



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

FIRST SECTION

CASE OF ANUFRIYEV v. RUSSIA

(Application no. 32215/05)

JUDGMENT

STRASBOURG

5 April 2011

FINAL

15/09/2011

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

In the case of Anufriyev 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,
Khanlar Hajiyeu,
George Nicolaou, *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. 32215/05) 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 Dmitriy Aleksandrovich Anufriyev (“the applicant”), on 27 May 2005.

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 the final and binding domestic judgment in his favour had not been enforced in a timely manner.

4. On 25 April 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time.

5. On 4 May 2009 the case was adjourned pending settlement in accordance with the pilot judgment (*Burdov v. Russia (no. 2)*, no. 33509/04, ECHR 2009-...).

6. On 15 September 2010 the adjournment ceased without the Government having been able to ensure enforcement of the judgment in question (see paragraph 16 below).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1968 and lives in Kurgan.

8. In 2002 the criminal proceedings were brought against the applicant. On 19 May 2003 he was acquitted by the Kurgan Regional Court (“the Regional Court”). That acquittal was upheld on appeal by the Supreme Court of Russia and became final.

9. The applicant lodged a claim for compensation. On 22 October 2003 the Kurgan Town Court partly allowed that claim and awarded the applicant 5,000 Russian roubles (RUB), this sum was equal to approximately 140 euros (EUR) at the material time. The award was payable from the federal budget.

10. The judgment of 22 October 2003 was upheld on appeal by the Regional Court on 11 December 2003 and thus became final. Writ of execution was issued.

11. On 17 February 2004 the court bailiffs returned the writ of execution to the applicant who was advised to address himself directly to the Ministry of Finance in Moscow. He apparently did so.

12. On 17 February 2005 the Director of Legal Department at the Ministry of Finance wrote to the applicant assuring him that the final judgment of the Town Court of 22 October 2003 in his favour had been in the course of being enforced.

13. That judgment remains unenforced.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. Relevant domestic law and practice in the material time are summarised in *Burdov (no. 2)*, cited above, §§ 26-33.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

15. The applicant contended that the prolonged failure to enforce the judgment of 22 October 2003 in his favour had violated his right to a court under Article 6 § 1 of the Convention which, in so far as relevant, provides the following:

“In the determination of his [or her] civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

16. The Government averred that they had no possibility to enforce the judgment of 22 October 2003 as the applicant had not re-submitted the writ of execution which had been returned to him on 25 August 2005 “due to [its] incompatibility with legislation”.

17. The applicant maintained his complaint.

A. Admissibility

18. The Court considers 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

19. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court” which would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III).

20. An unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention. The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant’s own behaviour and that of the competent authorities, and the amount and nature of the court award. Although some delay may be justified in particular circumstances, it may not, in any event, be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov (no. 2)*, cited above, §§ 66-67).

21. The Court reiterates that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings. However, a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt. That requirement does not relieve the authorities of their obligation to take timely *ex officio* action with a view to honouring the judgment against the State (see *Akashev v. Russia*, no. 30616/05, §§ 21-22, 12 June 2008).

22. Turning to the circumstances of the present case, the Court notes that the judgment of 22 October 2003 in the applicant’s favour was rendered against the State. The applicant undertook certain procedural steps in order to recover the judgment debt, in particular, he notified the Ministry of Finance of the judgment against the State rendered in his favour. He was advised by a senior official of the Ministry of Finance that the judgment in

question had been about to be enforced and had therefore legitimate expectation that no additional action on his part was required. The same agency however later returned the writ of execution to him. The Government did not explain why it had been “incompatible” with the legislation and what the applicant could have done in order to rectify the alleged incompatibility.

23. The Court therefore concludes that the authorities did not discharge their obligation to honour the binding judgment of 22 October 2003 rendered in the applicant’s favour against the State.

24. It has therefore been a violation of Article 6 § 1 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

25. The applicant contended that failure to have the judgment of 22 October 2003 in his favour enforced constituted unlawful deprivation of his possessions in breach of Article 1 of Protocol No. 1 which reads as follows:

“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.”

26. The parties’ arguments in this respect were the same as those in connection with the applicant’s complaint under Article 6 § 1 of the Convention.

A. Admissibility

27. The Court considers 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

28. The judgment which was never revoked provides the applicant with a “possession” within the meaning of this Article (see *Jasiūnienė v. Lithuania*, no. 41510/98, § 44, 6 March 2003).

29. The judgment of 22 October 2003 became final on 11 December 2003 (see paragraph 10 above) and has not been revoked since. By failing to comply with that judgment, the national authorities prevented the applicant from receiving the money he could reasonably have expected to receive.

30. There has therefore been a violation of Article 1 of Protocol No. 1.

III. 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 requested compensation of pecuniary damage totalling to 900 euros (EUR) constituting, in his submission, “the sum of delinquency”. He further requested compensation of non-pecuniary damage suffered. In his estimation, he should be awarded EUR 17,500 under this heading.

33. The Government made no pertinent observation.

34. As to pecuniary damage, the Court reiterates that the best redress of a violation of Article 6 is to put the applicant as far as possible in the position he would have been if Article 6 had been respected (see *Akashev*, cited above, § 32). Applied to the case at hand, this principle would mean that the State must pay to the applicant EUR 140 that he should have received under the judgment of 22 October 2003. Accordingly, the Court awards EUR 140 under this head.

35. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress from the non-enforcement of the judgment in question. Making its assessment on an equitable basis, the Court awards the applicant EUR 750 under this head.

B. Costs and expenses

36. The applicant made no request under this heading. The Court accordingly sees no reason to make any order in this respect.

C. Default interest

37. 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;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *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 140 (one hundred and forty euros) in respect of pecuniary damage and EUR 750 (seven hundred and fifty euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable on these amounts,
 - (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;
5. *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