions.

15. The applicant's counsel maintained his complaints.

16. 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

17. The Court first notes that the judgment in the applicant's favour dated 14 October 2002, final on 27 November 2002, remained without enforcement at least until 18 January 2005, i.e. for the period of two years, one month and twenty-two days.

18. 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 v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Petrushko v. Russia*, no. 36494/02, 24 February 2005, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

19. Having noted the Government's acknowledgement that there had been a violation of the said Convention provisions and in view of its case-law on the subject, the Court finds that by failing for such a substantial period to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving the property which he was entitled to receive under final and binding judgment.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government did not comment on the applicant's claims.

24. The Court observes that the applicant must have suffered a certain degree of stress and frustration as a result of the delayed enforcement of the awards in his favour. The actual amount claimed is, however, excessive. Making its assessment on an equitable basis, it awards the applicant the sum of EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

25. 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

26. 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 in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two 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 19 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Peer LORENZEN
President