



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

FIRST SECTION

CASE OF KORCHAGIN v. RUSSIA

(Application no. 19798/04)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Korchagin v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 19798/04) 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 Valeriy Pavlovich Korchagin, on 16 February 2004.

2. The applicant was represented before the Court by Mr R. Tontaryov, a lawyer practising in Rostov in the Yaroslavl Region. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 15 December 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 1942 and lives in Rostov in the Yaroslavl Region.

5. On 5 October 2000 criminal proceedings were instituted against the applicant on suspicion of theft. On 19 April 2001 the proceedings were discontinued as no indications of a criminal offence had been established.

6. The applicant sued the Ministry of the Interior for the damage sustained through the unlawful prosecution.

7. On 26 September 2001 the Rostovskiy District Court of the Yaroslavl Region granted the applicant's claim and awarded him RUR 5,000 (EUR 184). As no appeal had been lodged within the ten-day statutory time-limit, on 8 October 2001 the judgment became binding and the District Court issued the applicant with a writ of enforcement.

8. On 15 November 2001 the Moscow bailiffs returned the writ to the applicant, indicating that he should have submitted it directly to the Ministry of Finance.

9. On 14 January 2002 the applicant sent the writ to the Ministry of Finance which acknowledged its receipt on 11 February 2002.

10. On 25 April 2002 the Ministry of Finance forwarded the writ to the Ministry of the Interior. According to the Government, the Ministry of the Interior decided that payment should be effected by the Ministry of Finance and returned the writ.

11. On 16 May 2003 the Ministry of Finance asked the Ministry of the Interior whether the judgment had been appealed against. On 21 August 2003 the Ministry of the Interior responded to the inquiry.

12. On 10 September 2003 the Ministry of Finance paid the amount outstanding to the applicant's bank account. The applicant was not informed about the payment.

13. In November 2003 the applicant complained to the Prosecutor General's Office about prolonged non-enforcement of the judgment. On 18 December 2003 the Office forwarded his letter to the Ministry of Finance. No further replies have been received.

THE LAW

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

14. The applicant complained that the prolonged non-enforcement of the judgment in his favour had violated his right to a court under Article 6 § 1 and his right to peaceful enjoyment of possessions under 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 within a reasonable time... 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...”

A. Admissibility

15. The Court notes that 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

16. The Government submitted that the judgment had been fully enforced and that the authorities had taken necessary and lawful measures for enforcement. It was open to the applicant to apply to a court for adjustment of the award to take account of inflation or for compensation for non-pecuniary damage. He had done neither.

17. The applicant responded that he had never been informed of the transfer of money onto his bank account, his complaint to the Prosecutor General’s Office in November 2003 bears evidence to that. He had only learnt of the enforcement from the Government’s memorandum in April 2005. He considered that no objective cause could account for the two years’ delay in enforcement.

18. On the facts, the Court observes that on 26 September 2001 the applicant obtained a judgment in his favour. On 8 October 2001 the judgment became enforceable against the Ministry of the Interior. However, it remained unenforced until 10 September 2003, that is for almost two years.

19. 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; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

20. 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. It considers that the delays in enforcement were entirely attributable to the conduct of the domestic authorities. The first delay was caused by the bailiffs service which returned the writ to the applicant instead of forwarding it directly to

the competent State agency. Further significant delays were occasioned by the difference of opinion between the two Ministries as to which one should pay the award. Finally, the applicant was never informed of the bank transfer to his account. 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 breached his right to a court and prevented him from receiving the money he could reasonably have expected to receive.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He indicated that the amount outstanding had been an important part of his retirement income.

24. The Government submitted that the applicant had not produced any evidence of non-pecuniary damage. Furthermore, having regard to his own conduct and, in particular, his failure to check his bank account in good time, no compensation should be awarded to him. A finding of a violation would constitute sufficient just satisfaction.

25. The Court observes that non-pecuniary damage is the applicant's subjective measure of the distress he had endured because of a violation of his rights and, by its nature, is not amenable to proof. Furthermore, the applicant cannot be blamed for the authorities' failure to update him on the progress of the enforcement proceedings. The Court accepts that he has suffered distress and frustration because of the State authorities' failure to enforce the judgment in his favour within a reasonable time. Making its assessment on an equitable basis and taking into account the nature of the award as compensation for the unlawful criminal prosecution, the Court awards the applicant EUR 1,200 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

26. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

27. 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 application admissible;
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, EUR 1,200 (one thousand two hundred 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President