



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

FIRST SECTION

CASE OF SHVEDOV v. RUSSIA

(Application no. 69306/01)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

20/01/2006

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 Shvedov 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 N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 69306/01) 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, Aleksey Yefimovich Shvedov (“the applicant”), on 14 March 2001.

2. The initial complaint by the applicant concerned alleged non-enforcement of a judgment in his favour. On 27 March 2002 the first applicant died. It appears that the applicant's son, Aleksandr Shvedov and his brother Aleksey Shvedov were the only two heirs of the deceased. By letter of 4 December 2002 Aleksandr Alekseyevich Shvedov informed the Court about his father's decease and expressed the wish to continue proceedings in the capacity of his heir. His brother, the other son of the applicant, has never contacted the Court.

3. In 2002-2004 the applicant's son presented a number of new complaints on his own behalf. Thus, by letter of 4 December 2002 he complained of his forced immigration to the Soviet Union in 1957. By letter of 27 January 2004 he complained of the outcome of a housing dispute concerning his father's flat (see the “Facts” below).

4. The applicant was represented by Ms V. I. Vorontsova. His heir, Aleksandr Alekseyevich Shvedov (hereinafter referred to as “the second applicant”), was represented by Mr K. P. Krakovski, a lawyer practising in Rostov-on-Don. The Russian Government (“the Government”) were represented by Mr P. A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

5. On 8 March 2004 the Court decided to communicate the application to the Government in so far it concerned the complaint of the alleged non-enforcement of a judgment in the applicant's favour. 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

6. The applicant, a Russian national, was born in 1927 and died in 2003. At the relevant time he lived in Rostov-on-Don.

7. The second applicant is a Russian national and was born in 1949. He is the applicant's son and lives in Rostov-on-Don.

A. Civil proceedings arising from wrongful conviction

8. In 1995 the applicant was arrested on suspicion of theft and placed in police custody. In 1996 the court acquitted him.

9. In September 1996 the applicant brought proceedings against the State claiming damages for his unlawful detention. On 29 December 1997 the Proletarskiy District Court satisfied his claim ordering the State to pay the applicant damages in the amount of RUR 34,000. This decision entered into force. However on 25 May 1998 the decision in the first applicant's favour was quashed by way of supervisory review. The case was remitted to the first instance court.

10. On 15 March 1999 the Rostov-on-Don Proletarskiy District Court satisfied the applicant's claims in part awarding him 24,917 Russian Roubles (~970 Euros), to be recovered from the regional branch of the Federal Treasury. The decision was not appealed against and, as follows from a copy of this decision provided by the applicant, became final on 17 March 1999.

B. Enforcement proceedings

11. On 12 May 1999 the local bailiffs' service initiated the enforcement proceedings against the regional branch of the Treasury. The applicant and the bailiff repeatedly contacted the defendant in order to recover the amount awarded by the District Court. However, the payment orders were returned to the bailiff unexecuted. The regional branch of the Treasury explained that since no budget funds had been allocated from the federal budget for these purposes, the judgment debt could not be paid.

12. In the following months the bailiffs addressed the Federal Treasury in Moscow and the Ministry of Finance with request to make necessary

budget appropriations to execute the judgment of 15 March 1999. As follows from the letter of the Legal Department of the Ministry of Finance of 25 August 1999, the information on the judgment debt was included in a special data-base which listed all claims against the Federal Treasury.

13. In April 2000 the case-file concerning the enforcement proceedings was transmitted to the bailiffs in Moscow. The applicant was informed that henceforth the enforcement proceedings would be carried out by the bailiffs in Moscow, at the address of the central office of the Federal Treasury.

14. In the meantime the applicant asked the District Court to clarify which State institution was responsible for payment of the judgment debt. On 13 September 2000 the District Court ruled that the debt should be recovered from the central office of the Federal Treasury in Moscow. The court accordingly delivered a new writ of execution which was forwarded to the bailiffs' service in Moscow.

15. On 26 March 2001 the writ of execution was returned to the applicant. The Moscow-based bailiffs' service explained to the applicant that due to changes in the legislation, and, in particular, pursuant to the Law on the Federal Budget for 2001 (see the "Relevant domestic law" below), they ceased to be responsible for the forced execution of the court judgment against the State authorities. The bailiff proposed the applicant to forward the writ of execution together with some additional documents directly to the Ministry of Finance in Moscow.

16. According to the respondent Government, at present the writ of execution is with the Ministry of Finance. The second applicant indicated that in December 2004 all documents required pursuant to Decree no. 666 had been submitted to the Ministry of Finance. However, it appears that to date the judgment has not been enforced.

C. Other facts referred to by the second applicant

17. The second applicant was born in 1949 in Germany. Since 1950 his family lived in Australia. According to the applicant, in 1957, when they were visiting relatives in the Soviet Union, the Soviet authorities prohibited them from returning to Australia.

