



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

FIRST SECTION

CASE OF PRIVALIKHIN v. RUSSIA

(Application no. 38029/05)

JUDGMENT

STRASBOURG

12 May 2010

FINAL

12/08/2010

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

In the case of Privalikhin 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 Hajiyev,

Dean Spielmann,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 38029/05) 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 Petrovich Privalikhin (“the applicant”), on 21 October 2005.

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

3. On 10 November 2005 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).

4. On 2 May 2007 the President of the Chamber decided, under Rule 54 § 2 (c) of the Rules of Court, that the Government should be invited to submit further written observations in respect of applicability of Article 6 of the Convention to the proceedings that the applicant had brought against the authorities in the present case. The Government did not submit any submissions in this respect.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Berdsk, a town in the Novosibirsk Region.

A. Court proceedings

6. The applicant is a public prosecutor.

7. On an unspecified date in early 2003 he applied for a free housing provided by law for this category of state officials.

8. By judgment of 21 April 2003 the Tsentralny District Court of Novosibirsk ruled in favour of the applicant and ordered the local and regional authorities jointly

“...to provide [the applicant] with a flat in a State or municipal housing for a family of four people with a living surface measuring 36 sq. metres, and taking into account the applicant's right to an additional living area of not less than 20 sq. metres or in the form of a separate room...”

9. Upon the respondent's appeal, the judgment was upheld by the Novosibirsk Regional Court on appeal on 17 June 2003. On that day the judgment became binding.

B. Enforcement proceedings

10. The respondents did not enforce the judgment immediately. On 28 and 30 July 2003, the Bailiff's Office (“the bailiffs”) initiated enforcement proceedings.

11. According to the Government, the Novosibirsk Regional Administration was unable to execute the judgment as, pursuant to Decree of 27 December 1991, the property rights in respect of all State housing in the Novosibirsk Region had been transferred to municipal authorities.

12. On 20 April 2004 the Tsentralny District Court of Novosibirsk rejected the authorities' request to adjourn the execution of the final judgment.

13. On 24 September 2004 and 19 November 2004 the same court rejected the applicant's requests to award him compensation which would allow him to purchase a flat.

14. The prosecutor refused to initiate criminal proceedings against the bailiff on 11 December 2004. On 19 January 2005, in response to the applicant's complaint, the Berdsk Town Court found the acts of the bailiff in the applicant's enforcement proceedings arbitrary and unlawful and ordered

the prosecutor to institute criminal proceedings in this respect. On 25 May 2005 the Sovetskiy District Court once again urged the prosecutor to open criminal proceedings.

15. On 1 February 2006 the Berdsk Town Council sent a letter to the applicant, offering to provide him with a three-room flat of 77.5 sq. metres in total surface.

16. By letter of 2 February 2006 the applicant sent a letter to the bailiffs in which he agreed to this offer.

17. On 13 February 2006 the Novosibirsk Regional Administration allocated 1,500,000 Russian roubles (RUB) for acquisition of a flat for the applicant.

18. By decision of 17 May 2006 the bailiffs terminated the proceedings in the case as the judgment of 21 April 2003, as upheld on 17 June 2003, had been enforced.

19. According to the parties, the applicant was granted a three-room flat of 77.5 sq. metres in total surface under a social tenancy agreement.

II. RELEVANT DOMESTIC LAW

20. Under Section 13 of the Federal Law on Enforcement Proceedings of 21 July 1997, the enforcement proceedings should be completed within two months upon receipt of the writ of enforcement by the bailiff.

THE LAW

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

21. The applicant complained that despite the judgment he had not been provided with housing in good time. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. 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

22. The Government noted that the judgment in question had already been enforced. They further accepted that the delay in the enforcement of the judgment in the applicant's favour had taken place but argued that it had been justified in view of a great number of large-scale welfare programmes administered by the State at the material time.

23. The applicant maintained his complaints. The applicant admitted that the authorities had granted him a flat under a social tenancy agreement but argued that he ought to have received property rights to the flat instead.

24. The Court observes that the Government did not contest applicability of Article 6 of the Convention owing to the applicant's status as a civil servant (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-IV). The Court further notes that the proceedings brought by the applicant against the State concerned provision of a flat. The Court has no doubts that the proceedings in question were civil within the meaning of Article 6. Accordingly, the Court concludes that Article 6 is applicable in the present case.

25. 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

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 how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

27. Turning to the case at hand, the Court notes that, by virtue of the judgment of 21 April 2003, as upheld on 17 June 2003, the authorities were to put at the applicant's disposal a flat with certain characteristics in a State or municipal housing. Contrary to the applicant's allegations, the judgment

did not require the authorities to grant him ownership of a particular flat, but rather to conclude a tenancy agreement between the competent authority and the applicant, acting as the principal tenant on behalf of himself and the members of his family.

28. In the present case the enforcement lasted two years and eleven months: from the day the judgment became binding (17 June 2003) to the day when the bailiffs declared, upon the applicant's consent to accept the flat, that the judgment had been executed and terminated the enforcement proceedings (17 May 2006).

29. The Court considers that this period is in itself incompatible with the requirements of the Convention. The Government did not put forward any argument that might lead the Court to a different conclusion. The Court reiterates that lack at the material time of resources (such as housing, in particular) cannot by itself justify the authorities' failure to honour the judgment debt in good time (see *Burdov v. Russia* (no. 2), no. 33509/04, § 70, ECHR 2009-...).

30. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 1,718,000 Russian roubles (RUB) and 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage respectively.

33. The Government submitted that the applicant's claims were excessive and groundless.

34. The Court does not discern any causal link between the violation found and the extensive amount of the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant must have suffered distress because of the State authorities' failure to enforce the judgment in good time. However, the amounts claimed in respect of non-pecuniary damage appear excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,300 in respect

of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

35. The applicant did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

C. Default interest

36. 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 according to Article 44 § 2 of the Convention, EUR 2,300 (two thousand three hundred euros) to be converted into Russian roubles on the date of settlement in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount;
 - (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 12 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President