



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

FIRST SECTION

CASE OF BORMOTOV v. RUSSIA

(Application no. 24435/04)

JUDGMENT

STRASBOURG

31 July 2008

FINAL

31/10/2008

This judgment may be subject to editorial revision.

In the case of Bormotov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 24435/04) 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 Sergey Aleksandrovich Bormotov (“the applicant”), on 15 June 2004.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 2 May 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1958 and lives in Saint Petersburg.

5. As a serviceman and victim of radiation, he is entitled to a State flat. On 28 March 2002 the 224th Military Court of the Saint Petersburg Garrison ordered the Naval Engineering Academy to provide the applicant with a flat “meeting statutory requirements”. This judgment became binding on 9 April 2002, but was not enforced immediately.

6. In 2002–04 bailiffs several times urged the defendant to comply with the judgment.

7. In 2002–04 the applicant rejected three settlement offers.

In November 2002 he refused a three-room flat in Kommunar, a settlement in the Leningrad Region located 2 km away from Saint Petersburg. In February 2003 he refused a three-room flat in Gatchina, a town in the Leningrad Region located 8 km away from Saint Petersburg. The applicant rejected these two offers on the ground that they were located outside Saint Petersburg.

In February 2004 the applicant refused a flat in Pushkin, a town located within the administrative city limits of Saint Petersburg. The applicant rejected this offer on the ground that the flat was smaller than that due.

8. In December 2004 the debtor offered the applicant a four-room flat in Saint Petersburg, and the applicant accepted it. On 12 January 2005 the enforcement proceedings were terminated. On an unspecified date in 2005 the applicant moved into the flat and began to pay utility bills. On 9 August 2007 the applicant's tenancy was formally recorded.

II. RELEVANT DOMESTIC LAW

9. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months.

THE LAW

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

10. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment. Insofar as relevant, these Articles 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

11. The Government argued that the application was inadmissible. Article 6 had not applied to the proceedings in question because the applicant had been a serviceman. The applicant had not exhausted domestic remedies because he could have sued the authorities for non-pecuniary damage caused by the non-enforcement. In any event, the authorities had done everything they could to enforce the judgment. The applicant had been responsible for the delay, because he had rejected three reasonable settlement offers. The delay had been justified by the nature of the award. Flats had been in short supply, and there had been a queue of creditors. The applicant had been entitled to a flat measuring at least 90 m², and the first such flat had become available only in December 2004. The judgment had been enforced in 2005, after the applicant had moved into the flat.

12. The applicant maintained his complaint. The bailiffs had been inefficient. The first three settlement offers had fallen short of the court’s award. The judgment had been enforced only on 9 August 2007 when the applicant’s title to the flat had been formally recorded.

13. With regard to the applicability of Article 6, the Court reiterates that this Article does not apply to cases where domestic law expressly excludes access to a court for the category of staff in question, and where this exclusion is justified by the State’s objective interest (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...). In the case at hand, however, the applicant did have access to a court under domestic law. He used this right and sued his former employer. The Military Court examined and granted the applicant’s claim. Nothing suggests that domestic law barred the applicant’s access to a court. Accordingly, Article 6 is applicable (compare with *Dovguchits v. Russia*, no. 2999/03, § 24, 7 June 2007), and the Government’s objection must be dismissed.

14. With regard to the exhaustion of domestic remedies, the Court considers that the possibility to receive non-pecuniary damages for non-enforcement has not been shown sufficiently established in practice.

15. 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

16. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (*Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

17. The Court considers that the period to be considered was over two years and eight months: from the date the judgment became binding to an unspecified date in 2005 (the year in the course of which the applicant moved into his flat), even though his title to the flat was recorded later.

18. This period is incompatible with the Convention. The Government admitted that the first fully adequate offer had been made only in December 2004, and the Court finds in the circumstances of the case no justification for the preceding delay.

19. 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

20. 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

21. The applicant claimed 30,000 euros (EUR) in respect of pecuniary damage. This amount represented the applicant's estimate of lost profit. He considered that if the flat had been provided in time, his command would have been able to discharge him earlier, and he would have been able to find a civilian job yielding EUR 500 a month.

22. The Government argued that this claim was speculative and unsupported by evidence, and that domestic courts were better placed to determine such claims.

23. The Court does not discern any factually solid causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

24. The applicant further claimed EUR 5,000 in respect of non-pecuniary damage.

25. The Government argued that this claim was unjustified, and that a mere finding of a violation would suffice.

26. The Court accepts that the applicant has suffered distress that cannot be made good by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards EUR 2,100 under this head.

B. Costs and expenses

27. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

28. 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 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 2,100 (two thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President