



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

FIRST SECTION

CASE OF SUKHOBOKOV v. RUSSIA

(Application no. 75470/01)

JUDGMENT

STRASBOURG

13 April 2006

FINAL

13/07/2006

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 Sukhobokov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 23 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 75470/01) 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, Alik Kersanovich Sukhobokov (“the applicant”), on 27 June 2001.

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

3. On 16 February 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 1937 and lives in Volgodonsk, Rostov region.

5. The applicant receives an old-age pension. The Law on Calculating and Upgrading State Pensions of 21 July 1997 (the “Pensions Law”) introduced, since 1 February 1998, a new method of calculating pensions. This method, “Individual Pensioner Coefficient” (“IPC”), was meant to link a person’s pension to his previous earnings.

6. On 22 April 1999 the applicant brought proceedings against the Volgodonsk labour and social development authority (*Департамент труда и социального развития*) before the Volgodonsk Town Court. He argued that his IPC should be fixed at 0.7, which would result in an increase in his pension.

7. The Town Court found for the applicant and ordered the defendant authority to re-calculate the applicant's pension from 1 February 1998 based on the IPC equal to 0.7 and pay the arrears of 3,186.36 roubles. According to the applicant and the documents submitted by him, the judgment was dated 25 October 1999 and came into force on 8 December 1999. According to the Government, the judgment was dated 25 November 1999 and came into force on 5 December 1999.

8. On 14 January 2000 the Town Court issued a writ of execution. On 26 January 2000 the Volgodonsk bailiff's service instituted enforcement proceedings. As the payments in enforcement of the judgment had not been made the applicant complained to various authorities. In letters of 10 June and 3 October 2000 the enforcement proceedings supervision department of the Rostov region division of the Ministry of Justice informed him that the judgment debt would be paid to him upon receipt of funds from the State budget.

9. According to the Government, the Volgodonsk labour and social development authority lodged an application with the Town Court for re-consideration of the judgment given in the applicant's case due to discovery of new circumstances. The authority argued that such a circumstance was an instruction of the Ministry of Labour and Social Development of 29 December 1999, which interpreted the Pensions Law in a way different from that in the judgment. On 29 September 2000 the Town Court granted the authority's application and quashed the judgment due to discovery of new circumstances, notably the above ministerial instruction.

10. According to the applicant, he was never informed of the court decision of 29 September 2000.

11. On 5 January 2001 the Volgodonsk bailiff's service terminated the enforcement proceedings. It stated in its decision as follows:

"The proceedings [instituted on the basis of the writ of execution in favour of A. K. Sukhobokov] should be considered as terminated in connection with remitting the writ of execution, without enforcement, at the request of the court.

On the basis of the foregoing, being governed by Section 27 (2) of the Federal Law on Enforcement Proceedings, decided that:

1. The enforcement proceedings no. ... should be considered as terminated.
2. The present decision may be appealed against to a relevant court within a ten-day term.
3. The enforcement proceedings [file] should be transferred to the archive.

4. The writ of execution no. ... issued by the Volgodonsk Town Court should be remitted to the Volgodonsk Town Court ...”

12. According to the applicant, he received a copy of that decision on 24 March 2001.

13. According to the applicant, the amount of his monthly pension was 1,523 roubles as of 1 May 2001.

RELEVANT DOMESTIC LAW

14. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff’s order on the institution of enforcement proceedings must fix a time-limit for the defendant’s voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

15. Under Section 13 of the Law, the enforcement proceedings should be completed within two months of the receipt of the writ of execution by the bailiff.

16. Section 27 of the Law reads:

“1. The enforcement proceedings are terminated:

...

2) by remitting the writ of execution, without enforcement, to the court or other body, by which it was issued, or a creditor at their request;”

...

2. The bailiff’s decision on the termination of the enforcement proceedings is subject to appeal to a relevant court within a ten-day term.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF NON-ENFORCEMENT OF A FINAL JUDGMENT IN THE APPLICANT’S FAVOUR

17. The applicant complained about the non-enforcement of the judgment in his favour. He relied on Article 6 of the Convention which, in so far as relevant, reads as follows:

Article 6 § 1

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

18. The Government submitted that the enforcement proceedings had been carried out in strict compliance with the domestic law. They had been timely initiated. However, it had been temporarily impossible to enforce the judgment by paying the applicant the awarded amount of the pension since the defendant authority had had no funds. Eventually the judgment had not been enforced because it had been quashed by the decision of the Volgodonsk Town Court of 29 September 2000. The Government concluded that the complaint should be declared inadmissible as manifestly ill-founded.

19. The applicant maintained his complaint. He argued that he had not been informed about the quashing of the judgment.

A. Admissibility

20. The Court notes 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

21. The parties' submissions are summarised in paragraphs 18 and 19 above.

22. 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, and *Hornsby v. Greece*, judgment of

19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40). The State should comply with final judicial decisions against it within reasonable time (see *Burdov*, cited above, §§ 35-37; *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 35, 17 March 2005).

