



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

FIRST SECTION

CASE OF BULYCHEVY v. RUSSIA

(Application no. 24086/04)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

04/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bulychevy 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 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 24086/04) 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 three Russian nationals, Mrs Vera Nikolayevna Bulycheva, Mr Vladimir Vasilyevich Bulychev and Mr Vasiliy Vladimirovich Bulychev (“the applicants”) on 5 June 2004, 5 June 2004 and 13 February 2006, respectively.

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

3. On 3 September 2007 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 Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1956, 1956 and 1983, respectively, and live in Lipetsk.

5. The applicants are a married couple and their son.

A. Housing dispute

6. The applicants lived in a flat that in 1992 became unsuitable for living owing to break-down of the sewage system. In July 1993 the first and second applicants, also acting on behalf of their then underage son, brought court proceedings seeking housing from the Lipetsk Town Council ("Town Council"). By judgment of 21 October 1999 the Sovetskiy District Court of Lipetsk ("District Court") acknowledged that the applicants' flat was unsuitable for living and ordered the Town Council to provide them with a "comfortable housing suitable for four persons in compliance with the applicable legislation".

7. On 17 January 2000 the Lipetsk Regional Court, acting on appeal, amended the judgment. It specified, in particular, that "the flat should be in a brick building situated within the town centre". The appeal court also awarded each applicant 1,000 Russian roubles (RUB) in non-pecuniary damage.

B. Enforcement proceedings

8. On an unspecified date the applicants submitted a writ of execution to the Sovetskiy District Bailiffs' Service of Lipetsk. On 28 February 2000 an authorised bailiff opened enforcement proceedings.

9. Further to the applicants' complaint, on 9 April 2001 the District Court declared unlawful the bailiff's failure to enforce the judgment.

10. On 25 September and 2 October 2001 the bailiff and officials of the Town Council inspected two municipal flats and considered them eligible to be offered to the applicants. The latter however refused both flats.

11. By letter of 28 August 2003 the bailiff informed the applicants that the Town Council had allocated funds for purchasing a flat for them.

12. In November 2003 the Council offered to the applicants to buy a flat or, in the alternative, to pay compensation.

13. In March 2004 the Council made two new offers. On 24 June 2004 the applicants accepted resettlement into one of those flats. On 27 August 2004 they obtained an occupancy voucher and the enforcement proceedings were terminated.

14. On 6 September 2004 the applicants received keys to the flat. On the same day the flat was inspected by the housing committee and the applicants signed the inspection record.

15. Thereafter, the applicants complained to various authorities that the judgment of 21 October 1999 had not been properly enforced because repair works were still required. Those were carried out in August 2005.

16. On an unspecified date the applicants brought a court action against the Ministry of Finance and the Ministry of Justice for the loss of profit and compensation for non-pecuniary damage incurred through the belated

enforcement of the judgment of 21 October 1999. By a judgment of 23 August 2005 the Taganskiy District Court of Moscow dismissed their action. It found, in particular, that the flats offered to the applicants in September and October 2001 had met the requirements of the housing legislation. Therefore, their refusal to accept those offers had been ungrounded and the delays in the enforcement occurred afterwards could not be imputed to the bailiffs' service. On 18 July 2006 the Moscow City Court upheld the said judgment on appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE COURT PROCEEDINGS

17. The applicants complained that the length of the court proceedings against the Town Council had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

18. The Government contested that argument.

19. Pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter “within a period of six months from the date on which the final decision was taken”. The purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. It also ought to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. Even if a respondent Government does not raise the issue of compliance with the rule, the Court is to do so of its own motion (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

20. Turning to the facts of the present case, the Court observes that the court proceedings ended on 17 January 2000 when the judgment of 21 October 1999, as amended by the appeal court, became final. The application by the first and second applicants was submitted on 5 June 2004 and by the third applicant on 13 February 2006, that is more than four and six years respectively after the civil dispute had been solved. The Court considers that the enforcement period does not fall within the period to be taken into account in respect of the applicants' complaint of the lengthy court proceedings because they have made a separate complaint about the non-enforcement proper (see *Veretennikov v. Russia*, no. 8363/03, § 31,

12 March 2009 and *Finkov v. Russia*, no. 27440/03, § 94, 8 October 2009). It follows that the applicants' complaint of the excessive length of the court proceedings was introduced after the expiry of the six months time-limit and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION ON ACCOUNT OF THE DELAYED ENFORCEMENT OF THE FINAL JUDGMENT

21. The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgments of 21 October 1999 and 17 January 2000. 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 within a reasonable time... 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...”

