



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

FIRST SECTION

CASE OF BRONICH v. RUSSIA

(Application no. 805/03)

JUDGMENT

STRASBOURG

14 November 2008

FINAL

14/02/2009

This judgment may be subject to editorial revision.

In the case of Bronich 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 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 805/03) 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 Vitaliy Viktorovich Bronich (“the applicant”), on 23 November 2002.

2. The applicant was represented by Mr S.V. Shenkman, a lawyer practising in Kovrov, the Vladimir Region. The Russian Government (“the Government”) were initially represented by Mr P. Laptev and subsequently by Ms V. Milinchuk, both former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 9 October 2006 the President of the First Section decided to give notice of the application to the Government. It was 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 1939 and lives in Kovrov, the Vladimir Region.

1. Judgments of 27 December 2000 and 21 December 2001 in the applicant's favour

5. The applicant is in receipt of compensation for health damage. On 21 May 1999 he brought a court action against two regional departments of the Social Security Fund (Sakhalin and Moscow) alleging incorrect calculation of the amount of compensation due to him for the period from 1 June 1998 to 31 May 2000. He claimed recalculation of the allowance and recovery of the unpaid amounts from the respondent departments of the Social Security Fund. He also asked the court to award him a penalty and compensation for non-pecuniary damage.

6. On 9 February 2000 the Yuzhno-Sakhalinskiy Town Court dismissed the claim.

7. On 13 June 2000 the Sakhalin Regional Court reversed the judgment of 9 February 2000 on appeal and remitted the matter for fresh examination.

8. On 4 and 28 August 2000 the applicant modified his claims.

9. On 27 December 2000 the Town Court granted the applicant's action in part. The court found that the Sakhalin Regional Department of the Social Security Fund ("the Sakhalin Department") should pay the applicant RUB 10,348.35 and the Moscow Regional Department of the Social Security Fund ("the Moscow Department") RUB 2,723.25 in arrears. The court further ordered each of the respondent departments to pay the applicant RUB 450 for lawyer's fees and dismissed the remainder of the applicant's claims as having no grounds under the domestic law. The applicant did not attend. On 9 February 2001 a copy of the judgment was sent to the applicant.

10. On 24 February 2001 the applicant mailed his grounds of appeal against the judgment of 27 December 2000.

11. On 24 April 2001 the Regional Court upheld the judgment of 27 December 2000 in respect of the arrears and reimbursement of legal costs and remitted the claim for non-pecuniary damages and penalty for fresh examination. The applicant did not attend the hearing.

12. On 21 December 2001 the Town Court granted the applicant's claims in part. The court awarded the applicant RUB 10,348.35 against the Sakhalin Department and RUB 2,723.25 against the Moscow Department in respect of penalty for delayed payment of the allowance. The remainder of the applicant's claims were dismissed as unfounded. The applicant did not attend. On 18 March 2002 he received a copy of the judgment by post.

13. On 20 March 2002 the applicant appealed by post.

14. On 6 August 2002 the Regional Court upheld the judgment of 21 December 2001 on appeal.

2. Enforcement of the judgments in the applicant's favour

a) Judgment of 27 December 2000

15. On 24 April 2001 the award made by the judgment of 27 December 2000 in respect of arrears and lawyer's fees became enforceable.

16. On 20 and 26 July 2001 the Sakhalin Regional Department of the Social Security Fund paid the applicant RUR 10,348.35 in arrears and RUB 450 for lawyer's fees respectively, as ordered by the judgment.

17. On 15 October 2001 the Moscow Department transferred RUB 3,173.25 due to the applicant, to the deposit account of the bailiffs' service.

18. On 16 November 2001 the bailiff informed the applicant that payment of the remaining amount had been received from the Moscow Regional Department of the Social Security Fund and asked for his bank details.

19. On 6 February 2002 the bailiff received that information.

20. On 25 July 2002 the bailiffs' service transferred RUB 3,173.25 of the court's award to the applicant's bank account.

b) Judgment of 21 December 2001

21. On 6 August 2002 the award of 21 December 2001 became enforceable, once upheld on appeal.

22. On 26 March 2002 the Sakhalin Department paid the applicant RUB 10,348 pursuant to the judgment.

23. On 27 December 2002 the Moscow Department sent RUB 2,723.25 to the deposit account of the bailiffs' service, and on 30 December 2002 the bailiffs' service received the money.

24. On 12 May 2006 the bailiffs' service transferred RUB 2,723.25 into the applicant's bank account, thus completing the enforcement of the judgment in full.

II. RELEVANT DOMESTIC LAW

25. 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 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

26. The applicant complained that the delayed enforcement of the two judgments in his favour violated Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 thereto. Given the scope and the essence of the complaint, the Court will examine it under Article 6 § 1 and Article 1 of Protocol No.1 which, as far as relevant, read as follows:

Article 6

“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

27. 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

28. The applicant maintained his claims.

29. The Government have admitted that the delay in enforcement of the judgments of 27 December 2000 and 21 December 2001 in the applicant’s favour violated Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

30. In the circumstances of the present case, the Court finds no reason to hold otherwise. There has, accordingly, been a violation of these Articles.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant complained under Article 6 § 1 of the Convention about excessive length of the domestic proceedings and about partiality of the courts in these proceedings. He complained under Articles 6 § 1, 13 and 17 of the Convention about the domestic courts' refusal to grant his claims in full. He further complained under Article 17 of the Convention about protracted enforcement of the judgments of 27 December 2000 and 21 December 2001.

32. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. The Government did not submit any comments in this respect.

35. The Court accepts that the applicant suffered distress because of the State authorities' failure to enforce the judgments in his favour. Nevertheless, the amount claimed is excessive. The Court takes into account the amount and nature of the awards in the instant case and the delays in enforcement of the judgments concerned. Making its assessment on an equitable basis, it awards the applicant the amount of EUR 3,200, plus any tax that may be chargeable on it.

B. Costs and expenses

36. The applicant claimed RUB 9,525.65 for the costs and expenses incurred before the domestic courts and this Court, of which RUB 235.65 represented postal expenses and RUB 9,290 lawyers' fees. He produced the postal receipts for mailing correspondence to the domestic courts,

prosecutor's office and this Court. He also furnished payment orders evidencing payments made either to his representative or to a local bar in respect of unspecified legal services for the period from 19 February 2001 to 14 March 2005.

37. The Government did not make any comments on the applicant's claim of costs and expenses.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of 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. Regard being had to the information in its possession and to the above criteria, the Court awards the applicant EUR 160 in respect of costs and expenses, plus any tax that may be chargeable to the applicant, and dismisses the remainder of his claims under this head.

C. Default interest

39. 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 under Articles 6 § 1 of the Convention and Article 1 of Protocol No.1 concerning delayed enforcement of the judgments 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 to the Convention;
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, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,200 (three thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;
 - (ii) EUR 160 (one hundred sixty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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 14 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President