23. Turning to the instant case, the Court observes that by the judgment of the Volgodonsk Town Court the applicant's claim for re-calculation of his old-age pension was granted and the applicant was entitled to RUR 3,186.36, representing pension arrears, and an increase in his pension henceforth. This judgment has not been enforced. The Government have advanced two reasons for the failure to enforce the judgment – the lack of funds and the quashing of the judgment by the decision of the Volgodonsk Town Court of 29 September 2000. The Court will have to consider whether those reasons are capable of justifying the State's failure to comply with its final judgment awarding the applicant sums at the expense of the State treasury.

24. The Court reiterates that it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov*, cited above, § 35).

25. The Court further notes that it found a violation of Article 6 § 1 in the case of *Pravednaya*, in which a final judgment allowing the applicant's claim for re-calculation of her old-age pension was quashed by way of reopening of the proceedings on account of the discovery of new circumstances, notably an instruction of 29 December 1999 of the federal Ministry of Labour and Social Development which clarified how to apply the Pensions Law underlying the judgment (see *Pravednaya v. Russia*, no. 69529/01, 18 November 2004). The Court found that the quashing of the judgment, as a result of what was an "appeal in disguise" rather than a conscientious effort to make good a miscarriage of justice, breached the principle of legal certainty and the applicant's "right to a court" (*ibid.*, § 33).

26. In the present case the judgment allowing a similar claim was quashed, more than nine months after it had come into force, during which time it had not been enforced for the reason of lack of State funds. The quashing took place in the same way as in *Pravednaya*, on account of the discovery of new circumstances. The same ministerial instruction, which interpreted the Pensions Law in a different manner from that applied in the judgment in the applicant's case and which was issued after the judgment had come into force, served as such a "new" circumstance. It is conceivable that the statutory pensions regulations are liable to change and a judicial decision cannot be relied on as a guarantee against such changes in the future. However, the enforcement of a final judgment awarding a pension in respect of a period preceding the judgment should be guaranteed. The Court's task in the present case is not to assess whether the quashing of the

judgment as such was compatible with the Convention, but rather whether the quashing was capable of justifying the failure to enforce the judgment. With regard to the latter question, the Court does not find any reason which would enable it to reach a different conclusion in the present case from that in *Pravednaya*. Therefore, the quashing of the judgment, which did not respect the principle of legal certainty and the applicant's "right to a court", cannot be accepted as a reason to justify the non-enforcement of the judgment.

27. Thus, neither of the reasons cited by the Government are capable of justifying the State's failure to comply with the judgment in the applicant's case. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE LENGTH OF EXAMINATION OF THE APPLICANT'S CASE

28. The applicant also complained about the length of examination of his case by the Volgodonsk Town Court, which ended with the judgment of 25 October 1999. He relied on Article 6 of the Convention which, in so far as relevant, read as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

Admissibility

29. The Court notes that the period to be taken into consideration began on 22 April 1999, when the applicant filed his civil action with the court, and ended on 25 October 1999, when the first-instance court gave the judgment, according to the applicant. The applicant lodged the present application with the Court on 27 June 2001, more than six months after 25 October 1999.

30. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 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. In his application form of 5 September 2001 the applicant claimed 20,000 US dollars in respect of pecuniary and non-pecuniary damage.

33. In their letter of 24 May 2004 the Government submitted that no just satisfaction should be awarded to the applicant as they did not consider that his rights had been violated. They further stated that should the Court find a violation of the Convention in the applicant's case, the finding of a violation would be adequate just satisfaction. The Government concluded that in any event the award should be made in the light of the Court's judgment in the case of *Burdov v. Russia*, no. 59498/00, ECHR 2002-III.

34. The Court notes that the basis on which it may award just satisfaction in the instant case is a violation of Article 6 § 1 on account of the failure to enforce a final judgment in the applicant's favour. As regards pecuniary damage, the Court observes that by the final judgment of the Volgodonsk Town Court, which came into force in December 1999, the applicant was awarded the arrears in the payment of his pension during the period preceding the judgment in the amount of 3,186.36 Russian roubles, which he never received. The Court considers that the applicant has thus incurred pecuniary damage. Deciding on an equitable basis, the Court awards the applicant 150 euros (EUR) in this respect, plus any tax that may be chargeable on this amount.

35. As regards non-pecuniary damage, the Court finds that the applicant must have suffered non-pecuniary damage which the finding of a violation of the Convention in this judgment does not suffice to remedy. Ruling on an equitable basis, as required by Article 41, the Court awards the applicant the sum of EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Default interest

36. 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 non-enforcement of the judgment admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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, EUR 150 (one hundred fifty euros) in respect of pecuniary damage, and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus 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 13 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President