



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

1959 · 50 · 2009

FIRST SECTION

CASE OF BORODKIN v. RUSSIA

(Application no. 42234/04)

JUDGMENT

STRASBOURG

17 September 2009

FINAL

17/12/2009

This judgment may be subject to editorial revision.

In the case of Borodkin v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 42234/04) 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 Nikolay Dmitriyevich Borodkin (“the applicant”), on 19 October 2004.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, their Representative at the European Court of Human Rights.

3. On 29 April 2008 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 1949 and lives in Deputatskiy, the Republic of Sakha (Yakutiya).

5. In the 1990s the applicant subscribed to a State savings scheme which would entitle him to receive a VAZ car in 1993. He paid the car’s full value but never received the car.

6. On 13 February 2003 he received a partial compensation in the amount of 18,538.20 Russian roubles (RUB) equal to 13.35% of the car value.

7. The applicant brought the court action against the authorities, seeking to recover the monetary value of the State promissory notes for purchasing of a car.

8. On 30 June 2003 the Ust-Yanskiy District Court of the Sakha Republic (Yakutiya) allowed the applicant's action against the Government and awarded him RUB 120,428.80 as the full car value less the amount already paid in February 2003. The award was to be paid at the expense of the Federal Treasury.

9. On 28 July 2003 the Supreme Court of the Sakha (Yakutiya) Republic upheld the judgment and it became final. The award remained unenforced.

10. On 19 September 2003 the Ministry lodged a request for supervisory review of the case with the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic.

11. On 15 July 2004 the Presidium quashed the judgment of 30 June 2003 and the appeal decision of 28 July 2003 on the ground of a violation of the substantive law and delivered a new judgment in which it dismissed the applicant's claim in full.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

12. The applicant complained under Article 1 of Protocol No. 1 to the Convention about the quashing of the judgment in his favour on supervisory review. This Article, in so far as relevant, reads as follows:

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.”

13. The Government argued that the supervisory review of the judgment had not breached the Convention. It had been initiated by a party to the proceedings within less than one year from the judgment's entry into force. The quashing had been justified because the judgment had been based on a misapplication of law and hence had contained a fundamental defect. Annulment of the binding judgment had been legitimate in a democratic

society. Civil procedure of other countries, for example Germany, had also allowed for the annulment of final judgments. Besides, the Council of Europe had been satisfied with reforms of the supervisory-review procedure in Russia. Furthermore, the Presidium had found that the applicant's claim had been unfounded and therefore he had not had a "possession" within the meaning of Article 1 of Protocol No. 1. In February 2003 the applicant received compensation from the Ministry of Finance in the amount established by the domestic law.

14. The applicant maintained his claim arguing that he had been entitled to obtain the full monetary value of the car, but had never received that sum.

A. Admissibility

15. 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

16. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 74, ECHR 1999-VII, and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

17. The Court observes that the applicant obtained a binding and enforceable judgment in his favour, by the terms of which the State was to pay him a substantial amount of money at the expense of the Federal Treasury. He was prevented from receiving the award through no fault of his own. The quashing of the enforceable judgment frustrated the applicant's reliance on a binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgment in the applicant's favour by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of the Protocol No. 1.

18. There has therefore been a violation of that Article.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The applicant complained under Articles 13 and 17 of the Convention that he had no effective remedy against the quashing of his final judgment on supervisory review and under Article 1 of Protocol No. 1 about the State's failure to comply with its obligation to provide a car.

20. 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.

III. 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 90,000 United States dollars (USD) in respect of pecuniary damage and USD 50,000 in respect of non-pecuniary damage.

23. The Government submitted that no award should be made under Article 41 since the applicant's rights had not been violated. They challenged the claim in respect of pecuniary damage as unfounded and reiterated that in 2003 the applicant had already received 18,538.20 Russian roubles (RUB). They submitted that the claim for non-pecuniary damage was excessive.

24. With regard to pecuniary damage, the Court considers that the violation found is best redressed by putting the applicant in the position he would have been if the Convention had been respected. It is therefore appropriate to award the applicant the equivalent in euros of the sum that he would have received if the judgment of 30 June 2003 had not been quashed (see *Bolyukh v. Russia*, no. 19134/05, § 39, 31 July 2007). The Court awards EUR 3,382 under this head, plus any tax that may be chargeable.

25. The Court further considers that the applicant suffered distress and frustration because of the supervisory review of the judgment. Making its assessment on an equitable basis, it awards the applicant 2,000 euros (EUR) in respect of non-pecuniary damage and dismisses the remainder of the applicant's claims for just satisfaction.

B. Costs and expenses

26. The applicant did not claim costs or expenses and there is accordingly no call to make an award under this head.

C. Default interest

27. 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 Article 1 of Protocol No. 1 concerning the quashing 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 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 3,382 (three thousand three hundred and eighty-two euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President