A. Admissibility

22. The Government argued that the final judgment could have already been executed in September or October 2001, if the applicants had accepted the flats offered by the authorities at the time. By domestic court decisions of 19 November and 17 December 2001, unsubmitted by Government, it had been established that the flat offered by the Town Council in October 2001 had met the requirements set in the final judgment in question. The applicants' unreasonable refusal to accept it had deprived them of victim status in respect of their complaint of the delayed enforcement. The Government further claimed that the applicants had missed the six month time-limit as they had complained to the Court two years and eight months after the Town Council had made them the above offer. Accordingly, they requested the Court to dismiss the applicants' complaint as lodged out of time.

23. The applicants maintained their complaints.

24. The Court observes from the material submitted that the enforcement proceedings were officially terminated on 27 August 2004. The relevant complaint by the first and the second applicants was lodged on 5 June 2004

and by the third applicant on 13 February 2006. It follows that in respect of the complaint by the first and the second applicants the Government's argument should be dismissed. However, it should be upheld in respect of the third applicant's complaint that was introduced after expiry of the six months time-limit and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

25. The Court notes that the application by the first and the second applicants 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

26. 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 the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, the amount and the nature of court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

27. In the case at hand the enforcement proceedings lasted for four years, seven months and eleven days: from 17 January 2000, when the judgment became binding, to 27 August 2004, when these proceedings were terminated.

28. The enforcement proceedings were officially opened on 28 February 2000. On an unspecified date the applicants brought a court action complaining about the bailiffs' failure to enforce the judgment of 21 October 2000. By the competent court's judgment of 9 April 2001 their action was upheld.

29. The first two flats were offered to the applicants by the bailiff in September and October 2001.

30. The Court takes cognisance of the fact that by a judgment of 23 August 2005, as upheld on 18 July 2006, the Taganskiy District Court of Moscow dismissed the applicants' action for compensation for the delayed enforcement, having found that the flats offered to them in September and October 2001 had met the requirements of the housing legislation and that their refusal to accept these flats had been unjustified.

31. The Court also observes that the applicants failed to adduce sufficient evidence which could convince it that the above said flats had been unsuitable for living, had not satisfied housing standards or had been otherwise ineligible.

32. The Court reiterates that the domestic courts are in a better position to assess evidence before them, establish facts and interpret domestic law. Hence, it accepts the Government's argument that the delays in the

enforcement proceedings occurred after October 2001 were attributable to the applicants' conduct.

33. However, it should be noted that by failing to take adequate measures to enforce the binding judgment, the State authorities prevented the applicants from enjoying its benefits during a period of one year and seven months, that is from 28 February 2000, the date when the enforcement proceedings officially started, to October 2001, the moment when the applicants refused to accept the eligible flats offered by the authorities. The Court also observes that the Government have not put forward any fact or argument in order to justify this period of non-enforcement.

34. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicants raised various other complaints under Articles 2, 3, 6 § 1, 8, 13 and 14 of the Convention.

36. Having considered their submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

37. It follows that these parts of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicants claimed 800,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government contested the claim as unsubstantiated.

41. Making an assessment on an equitable basis, the Court awards the applicants jointly EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicants did not claim reimbursement of their 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

43. 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 by the first and second applicants concerning the non-enforcement of the judgment of 21 October 1999, as upheld on 17 January 2000, admissible and the remainder of the application inadmissible;
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 first and second applicant jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President