



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

FIRST SECTION

CASE OF LAZAREV v. RUSSIA

(Application no. 9800/02)

JUDGMENT

STRASBOURG

5 October 2006

FINAL

05/01/2007

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 Lazarev 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 14 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 9800/02) 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 Nikolay Viktorovich Lazarev ("the applicant"), on 1 June 2001.

2. The applicant was represented by Ms O. Sadchikova, a lawyer practising in Stavropol. The Russian Government ("the Government") were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 April 2005 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

4. The applicant was born in 1960 and lives in the village of Aleksandrovskoye in the Stavropol Region of the Russian Federation.

5. On 2 October 1997 the Commercial Court of the Sverdlovsk Region granted the applicant's civil action against the penitentiary facility AB-239 of the Ministry of Justice and awarded the applicant 75,623.60 Russian roubles (RUR) in arrears and RUR 82,838.91 in interest.

6. The judgment was not appealed against and became final on 2 November 1997.

7. On 3 March 1998 enforcement proceedings were instituted but the judgment was not enforced because the facility lacked funds. The enforcement proceedings were closed and re-opened on several occasions. The most recent decision by which the enforcement proceedings were discontinued was taken on 30 March 2001.

8. On 26 November 2002 the facility paid the applicant RUR 75,623.60. On 12 February 2004 it paid the remainder of the judgment debt, that is RUR 82,838.91.

9. On 30 December 2005 the Sverdlovsk Regional Treasury paid the applicant RUR 99,555.58 as compensation for depreciation of the amount of RUR 75,623.60 in the period from June 1997 to November 2002. According to the Government, that compensation was assessed at the annual rate of 24%.

THE LAW

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

10. The applicant complained under Articles 13 and 14 of the Convention and Article 1 of Protocol No. 1 that the judgment 2 October 1997 was not enforced in good time. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). 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...”

11. The Government argued that the judgment had been fully enforced in 2004.

A. Admissibility

12. 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

13. The Government claimed that the judgment of 2 October 1997 had not been enforced for a long time because the debtor, the penitentiary facility, had not had funds.

14. The applicant maintained his complaints.

15. The Court observes that on 2 October 1997 the applicant obtained a judgment in his favour by which he was to be paid a certain sum of money by the facility AB-239, a State body. The judgment was not appealed against and became final and enforceable on 2 November 1997. It was fully enforced on 12 February 2004 when the last part of the judgment debt was paid to the applicant. Thus, the judgment of 2 October 1997 remained unenforced for approximately six years and three months, of which approximately five years and nine months elapsed since the Convention entered into force in respect of Russia on 5 May 1998.

16. 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 *Burdov v. Russia*, no. 59498/00, § 19 et seq., ECHR 2002-III; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

17. 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. The Court notes that the judgment was not enforced because the debtor did not have financial recourses. However, the Court reiterates that it is not open to a State authority to cite the lack of funds as an excuse for not honouring a judgment debt (see *Plotnikov v. Russia*, no. 43883/02, § 23, 24 February 2005). The Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he had legitimately expected to receive.

18. 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

19. 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

20. The applicant claimed RUR 2,154,510.15 in respect of pecuniary damage, representing inflation losses resulting from the lengthy non-enforcement (RUR 912,213.74) and interest on the amount of inflation losses accrued from September 1997 to September 2005 (RUR 1,242,296.41). The applicant further claimed EUR 5,000 in respect of non-pecuniary damage.

21. The Government argued that the sum was excessive and amounted to “illegitimate enrichment”. They insisted that in December 2005 the applicant had already been paid compensation for depreciation of the judgment debt.

22. The Court observes that the debt arising from the judgment of 2 October 1997 was paid to the applicant in two instalments: RUR 75,623.60 on 26 November 2002 and RUR 82,838.91 on 12 February 2004 (see paragraph 8 above). In December 2005 the applicant also received a certain amount for depreciation of the first instalment. That compensation was assessed at the annual rate of 24% (see paragraph 9 above). The Court notes, however, that the Government offered no explanation what that rate represented and that that amount did not cover compensation for depreciation of the second instalment.

23. The Court reiterates that in the present case it has 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 good time. It 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*, no. 5124/03, § 28, 13 January 2005; *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). The applicant produced a certificate by the Stavropol Regional State Department of Statistics showing, in particular, that the inflation rate in the period from May 1998 to November 2002 was 376.26% and in the period from May 1998 to February 2004 443%. As the Government did not furnish an explanation of their method of calculation of compensation (see paragraph 22 above), the Court accepts the applicant's claim in respect of the pecuniary damage caused by inflation losses in the period from 5 May 1998, when the Convention entered into force in respect

of Russia, to 12 February 2004. Making its assessment on the basis of materials submitted by the applicant and deducting the partial compensation already paid to him (see paragraph 9 above), the Court awards him the sum of EUR 11,500 under this head, plus any tax that may be chargeable on that amount.

24. As regards the remainder of the claim in respect of pecuniary damage, the Court notes that the applicant claimed interest accrued on the inflation losses rather than on the principal debt. The Court accordingly rejects this claim.

25. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce a judgment in his favour. However, the particular amount claimed appears excessive. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings, and making its assessment on an equitable basis, awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

26. The applicant also claimed RUR 23,755.17 for the costs and expenses incurred in the domestic and Strasbourg proceedings, representing RUR 10,000 for the lawyer's fees, RUR 200 for the preparation of documents for the Court and RUR 13,555.17 for travel expenses.

27. The Government did not comment.

28. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 350 covering costs under all heads, plus any tax that may be chargeable on that amount.

C. Default interest

29. 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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) EUR 11,500 (eleven thousand and five hundred euros) in respect of pecuniary damage;
 - (ii) EUR 3,900 (three thousand and nine hundred euros) in respect of non-pecuniary damage;
 - (iii) EUR 350 (three hundred fifty euros) in respect of costs and expenses;
 - (iv) 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 5 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President