18. The second applicant was also involved in a civil dispute with a private person regarding his father's flat. This dispute ended with the decisions taken by the Rostov Regional Court on 4 December 2002 and by the Proletarskiy District Court on 13 March 2003, which was not appealed against and became final on 25 March 2003.

D. Relevant domestic law and practice

General provisions on execution of court judgments

19. The Russian Law on Enforcement Proceedings (no. 119-Φ3 of 21 July 1997) designates the court bailiffs' service as the authority charged with enforcement of court decisions (Section 3 § 1). Court judgments can also be executed by tax authorities, banks, financial institutions, other organisations, State officials and individuals – all of them are not considered to be the enforcement authorities (Section 5).

Execution of judgments against budget-funded organisations

20. Section 110 of the Law on Federal Budget for the Year 2001 (no. 150-Φ3 of 27 December 2000) provided that writs of execution issued against the treasury of the Russian Federation were to be sent for execution to the Ministry of Finance of the Russian Federation and were to be executed in accordance with the procedure established by the Russian Government. A similar provision was included in Section 128 of the Law on Federal Budget for the Year 2002. However, Section 122 of the Law on Federal Budget for the Year 2003 (no. 176-Φ3 of 24 December 2002) established, in addition to the similar requirement that writs of execution were to be submitted to the Ministry of Finance, that the court bailiffs could not enforce judgments against the Russian Federation.

21. On 22 February 2001 the Russian Government approved the “Rules on recovery of funds due on the basis of court-issued writs of execution under a monetary obligation of a recipient of federal budget funds” (the “Rules”). Sections 2 and 3 of the Rules provide that the creditor must submit the writ of execution and a copy of the judgment to the office of the federal treasury where the debtor has its current account. The federal treasury office must grant the recovery within three working days in the part not exceeding the balance of the account (Section 5). Should the balance of the account be insufficient for a full recovery, the writ of execution must be returned to the creditor who can then apply to the Ministry of Finance to recover the outstanding amount from the debtor's funding entity (Section 6).

22. On 9 September 2002 the Russian Government adopted Decree no. 666 which enacted the “Rules of Execution by the Ministry of Finance of court judgments against the Treasury of the Russian Federation arising from the claims for damages caused by unlawful acts or omissions of the State authorities or State officials”. The procedure of execution of such judgments provided by the Rules of 2002 was essentially the same as provided by the Rules of 22 February 2001 cited above.

Case-law of the Supreme Court of the Russian Federation

23. On 19 July 2001 the Supreme Court of the Russian Federation delivered judgment no. ГКПИ 2001-864 concerning the lawfulness of certain provisions of the Rules. In particular, the court held that the Rules did not govern the enforcement of court judgments because the federal treasury was not an enforcement body, pursuant to Section 5 of the Law on Enforcement Proceedings. In subsequent judgment no. ГКПИ 2001-1345 of 22 October 2001 the court clarified this position as follows:

“The contents of the contested Rules indicate that they do not govern the procedure for enforcement of court decisions, rather they establish the procedure for voluntary execution of court decisions and for recovery of funds under monetary obligations of recipients of the federal budget funds...”

The court also has regard to the fact that the contested Rules do not prevent the creditor from resorting to the enforcement proceedings in respect of a court decision...”

24. In judgment nos. ГКПИ 2001-1790 and 2002-139 of 27 February 2002 the Supreme Court of the Russian Federation confirmed that neither the Rules, nor the Laws on Federal Budgets for 2001 and 2002 prevented the creditor from seeking enforcement of a court judgment in accordance with the procedure set out in the Law on Enforcement Proceedings, the Law on Court Bailiffs and the Code of Civil Procedure. Finally, the Supreme Court again upheld this position in judgment no. ГКПИ 2001-1482 of 28 March 2002.

25. On 20 May 2003 the Supreme Court of the Russian Federation in its decision no. KAC 03-205 ruled that the Rules, adopted by Decree no. 666 of 9 September 2002, concerned the voluntary execution of court decisions against the Federal treasury and did not prevent the creditor from seeking enforcement through the court bailiffs.

THE LAW

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

26. The applicant complained about the non-enforcement of the court judgment in his favour of 15 March 1999. Although the applicant in his initial application referred to Article 5 § 5 of the Convention, the Court, in line with its well-established case-law in similar cases (see, among many other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III) considers that this complaint falls to be examined more appropriately under

Article 6 § 1 and Article 1 of Protocol no. 1 to the Convention, which, insofar as relevant, read as follows:

Article 6

“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.”

