CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF BOGDANOV v. RUSSIA

(Application no. 3504/02)

JUDGMENT

STRASBOURG

9 February 2006

FINAL

09/05/2006

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 Bogdanov v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 19 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 3504/02) 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 national, Mr Aleksandr Petrovich Bogdanov ("the applicant"), on 15 March 2001.

2. The applicant complained about the insufficiency of the award made in his favour by the judgment of the Krasnoarmeyskiy Town Court of 14 September 1998. He also complained that the above judgment was not enforced.

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

4. On 19 November 2003 the Court decided to communicate the complaint concerning non-enforcement of a judgment in his favour 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in the Novolobinskaya village, Krasnodar Region.

6. In 1992 the applicant was convicted of theft and sentenced to 5 years and 6 months' imprisonment. Following the revision of his criminal case by way of supervisory review in 1995, his sentence was reduced. However, this decision was erroneously sent to the prison administration with a considerable delay. As a result, the applicant was released eight months later than provided by the court decision.

7. In September 1996 the applicant brought civil proceedings claiming damages in this respect. On 14 September 1998 the Krasnoarmeyskiy Town Court of the Saratov Region awarded the applicant 1,000 Roubles, to be paid by the Ministry of Finances of Russia. The parties did not appeal and this judgment became final.

8. The Krasnoarmeyskiy Town Court issued an execution order and on 23 October 1998 (or, according to the Government, on 20 October 1998) it was forwarded to the Kirovskiy District Court of Saratov. On 26 October the Kirovskiy District Court received the execution order. On the same day the execution order was forwarded to the court bailiffs for execution. However, it never reached the bailiffs.

9. The applicant asserted that in the following years he requested the Kirovskiy District Court of Saratov and the bailiffs' service to resume the enforcement proceedings. In reply to one of his letters, on 16 April 2001 the Saratov Region Chief Bailiff advised the applicant to file a request to the Krasnoarmeyskiy District Court with a view to obtain a duplicata of the execution order. However, as the Government suggested, he did not do so.

10. On 20 October 2004 the Krasnoarmeyskiy District Court of the Saratov Region issued a duplicata of the execution order. It is unclear whether the court did it on its own motion or upon the applicant's initiative. In December 2004 it was forwarded to the Ministry of Finance, with a copy to the applicant. In a cover letter of 6 December 2004 the District Court noted that the parties had been duly notified about the hearing but failed to appear. The Court also drew the applicant's attention to the fact that he should provide the Ministry of Finance with his bank account details.

11. It appears that the judgment of 14 September 1998 remains unenforced to date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. For relevant provisions of Russian law on enforcement of court judgments against budget-funded organisations see *Wasserma v. Russia* (dec., no. 15021/02, 25 March 2004), and *Shatunov and Shatunova v. Russia* (dec., no. 31271/02, 30 June 2005).

13. 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". Pursuant to this Decree, the judgment creditor should forward to the Ministry of Finance a writ of execution, a copy of the court's judgment duly attested, and an application form, containing, inter alia, information on the plaintiff's bank account. 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, 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 AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

14. The applicant complained about the lengthy non-enforcement of the court judgment of 14 September 1998 in his favour. The Court will examine this complaint under Article 6 § 1 and Article 1 of Protocol no. 1 to the Convention. These articles, in so far 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 the 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

15. The Government indicated that the execution writ issued by the Krasnoarmeyskiy Town Court should have been enforced by the Saratov branch of the Federal Treasury. For some reason it was lost on its way to the bailiff's office. The applicant knew that the enforcement proceedings were not initiated, however, he failed to lodge a request with the competent court

in order to obtain a duplicata of the execution order. In their further submissions the Government also indicated that the applicant did not submit to the Ministry of Finance the application form with his banking information and the writ of execution, as required by Government Decree No. 666, and, consequently, the execution order could not be enforced. Therefore, the applicant's complaint should be rejected as manifestly ill-founded.

16. The applicant in reply maintained his arguments.

17. The Court notes that the new regulations on enforcement, referred to by the Government, namely Government Decree No. 666, did not preclude the applicant from seeking the enforcement in a normal way, i.e. through the bailiffs (see § 13 above). The applicant made use of that avenue; therefore, he cannot be held responsible for not using the alternative procedure, indicated by the respondent Government.

18. Further, as concerns the enforcement through the bailiffs, the Government did not contest that the execution order had been lost due to the authorities' fault. It is true that in April 2001 the applicant was advised to submit a request to the court in order to obtain a duplicata (see § 9). However, even assuming that after having learned about the loss of the execution order the applicant should have had recourse to the court again, it does not justify the authorities' inaction before that date. The Court also notes that in October 2004 the Krasnoarmeyskiy District Court issued a duplicata of the execution order of 14 September 1998 (see § 10). The Government did not explain why it could not have been done before that date.

19. The Court concludes, in view of the above, 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

20. The Court observes that the judgment of the Krasnoarmeyskiy Town of 14 September 1998 remained inoperative at least until the end of 2004. The Government did not advance any arguments to justify this delay other than those examined by the Court above (see §15 et seq.).

21. 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, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III and, more recently, *Petrushko*, no. 36494/02, 24 February 2005, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

22. Having examined the material submitted to it, the Court notes that the Government did 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant complained about the insufficiency of the court award in his favour, made by the Krasnoarmeyskiy Town Court.

Admissibility

25. The Court notes that the application in this respect has been introduced outside of the time-limit set down by Article 35 § 1 of the Convention: the decision, taken by the Krasnoarmeyskiy District Court of Saratov on 14 September 1998, was not appealed against and became final on 24 September 1998. The applicant's subsequent requests for a supervisory review do not constitute effective remedies within the meaning of Article 35 § 1 of the Convention. It follows that 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

26. 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."

27. After the communication of the application to the respondent Government, the applicant was invited to submit his claims for just satisfaction under Article 41 of the Convention. However, he did not present any claims for compensation of pecuniary or non-pecuniary damages caused by the prolonged non-enforcement of the judgment in his favour. Accordingly, the Court considers that there is no call to award him any sum on that account.

28. At the same time the applicant maintained his claims as to the judgment debt, due to him under the judgment of 14 September 1998. Insofar as the applicant's claims relate to the outstanding amount of the judgment debt (RUR 1,000) the Court notes that the Government's

obligation to enforce the judgment at issue is not yet extinguished in the domestic terms and the applicant is still entitled to recover this amount in the course of enforcement proceedings. The Court recalls that the most appropriate form of redress 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 THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning non-enforcement of the Krasnoarmeyskiy District Court judgment of 14 September 1998 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 due to the prolonged non-enforcement of the judgment of 14 September 1998;

3. *Holds* 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 14 September 1998, and that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the outstanding amount of the judgment debt at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 9 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President