



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

FIRST SECTION

CASE OF REYNBAKH v. RUSSIA

(Application no. 23405/03)

JUDGMENT

STRASBOURG

29 September 2005

FINAL

29/12/2005

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 Reynbakh v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 8 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 23405/03) 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 Sergey Sergeyevich Reynbakh, on 1 March 2002.

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

3. On 25 June 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1946 and lives in the Sakha (Yakutia) Republic of the Russian Federation.

1. Proceedings against the applicant's former employer

5. On 11 January and 14 December 1999 the Yakutsk Town Court granted the applicant's claims against his former employer, a public

company “Sakhaavialinii” (ОАО Авиакомпания «Сахаавиалинии», “the company”), and ordered payment of wage arrears and court fees.

6. It appears that the judgments could not be enforced as the company went bankrupt. In July 2000 the court bailiffs forwarded the writs of execution to the company’s receiver.

7. On an unspecified date the applicant sued the receiver. He claimed that the amounts outstanding should be adjusted for inflation.

8. On 17 January 2003 the Neryungri Town Court discontinued the proceedings on the ground that the applicant had failed to appear at the hearings of 27 December 2002 and 17 January 2003, despite having been duly notified thereof. The applicant did not appeal against that decision.

9. In March 2004 the applicant for the second time sued the company’s receiver, asking to increase the amounts to take account of the inflation.

10. On 5 May 2004 the Yakutsk Town Court dismissed his claim because the company had been declared bankrupt in 2003 and had ceased to exist. On 30 June 2004 the Supreme Court of the Sakha (Yakutia) Republic upheld the judgment on appeal.

2. Proceedings for the enforcement of a State promissory note

11. The applicant brought a civil action against the Russian Government. He sought to enforce a State-issued promissory note for the purchase of a Russian-made car or to recover the monetary value thereof.

12. On 6 June 2000 the Basmanniy District Court of Moscow granted the applicant’s action and awarded him 63,000 Russian roubles (“RUR”, EUR 2,360). The judgment was not appealed against and it became final and enforceable.

13. The applicant was issued with a writ of execution which he submitted to the court bailiffs’ service. On 26 April 2001 a bailiff of the 2nd Interdistrict Court Bailiffs’ Service of the Central Administrative District of Moscow refused to accept the writ because the law on budget for the year 2001 and the implementing Government regulation, introduced in December 2000, established that writs against the Treasury were to be submitted directly to the Federal Treasury.

14. On 13 August 2001 the applicant sued the Neryungri Department of the Federal Treasury seeking enforcement of the judgment of 6 June 2000 and adjustment of the judgment debt for inflation. His claim was dismissed in the final instance on 5 December 2001 by the Supreme Court of the Sakha Republic as having no grounds in the domestic law.

15. On 24 October 2001 the applicant also complained about the allegedly unlawful decision of the Moscow bailiff’s service to the Basmanniy District Court of Moscow. On 24 December 2002 the Moscow City Court dismissed the applicant’s complaint in the final instance. It found that the bailiff had acted lawfully. The applicant received a copy of the judgment on 19 July 2003.

16. The judgment of 6 June 2000 remains unenforced to date.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

17. The applicant complained that the continued non-enforcement of the judgments of 11 January and 14 December 1999 and that of 6 June 2000 violated his right of access to a court enshrined in Article 6 of the Convention and his right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1. The relevant parts of these provisions read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“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.”

A. Admissibility

1. Non-enforcement of the judgments against the applicant's former employer

18. The Court recalls that, according to Article 34 of the Convention, it can only deal with applications alleging a violation of the rights guaranteed by the Convention claimed to have been committed by State bodies. The Court has no jurisdiction to consider applications directed against private individuals or businesses (see, among other authorities, *Ciprová v. the Czech Republic* (dec.), no. 33273/03, 22 March 2005; *Mihăilescu v. Romania* (dec.), no. 47748/99, 26 August 2003; *Sanglier v. France*,

no. 50342/99, § 39, 27 May 2003). Turning to the instant case, the Court notes that the debtor was a public company. The company was not owned by the State, did not exercise any public functions and the State does not appear to have had effective control of it. The Court observes that the judgments against the company could not be enforced due to the company's lack of funds and its subsequent bankruptcy. There is nothing to indicate that the State may be responsible for the continued non-enforcement of the judgments.

19. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. Non-enforcement of the judgment against the Treasury

20. The Court notes that this part of the application 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

21. The Government claimed that the applicant failed to submit the writ of execution and the original promissory notes to the federal treasury. According to the domestic law, judgments remain enforceable for three years. After the three-year time-limit expired, the judgment of 6 June 2000 was no longer enforceable.

22. The applicant responded that the requirement was introduced in December 2000 and that the bailiffs had had sufficient time to ensure enforcement before that date. He maintained that he could not submit the original promissory notes to the federal treasury because they were kept with the case file at the Basmanniy District Court of Moscow. It was not before December 2003 that the court returned the documents. By that time the time-limit for enforcement had already expired.

23. The Court observes that on 6 June 2000 the applicant obtained a judgment in his favour against the federal treasury, which has not been enforced to date. A competent State agency, the bailiffs' service, was promptly served with the writ of execution. The Government did not explain why the bailiffs had taken no steps to enforce the judgment within the two-month enforcement period established in the domestic law. It is true that the applicant did not resubmit the writ of execution to a different authority after the changes in the domestic law had been introduced in December 2000. However, the Court considers that it is incumbent on the State to organise its legal system in such a way that ensures co-ordination between various enforcement agencies and secures honouring of the State's judgment debts in good time, irrespective of changes in the domestic law. It

would impose an excessive burden on the applicant if he were to follow every such change and forward the writ of execution from one competent State agency to another.

24. In any event, the Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The State authorities were aware of the applicant's claims, and, as soon as the judgment in the applicant's favour became enforceable, it was incumbent on the State to comply with it.

25. The respondent Government did not provide any explanation as to why the judgment in the applicant's favour has not been enforced. It does not appear that the bailiffs or the federal treasury have taken any measures to comply with the judgment. In fact, the judgment has remained without enforcement to date, that is for more than five years since it was issued.

26. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Petrushko v. Russia*, cited above, § 23 et seq.; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

27. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving the money he could reasonably have expected to receive.

28. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicant complains under Article 6 about unfairness and excessive length of the proceedings leading up to the judgment of the Supreme Court of the Sakha Republic of 5 December 2001 and of those that culminated in the judgment of the Moscow City Court of 24 December 2002.

30. The Court has examined the complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows

that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

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. As regards the pecuniary damage, the applicant claimed 105,531 Russian roubles (RUR), which represents the principal due to him under the judgment of 6 June 2000 adjusted by the inflation coefficient of 167.51 %. He submits that this sum would not entirely compensate the damage because the value of the Russian-made car is now RUR 240,000. As to the non-pecuniary damage, the applicant leaves the determination of the amount to the Court’s discretion.

33. The Government considered that the finding of a violation would in itself constitute sufficient just satisfaction.

34. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position in which he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12; and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). Turning to the instant case, the Court observes that the three-year time-limit for enforcement has expired. Accordingly, the enforcement of the judgment of 6 June 2000 is no longer possible. This indicates the existence of a causal link between the violation found and the alleged pecuniary damage. However, the applicant was awarded a fixed sum of money. The Court does not discern a causal link between the violation found and the applicant’s claim for the payment of the current value of the Russian-made car.

35. The Court further notes that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the award in the applicant’s favour had not been paid to him. In this connection the Court recalls that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizatova v. Russia*, cited above, § 28; *Metaxas v. Greece*, cited above, § 36). The applicant submitted a certificate of the Neryungri State

Department of Statistics showing that the inflation rate in the reference period was 167.51 %. Taking into account that the Government did not dispute the method of calculation employed by the applicant, the Court accepts the applicant's claim in respect of the pecuniary damage and awards him the sum of RUR 105,531 under this head, plus any tax that may be chargeable on that amount.

36. The Court also accepts that the applicant suffered distress because of the State authorities' failure to enforce a judgment in his favour. The Court takes into account the amount and nature of the award in the instant case, a long period of the authorities' inactivity, and the fact that the judgment has not been enforced. Making its assessment on an equitable basis, it awards the applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

37. The applicant asked for reimbursement of his legal fees. However, he did not specify the amount, nor did he submit any receipts or other vouchers on the basis of which such amount could be established. Accordingly, the Court does not make any award under this head.

C. Default interest

38. 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 non-enforcement of the judgment of 6 June 2000 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and 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 in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) RUR 105,531 (one hundred and five thousand five hundred thirty-one Russian roubles) in respect of the pecuniary damage;

- (ii) EUR 2,500 (two thousand and five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
- (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President