27. The Government contested the applicant's arguments. They indicate that he failed to follow the procedures provided for the enforcement of court decisions against the State. In particular, the applicant failed to send to the competent authority – the Ministry of Finance of the Russian Federation – certain documents, required by Decree no. 666 of 9 September 2002 (see the “Relevant domestic law” above). Therefore, the delay in execution of a judgment was the applicant's fault. The Government further alleged that “taking into account that Mr. A. E. Shvedov [the applicant] has not received the money due to him, in connection with his death, ... the heirs of the departed, in particular, Mr. A. A. Shvedov [the second applicant] can address for execution of the judicial decision by way of submitting the relevant documents to the Ministry of Finance of the Russian Federation”. The Government concluded that the complaint about the non-enforcement of the court decision was manifestly ill-founded.

A. Admissibility

28. The Court notes that the sole objection raised by the Government in this respect is that the applicant's own behaviour had been the principal cause for the delay in the execution of the Proletarskiy District Court's judgment of 15 March 1999. In the Court's view, this question raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Therefore, the 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 and must be therefore declared admissible.

B. Merits

1. Alleged breach of Article 6 § 1 of the Convention

29. The Government claim that the judgment has not been enforced because of the applicant's failure to submit appropriate documents to the Ministry of Finance of the Russian Federation, as provided by Decree no. 666 of 9 September 2002.

30. The second applicant submits that by the moment of adoption of the regulations referred to by the Government the court decision in the applicant's favour of 15 March 1999 had remained unexecuted for a considerable period of time and that, moreover, the adoption of special rules on the enforcement of judgments against the State authorities did not preclude the creditors from seeking enforcement in an ordinary way, that is through the bailiffs. The second applicant referred to the Russian Supreme Court decisions cited above (see the “Relevant Domestic Law” above).

31. The Court notes that the parties are in dispute as to whether the applicant's behaviour or the conduct of the State authorities (the debtor) were the principal cause for the delay in the execution of the judgment of 15 March 1999.

32. In this respect the Court recalls, at the outset, that the “right to a court”, derived from Article 6, comprises a duty of the State to implement final judicial decisions (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III). However, this duty is not absolute and may be subject to certain limitations permitted by implication: a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt (see *Treial v. Estonia*, (dec.) no. 48129/99, 28 November 2000). At the same time the formalities required from the creditor may not restrict or reduce his access to the enforcement proceedings in such a way or to such an extent that the very essence of the “right to a court” is impaired (see, *mutatis mutandis*, *Kreuz v. Poland*, no. 28249/95, § 53, ECHR 2001-VI).

33. Turning to the present case the Court notes that the enforcement proceedings started in May 1999. On 26 March 2001 the bailiffs returned the writ of execution to the applicant. They advised him to submit it directly to the Ministry of Finance, referring to the new regulations on enforcement of judgments against the State, introduced by the Law on the Federal Budget for 2001. However, by this time the writ of execution had been with the bailiffs for more than two years. During this period the enforcement made no progress at all and the Government do not present any justification why this delay occurred. The only reason referred to by the domestic authorities was the absence of funds. However, in the eyes of the Court, “it is not open to a State authority to cite lack of funds as an excuse for not

honouring a judgment” (*Romashov v. Ukraine*, no. 67534, 27 July 2004, § 43). Therefore, this delay in executing the judgment in the applicant's favour is imputable to the State.

34. As to the period after 26 March 2001, the Court notes the following. The new regulations on enforcement, enacted in 2000 did not preclude the applicant from seeking the enforcement in a normal way, i.e. through the bailiffs (see the “Relevant domestic law”, § 23). Moreover, the Ministry of Finance had all necessary information about the applicant's claim already in 1999 (see § 12), that is prior to enactment of the new regulations.

35. Therefore, after more than two years of inactivity the authorities *de facto* required the applicant to re-start the enforcement proceedings. It was not necessary from the standpoint of the national law and, moreover, excessive from the standpoint of the Convention. Consequently, the applicant could not be blamed for delaying the enforcement of the judgment by not making use of an alternative procedure indicated by the respondent Government.

36. The Court concludes that the non-execution of the judgment of 15 March 1999 is attributable solely to the authorities. The Government did not advance any plausible justification for the delay in paying off the judgment debt. Therefore, the delayed enforcement of the judgment impaired the applicant's right to the court.

37. It follows that there has been a violation of Article 6 § 1 of the Convention.

2. Alleged breach of Article 1 of Protocol No. 1 to the Convention

38. 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 *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). By failing to comply with the final judgment of 15 March 1999 the national authorities prevented the applicant from receiving the money he could reasonably have expected to receive (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III).

