



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

FIRST SECTION

Application no. 5871/07
Gennadiy Mikhaylovich BERKOVICH
against Russia
lodged on 28 December 2006

STATEMENT OF FACTS

The applicant, Mr Gennadiy Mikhaylovich Berkovich, is a Russian national, who was born in 1950 and lives in Moscow.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

In 1973 the applicant started working for the Scientific Research Electromechanical Institute (*OAO "НИЭМИ"*) (hereinafter – the Institute or the employer), a state corporation that developed air defence weapons.

On 26 December 1997 the applicant and his employer signed an undertaking concerning non-disclosure of state secrets. According to the applicant, the undertaking contained an exhaustive list of restrictions that would apply to him after the termination of his work contract; a restriction on his right to leave the country was among them, imposing a ban of five years on his right to travel abroad. The five-year period was to be calculated from the most recent date of the applicant's access to state secrets. According to the applicant, for the last time he had studied top secret documents on 26 February 2006.

The applicant also submitted that, despite his having signed the undertaking, on a number of occasions his employer had sent him on official missions to France (in 1993 and 1994), China (in 1996 and 2003) and Greece (in 2001 and 2004). For that purpose, on 9 September 1993 the applicant was issued with a travel passport (*заграничный паспорт*), which

he renewed twice during his employment, on 16 December 1998 and 3 November 2003.

On 28 September 2004 the applicant terminated his employment. The employer kept the applicant's travel passport. In February 2005 it dismissed the applicant's request to return the passport to him.

On 25 July 2005 the applicant applied to the Passports and Visas Service of the Department of the Interior (*отдел паспортно-визовой службы отдела внутренних дел*) of the Academic District in Moscow with a request to issue him with a new travel passport.

On 16 December 2005 the head of the Passports and Visas Service refused the applicant's request. The refusal indicated that his right to obtain a travel passport was restricted until 26 February 2009 given the applicant's access to state secrets during his employment with the Institute. The letter also indicated that the applicant's former employer did not express any opinion on the subject.

The applicant contested the refusal before the Moscow City Court.

On 8 June 2006 the City Court issued a judgment. The court found that on 26 December 1997 the applicant had signed an undertaking on the non-disclosure of state secrets; the undertaking had also contained a clause about a restriction on the applicant's right to leave the country for five years after his last access to documents containing state secrets. The court further noted that the last access had been granted to him on 26 February 2004. Having noted that the applicant had not disputed the fact of his last access to state secrets in 2004 and having examined the documents to which the applicant had had access on that date, the court established that the documents had not lost their "top secret" status. The court also examined a decision by the permanent technical commission of the applicant's former employer and an opinion prepared by experts of another state corporation, according to which the information, to which the applicant had had access, still retained its top secret classification. On these grounds, the court concluded that the restriction on the applicant's right to leave the Russian Federation until 26 February 2009 had been lawful and valid.

On 1 September 2006 the Supreme Court of the Russian Federation examined the applicant's appeal and upheld the judgment of 8 June 2006, having endorsed the City Court's reasoning.

COMPLAINT

The applicant complained under Article 18 of the Convention and Article 2 of Protocol No. 4 about a restriction on his right to leave the Russian Federation.

QUESTION TO THE PARTIES

Was the restriction on the applicant's right to be issued with an identity document which, had he so wished, would have permitted him to leave the country, "necessary in a democratic society" and compatible with Article 2 of Protocol No. 4 (see *Bartik v. Russia*, no. 55565/00, ECHR 2006-XV)?