



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

FIRST SECTION

CASE OF KRAVTSOV v. RUSSIA

(Application no. 39272/04)

JUDGMENT

STRASBOURG

5 April 2011

FINAL

05/07/2011

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

In the case of Kravtsov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 39272/04) 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 Eduard Vladimirovich Kravtsov (“the applicant”), on 28 September 2004. The applicant was not represented before the Court.

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

3. The applicant alleged that final and enforceable domestic judgments rendered in his favour had not been enforced in a timely manner.

4. On 16 March 2009 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in the town of Yelizovo, the Kamchatka Region. He is a military serviceman.

6. On 22 March and 20 May 2004 the Pacific Ocean Fleet Military Court (“the Fleet Court”), sitting in Vladivostok, in the final instance dismissed the applicant's claims against his commanding officers.

7. On 22 July 2004 the Fleet Court in the final instance allowed the applicant's other claim. It made the following order:

“The commanding officer of military unit no. 27120 shall provide [the applicant] with data about the constitutive elements of his monetary allowance paid to him from 1 January 2003 until 13 March 2004, as well as about reasons and grounds for him being deprived of bonus in 2003”.

8. The Fleet Court's judgment of 22 July 2004 was final and immediately enforceable.

9. On 4 April 2005 the bailiffs of the Kamchatka Regional Department of the Federal Court Bailiffs Service (“the Regional Department”) commenced the enforcement proceedings. They requested the commanding officer to enforce the judgment of 22 July 2004 in the applicant's favour voluntarily within a five-days period.

10. Meanwhile, on 1 April 2005 the 35th Garrison Military Court (“the Garrison Court”), sitting in Petropavlovsk-Kamchatskiy, allowed another claim lodged by the applicant. It ordered the commanding officer of the military unit no. 51401 to provide the applicant with an annual leave starting from 29 May 2005. The judgment of 1 April 2005 was not appealed against and became final and enforceable on 15 April 2005.

11. On 10 June 2005 the bailiffs of the Regional Department commenced the enforcement proceedings. They requested the commanding officer to enforce the judgment of 1 April 2005 in the applicant's favour voluntarily within a five-days period. The judgment was enforced before October 2005.

12. On 4 June 2009 the commanding officer of the military unit no. 27120 wrote to the applicant providing him with the relevant information, as he had been ordered to do by the Fleet Court's judgment of 22 July 2004. The letter of 4 June 2009 indicated that it was sent in compliance with the judgment of 22 July 2004. It was received by the applicant on 8 June 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. Domestic law and practice on execution of the judgments delivered against the State and its entities are summarised in *Burdov (no. 2) v. Russia* (no. 33509/04, §§ 23-24, ECHR 2009-...).

14. The 2010 legislation introducing a new domestic remedy in respect of an alleged violation of one's right to enforcement of a judgment within reasonable time is summarised in *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, §§ 15-20, 23 September 2010, and *Balagurov v. Russia* (dec.), no. 9610/05, 2 December 2010.

15. On 23 December 2010 the Joint Plenary of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation adopted a resolution interpreting the above-mentioned legislative provisions. It is reiterated in the resolution that the legislation in question is applicable only in respect of the monetary awards payable from the public funds pursuant to a contractual or legal provision (paragraph 1).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF NON-ENFORCEMENT OF THE JUDGMENT OF 22 JULY 2004

16. The applicant complained under Article 6 § 1 of the Convention about prolonged non-enforcement of the final and enforceable judgment of 22 July 2004 in his favour.

17. Article 6 § 1 of the Convention, in so far as relevant, 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 averred that the judgment in the applicant's favour had been timely enforced.

A. Admissibility

19. The Court notes that the Government did not put forward any formal objection concerning the admissibility of the complaint about the prolonged non-enforcement of the Fleet Court's judgment of 22 July 2004 in the applicant's favour. The Court considers, in the light of the parties' submissions, that this complaint raises serious issues of fact and law under the Convention, the determination of which requires examination of its

merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

20. The Court reiterates that the right of access to a court secured under Article 6 § 1 of the Convention would be illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party (see, among many other authorities, *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III, and *Société Cofinfo v. France* (dec.), no. 23516/08, 12 October 2010).

21. In so far as the enforcement of the Fleet Court's judgment is concerned, the Court notes that it became final and enforceable on 22 July 2004. The applicant received a letter containing information which the commanding officer had been ordered to furnish in June 2009. It follows that it took the military authorities almost five years to enforce the judgment in the applicant's favour. The Court does not lose sight of the fact that the present applicant was entitled to receive specified personal information which was of particular importance to him as its timely receipt could have enabled the applicant to pursue his complaints against the military authorities further. It is not clear what obstacle might have prevented the military authorities from furnishing the applicant with that information which was presumably readily available. The Court understands that the information in question was in the military authorities' exclusive possession and the applicant did not have any other method of obtaining it at his disposal.

22. The Court recalls in this connection that a delay in the execution of a judgment may be justified in particular circumstances but it may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Gizatova v. Russia*, no. 5124/03, § 20, 13 January 2005). In the instant case, however, the Court considers that the delay of several years in the execution of a simple procedural act in accordance with the judgment appears at the outset manifestly unreasonable. Nor did the Government advance any sound justification for such a long delay. The Court is mindful that information is by definition a perishable commodity (see, *mutatis mutandis*, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 70, ECHR 2010-...), therefore, grounds for delay in providing the personal information to the individual concerned – when such disclosure is ordered by a domestic court – shall be particularly exceptional (see *Kenedi v. Hungary*, no. 31475/05, §§ 39 and 45, ECHR 2009-...). No such grounds were shown to exist in the case *sub judice*.

23. Accordingly, by failing for several years to take the necessary measures to comply with the final Fleet Court's judgment of 22 July 2004 in the applicant's favour, the Russian authorities deprived the provisions of Article 6 § 1 of all useful effect. There has accordingly been a violation of this Article.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. In so far as the applicant's complaint under Article 6 § 1 of the Convention about the belated enforcement of the Garrison Court's judgment of 1 April 2005 is concerned, the Court notes that it was fully enforced before October 2005, that is within seven months. Having regard to its case-law on the subject (see *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005, and *Inozemtsev v. Russia* (dec.), no. 874/03, 31 August 2006), the Court finds that this judgment was enforced within reasonable time. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

25. Finally, the applicant complained under Article 13 of the Convention about absence of domestic remedies in respect of his principal grievances raised under Article 6 § 1 of the Convention. However, having examined the remainder of the applicant's complaints, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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. Non-pecuniary damage

27. The applicant claimed compensation of 50,000 euros (EUR) for non-pecuniary damage suffered. The Government responded that the amount of compensation claimed by the applicant was not in accordance with “the principles of proportionality and adequacy”.

28. The Court considers that the failure to have the Fleet Court's judgment of 22 July 2004 in the applicant's favour enforced during almost five years must have caused him certain distress and frustration. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000

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

B. Pecuniary damage and costs and expenses

29. The applicant did not submit any claim for pecuniary damage and for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum under those headings.

C. Default interest

30. 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 concerning the non-enforcement of the judgment of 22 July 2004 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of 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, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 5 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President