39. The Court refers to its finding (see §§ 31 - 37) that there was no fault on behalf of the applicant in delaying the enforcement of the judgment of 15 March 1999. It follows that the impossibility for the applicant to have the judgment enforced for a substantial period of time constituted an interference with his right to peaceful enjoyment of his possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

40. In the absence of any justification for such an interference (see § 36 above), the Court concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. The second applicant complained of the refusal of the Soviet authorities to let his family return to Australia in 1957. However, the events complained of took place before the date of the Convention's entry into force in respect of the Russian Federation. Therefore, this complaint is incompatible with the provisions of the Convention *ratione temporis*, and must be rejected pursuant to Article 35 §§ 3 and 4 thereof.

42. The second applicant also complained about a civil dispute concerning his father's flat. The Court notes that this dispute ended with two final decisions (see § 18), delivered more than six months before the date on which the application in this respect was lodged with the Court (see § 3). It follows that this part of the application has been introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. In his initial application to the Court the applicant claimed for both pecuniary and non-pecuniary damage sustained by him 3,000,000 US Dollars. The second applicant, in his application of 27 January 2004, repeated this claim. After the communication the second applicant was invited by the Registry to submit his claims for just satisfaction, which he did on 18 October 2004. He claimed two amounts: EUR 5,000 for wrongful conviction of his father, and EUR 3,000 for non-enforcement of the court judgment of 15 March 1999. It appears that the amounts sought by the applicant comprised both pecuniary and non-pecuniary damage allegedly sustained by him and his father in the course of the domestic proceedings.

45. The Government maintained that the applicant did not suffer any pecuniary or non-pecuniary damage. They suggested that a finding of a violation would of itself constitute sufficient just satisfaction. Alternatively, they suggested that a compensation similar to one awarded in the case *Burdov v. Russia* (cited above, § 47) would suffice.

46. As regards the first amount sought by the applicant, the Court notes the following. The complaint to the Court concerned only the non-enforcement of the judgment of 15 March 1999, and not its alleged

unfairness or inadequacy. Consequently, the sole matter to be taken into consideration for the purposes of Article 41 is the prejudice supposedly entailed by the lengthy non-enforcement of the judgment in the applicant's favour.

A. Pecuniary damage

47. As regards any possible material losses sustained by the applicant as a result of the lengthy non-enforcement of the judgment at issue, the Court points out that under Rule 60 of the Rules of the Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the [Court] may reject the claim in whole or in part”.

48. Insofar as the second applicant's claim relate to the outstanding principal amount due to his father under the judgment of 15 March 1999 (RUR 24,917), the Court notes that the Government's obligation to enforce the judgment at issue is not yet extinguished in the domestic terms and the second applicant, as the applicant's heir, is still entitled to recover this amount in the course of enforcement proceedings. The Court recalls 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 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). The Court finds that in the present case this principle applies as well, having regard to the violations found. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the award made by the domestic court. For this reason the Court does not find it necessary to make an award for pecuniary damage in so far as it relates to the principal amount (see *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005).

49. As regards other possible material losses arising from the non-enforcement of the judgment, the Court makes no award in this respect as the applicant has not substantiated any such loss.

B. Non-pecuniary damage

50. The applicant, referring to an award made by the Court in the case *Burdov v. Russia* cited above, sought compensation for non-pecuniary damage in the amount of EUR 3,000.

51. The Court recalls that in *Burdov* the judgment at issue concerned the Chernobyl-victim's pension payable as compensation for health damage leading to disability, which represented the applicant's main source of income. In the present case the court award was of a different nature. Nevertheless, the Court is ready to accept that the prolonged non-payment

of the judgment debt caused certain mental distress to the applicant (see *Wasserman v. Russia*, no. 15021/02, 18 November 2004, § 50). Making an assessment on an equitable basis in accordance with Article 41, the Court awards the applicant EUR 3,000 (three thousand euros) under this head, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amount. This sum should be paid to his heir, the second applicant, who continued the proceedings in the applicant's stead.

B. Costs and expenses

52. The applicant also claimed reimbursement of the costs and expenses incurred before the Court. He left the determination of the exact amount of these expenses at the Court's discretion.

53. The Government considered that the applicant's claim for reimbursement of his legal costs was unsubstantiated.

54. The Court notes that in the present case the applicant was represented by a lawyer and was involved in a correspondence with the Court, which necessarily put him to expenses. At the same time the applicant presented no supporting documents, which would allow the Court to make a precise calculation of his legal costs. Consequently, according to the estimate of standard legal expenses which might have incurred by a successful applicant in a comparable situation, the Court awards the applicant EUR 300 (three hundred euros) under this head, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount. This sum is to be paid to his heir, the second applicant, in the applicant's stead.

C. Default interest

55. 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 prolonged non-enforcement of the judgment of 15 March 1999 in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

3. *Holds:*

- (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court on 15 March 1999, and in addition pay the second applicant EUR 3,000 (three 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 the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 300 (three hundred euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
- (c) 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President