



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

FIRST SECTION

CASE OF BAKHAREV AND OTHERS v. RUSSIA

(Application no. 32786/04)

JUDGMENT

STRASBOURG

18 September 2008

FINAL

18/12/2008

This judgment may be subject to editorial revision.

In the case of Bakharev and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 August 2008,

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

PROCEDURE

1. The case originated in an application (no. 32786/04) 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 seven Russian nationals, Messrs Aleksandr Alekseyevich Bakharev (born in 1956), Georgiy Semenovich Dyachkov (born in 1950), Aleksandr Viktorovich Geraskin (born in 1960), Nikolay Ivanovich Gorbunov (born in 1950), Anatoliy Pavlovich Semenov (born in 1948), Aleksandr Vladislavovich Shchemelev (born in 1961), and Yuriy Vasilyevich Yevdokimov (born in 1957) (“the applicants”), on 10 August 2004.

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

3. On 17 November 2005 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 applicants live in Kamensk-Uralskiy, a town in the Sverdlovsk Region.

5. As victims of Chernobyl, the applicants were entitled to benefits. Considering themselves underpaid, they sued the local welfare authority. On 25 July 2003 the Krasnogorskiy District Court of Kamensk-Uralskiy held for the applicants, awarded them arrears, and fixed new amounts of periodic benefits with subsequent cost-of-living adjustment. This judgment became binding on 23 September 2003.

6. According to the Government, the judgment was gradually enforced by 1 July 2005. According to the applicants, the judgment was not enforced fully, because the cost-of-living adjustment had been incomplete. On 28 March 2006 the District Court confirmed that to that date the cost-of-living adjustment had been incomplete.

II. RELEVANT DOMESTIC LAW

7. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment within three months.

THE LAW

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

8. The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the delayed 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

9. The Government admitted that the delayed enforcement had breached the applicants’ rights. The Government argued, however, that the applicants had lost their status as victims, because the judgment had been enforced fully, and because the applicants had refused settlement offers. They concluded that the application had to be struck out of the Court’s list of cases.

10. The applicants argued that they had not lost their status as victims, because the judgment had not been enforced fully.

11. The Court has earlier refused to strike out cases where applicants refused settlement (see, with further references, *Svitich v. Russia*, no. 39013/05, § 21, 31 July 2007). The Court will do so in this case too.

12. 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

13. The Government admitted that the applicants’ rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 had been breached.

14. In the circumstances of the present case the Court finds no reason to hold otherwise. Accordingly, there has been a violation of these Articles.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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

16. In respect of pecuniary damage, the applicants claimed sums outstanding under the judgment of 25 July 2003.

17. The Government pointed out that on the date when the Court had given them notice of the application, no sum was outstanding, but that later the debts began to accrue again.

18. The Court reiterates that the violation found is best redressed by putting the applicants in the position they would have been if the Convention had been respected. The Government shall therefore secure, by appropriate means, the enforcement of the domestic court's outstanding award (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005).

19. In respect of non-pecuniary damage, each applicant claimed 20,000 euros (EUR).

20. The Government rejected this claim on the ground that they had acknowledged a breach of the applicants' rights and offered settlement.

21. The Court accepts that the applicants were distressed by the delayed enforcement of the judgment. Making its assessment on an equitable basis, the Court awards each applicant EUR 2,000 under this head.

B. Costs and expenses

22. The applicants made no claim for the costs and expenses. Accordingly, the Court makes no award in this respect.

C. Default interest

23. 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 according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court, and in addition pay each applicant EUR 2,000 (two thousand euros) 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 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President