



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

FIRST SECTION

CASE OF WASSERMAN v. RUSSIA

(Application no. 15021/02)

JUDGMENT

STRASBOURG

18 November 2004

FINAL

18/02/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Wasserman v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 28 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 15021/02) 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 and Israeli national, Mr Kim Wasserman.

2. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged a violation of Article 6 § 1 and Article 1 of Protocol No. 1 in that the respondent State failed to enforce a final judicial decision in his favour.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 25 March 2004 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1926 and lives in Ashdod, Israel.

8. On 9 January 1998 the applicant came to Russia to tend to a grave of his close relative. He had on him 1,600 US dollars which he omitted to note on his customs' declaration.

9. On the same day the Sochi Customs Office (*Сочинская таможня*) found the applicant guilty of smuggling foreign currency and imposed on him a fine of an amount equal to the amount smuggled. The money that the applicant had on him was forfeited as the fine. The applicant appealed to a higher customs office and also lodged a civil action with a court.

10. On 30 July 1999 the Khostinskiy District Court of Sochi gave its judgment. The court quashed the order of the customs office of 9 January 1998 and ordered the treasury of the Russian Federation to repay the applicant 1,600 US dollars "in the form of their equivalent in Russian roubles, i.e. RUR 38,752". The court dismissed the applicant's claim for compensation for non-pecuniary damage as having no grounds in the domestic law.

11. On 9 September 1999 the Krasnodar Regional Court upheld, on the customs office's appeal, the judgment of 30 July 1999.

12. On 29 December 1999 and 14 January 2000 the applicant wrote to the Prime Minister of the Russian Federation and the Minister of Foreign Affairs of the Russian Federation with a request to have the award in his favour enforced in US dollars and not in Russian roubles. He argued that he was an Israeli national and he could not receive any Russian roubles on his bank account in Israel.

13. On 13 March 2000 the Sochi Town Branch of the Federal Treasury (*Отделение федерального казначейства по г. Сочи*) advised the applicant that it had received the full amount of the award, but, having been unable to transfer it to the applicant's bank in Israel, it deposited it in the applicant's name with the Central office of the Savings Bank of the Russian Federation in Sochi.

14. In response to the applicant's letter addressed to President Putin, on 26 April 2000 the Ministry of Finance of the Russian Federation informed the applicant that on 31 March 2000 it had granted permission to the Sochi Branch of the Federal Treasury to convert the amount of the award into US dollars.

15. On an unspecified date the applicant asked the court to clarify the operative part of the judgment of 30 July 1999 and amend the method and form of enforcement. He requested the court to order the Federal Treasury to wire 1,600 US dollars to his account in Israel.

16. On 23 November 2000 the Khostinskiy District Court of Sochi refused the applicant's request because the Russian rouble was the only legal tender in the Russian Federation. This decision was quashed on the applicant's appeal by the Krasnodar Regional Court.

17. On 15 February 2001 the Khostinskiy District Court of Sochi granted the applicant's request. The court amended the operative part of the

judgment of 30 July 1999 and ordered the Federal Treasury of the Russian Federation to transfer 1,600 US dollars to the applicant's bank account in Israel.

18. The decision of 15 February 2001 was not appealed against and became final on 1 March 2001.

19. On 10 April 2001 the Khostinskiy District Court of Sochi issued a writ of execution and sent it to the bailiffs' service in Moscow.

20. On 19 June 2001 the writ of execution was received by the 2nd Interdistrict office of court bailiffs of the Central Administrative District of Moscow (*2й межрайонный отдел службы судебных приставов по ЦАО г. Москвы*), having territorial jurisdiction over the seat of the federal treasury. The applicant was advised of the receipt by phone.

21. On 14 and 20 January and 20 February 2002 the applicant complained to the Chief Court Bailiff of the Russian Federation (*Главный судебный пристав РФ*) about non-enforcement of the judgment.

22. On 28 February 2002 one of the applicant's complaints was forwarded to the Main Directorate of the Ministry of Justice of the Russian Federation for "taking measures to enforce the court judgment".

23. On 7 February 2003 the applicant complained to the president of the Zamoskvoretskiy District Court of Moscow about non-enforcement of the judgment of 30 July 1999.

24. On 12 May 2003 the applicant lodged a civil action against the 2nd Interdistrict office of court bailiffs of Moscow, seeking enforcement of the judgment, interest and damages.

25. On 31 July 2003 a deputy head of the 2nd Interdistrict office of court bailiffs of Moscow submitted his observations on the applicant's complaint. He denied that his service had received any documents from the applicant between 2000 and 2003.

26. By a letter of 6 January 2004, a deputy Chief Court Bailiff of Moscow informed the court that the Moscow bailiffs had received the writ of execution on 19 June 2001 and immediately forwarded it to the 2nd interdistrict office. On 30 October 2001 the 2nd interdistrict office had sent it to the court bailiffs of Sochi and since that time the Moscow bailiffs had no information about the whereabouts of the document.

