



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

SECOND SECTION

CASE OF OOO RUSATOMMET v. RUSSIA

(Application no. 61651/00)

JUDGMENT

STRASBOURG

14 June 2005

FINAL

14/09/2005

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 OOO Rusatommet v. Russia,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mr A. KOVLER,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 24 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 61651/00) 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 OOO Rusatommet, a limited-liability company registered in Russia (“the applicant company”), on 20 April 2000.

2. The applicant company was represented by Mr A. Kemishev, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant company alleged, in particular, that the State had failed to honour a judgment debt.

4. The application was allocated to the Second 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. When the Court changed the composition of its Sections on 1 November 2004, this case was allocated to the new Second Section.

5. By a decision of 14 September 2004, the Court declared the application partly admissible.

6. The applicant company and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the applicant company replied in writing to the Government’s observations.

THE FACTS

7. The applicant company is a debt collector. In July 1999, it bought a defaulted State bond and sued the Government for the debt. After several years of litigation, on 10 April 2002 the Moscow City Commercial Court ordered the Government to pay the applicant company 100,000 American dollars (“USD”).

8. On 5 August 2002, the Appeals Division of the Moscow City Commercial Court upheld the judgment, but specified that the debt was to be paid by the Ministry of Finance.

9. On 6 November 2002, the ministry asked the court to stay the enforcement of the judgment until January 2003, because there were no funds in the State budget of 2002.

10. On 19 November 2002, bailiffs opened enforcement proceedings.

11. On 16 December 2002, the court refused to stay the enforcement because the ministry had failed to prove either that it did not have the funds, or that the funds would become available after January 2003.

12. On 7 February 2003, the ministry asked the court to stay the enforcement of the judgment until January 2004, because there were no funds in the State budget of 2003.

13. On 20 March 2003, the court refused to stay the enforcement because the ministry had failed to prove either that it did not have the funds, or that the funds would become available after January 2004.

14. In August 2003, the ministry asked the appeal court to clarify how the judgment was to be enforced.

15. On 3 September 2003, the appeal court clarified that the judgment was to be enforced only once the applicant company had handed in the bond. The applicant company appealed against this decision because the general conditions of the bond’s issue did not require that it be handed in. In addition, the applicant company argued that the judgment could be enforced on the basis of a writ of enforcement alone, and that the bond was to be returned to the ministry only after the enforcement. On 25 November 2003, the Federal Commercial Court of the Moscow Circuit dismissed this appeal.

16. On 18 February 2004, the applicant company handed in the bond to the ministry.

17. Subsequently, the applicant company unsuccessfully sought an injunction to oblige the ministry to enforce the judgment.

THE LAW

18. The applicant company complained under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1 that the judgment of 10 April 2002 had not been enforced.

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

19. As far as relevant, Article 6 § 1 of the Convention reads as follows:

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

A. The parties' arguments

20. The Government rejected this complaint as manifestly ill-founded. Initially, they asserted that the applicant company was itself responsible for the delay, because it had resisted handing in the bond. In their observations of 17 January 2005, the Government asserted that the Ministry of Finance was taking steps to enforce the judgment.

21. The applicant company insisted on its complaint. It asserted that it had done everything it could to have the judgment enforced. The ministry's doubts about the manner of enforcement were a ruse to put off the payment day. The ministry was taking no steps to enforce the judgment.

B. The Court's assessment

22. Article 6 § 1 guarantees the “right to a court”: any person should be able to apply to a court to defend his or her civil rights. However, this right would be futile if the State allowed a final, binding judgment to idle (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40).

23. Lack of funds does not excuse the State from honouring a judgment debt. Even though in certain circumstances enforcement may be delayed, the delay must not undermine the right to a court (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III).

24. Turning to this case, the Court notes that the judgment has not yet been enforced. To date, 1 year and 3 months have passed from the day when the applicant company handed in the bond as the appeal court had required (and some three years since the date of the original judgment debt). This former delay is long enough to undermine the applicant company's right to a court. The Government have not advanced any justification for this delay.

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

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

26. Article 1 of Protocol No. 1 to the Convention 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.”

27. The Court repeats that a “claim” can be a “possession” within the meaning of Article 1 of Protocol No. 1 if sufficiently established in law to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, § 59).

28. The judgment gave the applicant company a reason to expect from the State 100,000 US dollars. The judgment became final and was submitted for enforcement. It follows that the non-enforcement of the judgment was an interference with the applicant company’s right to the peaceful enjoyment of its possessions. The Government have not advanced any justification for this interference.

29. There has, accordingly, been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant company claimed 210,332.24 American dollars (“USD”). This amount included the judgment debt and compensation for the bond’s late redemption. The applicant company suggested that, until settlement, this amount should also be increased by 23% a year. In addition, the applicant company asked the Court to fix compensation for the breach of the Convention.

32. The Government stated that these claims were unreasonably high. Besides, since the State was taking measures to pay the debt, the Court’s mere finding of a violation would suffice.

33. As to pecuniary damage, the Court notes that the judgment debt of 10 April 2002 has not yet been enforced. The Court considers that if the Government were to pay this debt, it would constitute full and final settlement of the dispute. Therefore, the Court awards the applicant USD 100,000 under this head.

34. As to non-pecuniary damage, the Court considers that the applicant company has suffered prejudice as a result of the violation found, and that it cannot be made good by the Court's mere finding of a violation. Deciding equitably, the Court awards 2,000 euros ("EUR") under this head.

B. Default interest

35. 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

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* by five votes to two
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) USD 100,000 (one hundred thousand American dollars) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (iii) 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* unanimously the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Mr Ugrekhelidze and Mr Kovler is annexed to this judgment.

J.-P.C.
S.D.

PARTIALLY DISSENTING OPINION OF
JUDGES UGREKHELIDZE AND KOVLER

We share the conclusions of the Chamber concerning a violation of Article 6 § 1 of the Convention and Article 1 Protocol no. 1, but we regret that the Chamber did not follow the Court's case-law in recent non-enforcement cases where the Court held that the respondent Government, within three months from the date on which the judgment becomes final, according to Article 44 § 2 of the Convention, should secure, by appropriate means, the enforcement of the award made by the domestic court. (*Makarova and others v. Russia*, no. 7023/03, 24 February 2005; *Plotnikov v. Russia*, no. 43883/02, 24 February 2005).

This clause would have permitted, in our opinion, to follow the domestic procedure of enforcement and to determine an appropriate amount of interest in accordance with the domestic rules.

The wording adopted by the majority of the Chamber in paragraph 3 (a) of the operative part of the judgment seems to fail to take into account the actual interest accrued during a long period of non-enforcement. We fear that this approach could foster an incorrect interpretation of the principle of "just satisfaction to the injured party", provided in Article 41 of the Convention. It might also create certain difficulties for the respondent Government in the course of the execution of the judgment.