27. On 26 April 2004 the hearing was adjourned until 31 May 2004 because the applicant's lawyer failed to appear.

28. On 1 June 2004 the court granted the applicant's request to join the Ministry of Finance as a co-defendant and adjourned the hearing until 10 June 2004.

29. On 10 June 2004 the court received a letter from Ms Zhenina, the applicant's lawyer, informing it that the applicant had revoked her power of attorney. The court adjourned the hearing until 12 July 2004 and requested the applicant to confirm the revocation.

30. On 12 July 2004 the proceedings were adjourned until 25 August 2004 because the parties did not appear.

31. It appears that the proceedings are now pending and the judgment of 30 July 1999, as amended on 15 February 2001, is not yet enforced.

THE LAW

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

32. The applicant complained that the continuing non-enforcement of the judgment of 30 July 1999 violated his “right to a court” enshrined in Article 6 of the Convention which provides as follows:

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

33. The Government submit that the writ of execution issued on the basis of the decision of 15 February 2001 was lost while being transmitted from one court bailiffs’ office to another. At present those responsible for its disappearance are “no longer in the civil service”. On 17 February 2004 the court bailiffs’ office of the Krasnodar region obtained a duplicate of the writ of execution and forwarded it to the Ministry of Finance in Moscow. On 21 June 2004 the legal department of the Ministry of Finance approved a transfer of 1,600 US dollars to the applicant’s account specified in the decision of 15 February 2001. The Government claim that the judgment will be enforced “in the nearest future”. They also note that the proceedings concerning interest and costs and expenses are now pending before the Zamoskvoretskiy District Court of Moscow and the applicant may still obtain satisfaction at the domestic level.

34. The applicant takes note of the Government’s admissions as regards the loss of the writ of execution through a fault of Russian civil servants. He submits that he has little hope in the success of the proceedings before the domestic courts because the judge had only fixed the first hearing after he had apprised her of the admissibility decision by this Court. Furthermore, despite the Government’s claim of forthcoming transfer of money, the judgment is still not enforced.

35. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right 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. It would be

inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

36. Turning to the instant case, the Court notes that the judgment of 30 July 1999, by which the applicant was to be reimbursed in Russian roubles for unlawfully seized US dollars, became final and enforceable on 9 September 1999. On 13 March 2000 the amount awarded in Russian roubles was transferred in its entirety to a deposit account in Sochi. The Court finds that the deposit can be considered as the appropriate enforcement of the judgment of 30 July 1999 inasmuch as it had only required a payment in roubles and it had not specified that the applicant was to receive it in Israel and not in Russia. Furthermore, the delay of six months and four days was not such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov v. Russia*, cited above, § 35; *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004).

37. The Court further notes that, as a result of successful litigation, on 15 February 2001 the applicant obtained a decision amending the judgment of 30 July 1999. It had the effect of changing the method and currency of enforcement of the judgment of 30 July 1999, without affecting, however, the amount of the award. On 1 March 2001 the decision became final and binding; it required that the award should be transferred in US dollars to the applicant’s bank account in Israel specified in the text of the decision. The applicant was issued with a writ of execution which he submitted, along with other required documents, to a court bailiffs office in Moscow.

38. The Court notes the Government’s admission that the writ of execution was lost in the process of its transfer from the Moscow bailiffs to the Sochi office. However, the logistical difficulties experienced by the State enforcement services cannot serve as an excuse for not honouring a judgment debt. The respondent Government did not provide any explanation as to why the applicant’s complaints about non-enforcement of the judgment had not prompted the competent authorities to investigate the matter and to ensure that the enforcement proceedings were brought to successful completion.

39. By failing for years to take the necessary measures to comply with the final judicial decision in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of all useful effect.

40. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

41. The applicant complained that the failure to honour a judgment debt interfered with his property rights under 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.”

42. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40; *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

43. The Court reiterates that, in so far as the judgment of 30 July 1999 in its original wording is concerned, the State did discharge its duty to enforce it in a sufficiently prompt and adequate manner (see § 36 above).

The Court finds that the decision of 15 February 2001 provided the applicant with a different enforceable claim, and notably that to have the amount of 1,600 US dollars credited to his bank account in Israel. But the applicant did not receive from the State the judgment debt as soon as it became enforceable or even within the time-limit set in the domestic law. Enforcement proceedings had been instituted and subsequently abandoned due to the loss of the writ of execution within the machinery of the court bailiffs’ service. The Court considers that the impossibility for the applicant to have this judgment enforced, constituted an interference with his right to peaceful enjoyment of his possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

44. By failing to comply with the decision of 15 February 2001, the national authorities prevented the applicant from receiving the reimbursement of the unlawfully seized amount in accordance with the method and form of enforcement mandated by that decision. The Government have not advanced any plausible justification for this interference and the Court considers that the lack of co-ordination between two offices of court bailiffs cannot justify such an omission.

45. It follows that there has also been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 2,362.70 US dollars (“USD”) in respect of pecuniary damage, of which USD 1,600 represented the principal amount awarded and unpaid to the applicant and the remainder represented the compound interest payable at the default Israeli interest rate of 6% for the period between 7 January 1998 and 7 July 2004. The applicant claimed USD 100,000 in respect of non-pecuniary damage which he had sustained as a result of the authorities’ failure to enforce the judgment.

48. The Government consider that the interest accrued has to be calculated from the date when the judgment of the Khostinskiy District Court of Sochi of 30 July 1999 entered into force. They indicate that the applicant did not provide any documents in support of his statement that the default Israeli interest rate was equal to 6%. As regards non-pecuniary damage, they submit that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

49. The Court rejects the claim for pecuniary damage in so far as it relates to the principal amount because the Government’s obligation to enforce the judgment at issue has not been yet extinguished and the applicant is still entitled to recover this amount in the domestic enforcement proceedings. Having regard to its conclusions in paras. 36 and 43 above, the Court considers that the interest is payable from the day the decision of 15 February 2001 amending the judgment of 30 July 1999 became enforceable, i.e. from 1 March 2001. As the Government did not suggest a different interest rate, the rate indicated by the applicant will be used for calculations. It follows that the compound interest for the period between 1 March 2001 and 7 July 2004 equals USD 356.57. Accordingly, the Court awards the applicant EUR 300 in respect of pecuniary damage, plus any tax that may be chargeable.

50. The Court also accepts that the applicant has suffered distress because of the State authorities’ failure to enforce a judgment in his favour.

However, the amount claimed in respect of non-pecuniary damage appears excessive. The Court takes into account the award made in the *Burdov v. Russia* case (cited above, § 47), the nature of the award, i.e. reimbursement of the unlawfully seized money, the amount due in the present case, the period of the authorities' inactivity and the fact that the judgment has not yet been enforced. Making its assessment on an equitable basis, it awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

51. The applicant also claimed USD 29,807 for costs and expenses. Those include USD 1,142 for travel expenses incurred in connection with the proceedings before the domestic courts, USD 465 for accommodation in Russia during the court proceedings, USD 593 for telephone calls to various law enforcement authorities, USD 3,000 in respect of the legal fees paid to Mr Dubinin for the drafting of statements of claim and other legal documents, USD 1,455 for the purchase and maintenance of a computer, printer, fax and calculator, USD 585 for office supplies, USD 440 for postal expenses, USD 4,588 for legal training and computer classes, USD 17,550 for the his wife's assistance (legal and otherwise) and her presumed loss of income in the past six years, and, finally, USD 29 for the certification of a power of attorney for Ms Zhenina, his former representative before the Court.

52. The Government contest the applicant's claims concerning reimbursement of the value of office equipment and payment for the assistance provided by the applicant's wife as unrelated to the substance of the application. They note that the applicant's wife was not his representative either before the domestic courts or in Strasbourg and the cost of her training is not to be reimbursed. They concede, however, that the Court may take into account the depreciation cost of the office equipment for the period while the domestic and Strasbourg proceedings were pending. The Government indicate that many documents in support of the applicant's claim are submitted in Hebrew, without translation into either official language of the Court, and therefore they "cannot be taken into consideration". They finally submit that the applicant's claims for costs and expenses are, in any event, manifestly ill-founded, excessive and unreasonable.

53. According to the Court's case-law, an applicant is entitled to reimbursement of the costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court further notes that it can only take into account the above claims in so far as they relate to the applicant's attempts to secure the enforcement of the decision of 15 February 2001 which was the subject-

matter of his application to the Court. It observes that the claimed travel and accommodation expenses, as well as the fees paid to Mr Dubinin for legal advice, were incurred in connection with the domestic proceedings for the return of unlawfully seized money and it was open to the applicant to raise the claims in question in those proceedings.

The Court rejects the applicant's claims insofar as they relate to his wife because it has not been shown that he had actually incurred these expenses himself and, in any event, there appears to be no causal link between the violation found and the applicant's wife's loss of earnings. It further rejects his claim related to Ms Zhenina because he had voluntarily refused her services for his representation before this Court.

Finally, as regards the remainder of the applicant's claims, the Court accepts that the applicant incurred some expenses in order to obtain enforcement of the decision of 15 February 2001 both in the domestic legal order and at the European level. It however considers the amounts claimed to be excessive. In this respect, the Court observes that at the admissibility stage some of the applicant's complaints were declared inadmissible. It is therefore appropriate to reimburse the costs and expenses alleged by the applicant only in the part related to his attempts to secure the enforcement of the judgment after 15 February 2001. Having regard to the elements at its disposal, the Court awards the applicant 300 EUR for the costs incurred before the Russian authorities and 300 EUR for the costs related to the European proceedings, and therefore the global sum of 600 EUR, plus any tax that may be chargeable.

C. Default interest

54. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that there has been a violation of 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, the following amounts:
 - (i) EUR 300 (three hundred euros) in respect of pecuniary damage;

- (ii) EUR 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage;
- (iii) EUR 600 (six hundred euros) in respect of costs and expenses;
- (iv) any tax that may be chargeable on the above amounts;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 18 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President