



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

FIRST SECTION

CASE OF KAZARTSEV v. RUSSIA

(Application no. 26410/02)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

02/02/2007

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 Kazartsev 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,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 26410/02) 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 Aleksey Dmitriyevich Kazartsev (“the applicant”), on 3 June 2002.

2. 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 11 October 2005 the Court decided to give notice of 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 1940 and lives in Voronezh.

THE CIRCUMSTANCES OF THE CASE

5. On 21 September 2000 the Levoberezhniy District Court of Voronezh accepted the applicant’s civil action against the Voronezh Regional Division of the Pension Fund (hereafter – the Pension Fund) and awarded him 887.73 Russian roubles (RUR, approximately 38 euros) in pension arrears. The judgment was not appealed against and became final.

6. Enforcement proceedings were instituted but on 27 April 2001 the bailiffs returned the writ of execution to the applicant without enforcement because the Pension Fund lacked the necessary funds.

7. On 13 December 2005 the judgment of 21 September 2000 was enforced in full.

THE LAW

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

8. The applicant complained that the judgment of 21 September 2000 had not been 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...”

A. Admissibility

9. The Government informed the Court that the Pension Fund had attempted to secure a friendly settlement which the applicant had refused to accept. Referring to that refusal, to the fact that the judgment in the applicant's favour had been fully enforced, and to the Court's decision in the case of *Aleksentseva and Others v. Russia* (nos. 75025/01 et seq., 4 September 2003), the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention.

10. The applicant disagreed with the Government. He claimed that the Government had not offered compensation for the loss of the value of the judgment debt. The sum offered had not covered the pecuniary and non-

pecuniary damage he had sustained due to protracted non-enforcement of the judgment.

11. The Court firstly observes that the parties were unable to agree on the terms of a friendly settlement of the case. Whilst under certain circumstances an application may indeed be struck out of the Court's list of cases under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued, this procedure is not, as such, intended to circumvent the applicant's opposition to a friendly settlement (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003; and *Androsov v. Russia*, no. 63973/00, § 44, 6 October 2005).

12. Moreover, a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court.

13. On the facts, the Court observes that the Government failed to submit any formal statement capable of falling into that category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

14. As regards the Government's argument that the judgment in question have already been enforced, the Court considers that the mere fact that the authorities complied with the judgment after a substantial delay cannot be viewed in this case as automatically depriving the applicant of his victim status under the Convention (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

15. In the light of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

16. The Court notes that 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. It must therefore be declared admissible.

B. Merits

17. The Government argued that the judgment of 21 September 2000 had been fully enforced. In any event, the enforcement had been impeded by difficulties of budgetary arrangements between State bodies and scarcity of financial resources.

18. The applicant maintained his complaints.

19. The Court observes that on 21 September 2000 the applicant obtained the judgment by which the Fund, a State body, was to pay him a certain sum of money. The judgment was not appealed against and became final and enforceable. The judgement was enforced in full on 13 December 2005. Thus, it has remained unenforced for over five years.

20. 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).

21. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delay in enforcement of the judgment of 21 September 2000. 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 same principle applies to difficulties experienced by the State enforcement services and the complexity of the budgetary arrangements between State bodies (see, for example, *Wasserman v. Russia*, no. 15021/02, § 38, 18 November 2004).

22. 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.

23. 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

24. 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

25. As regards the pecuniary damage, the applicant argued that he should be paid the sum of the judgment award of 21 September 2000 multiplied at least by 10 to cover inflation losses in 2000-2005 and an interest on the amount outstanding. He further claimed 10,000 US dollars

(USD), representing medical expenses of his family members in 2000-2005, and USD 10,000, representing the aggregated salary loss in the period of non-enforcement. He also claimed USD 45,000 in respect of non-pecuniary damage.

26. The Government argued that the applicant had failed to substantiate his claims. In any event, those claims were unreasonable and excessive.

27. As regards the claim for compensation for pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant in respect of medical expenses and salary losses; it therefore rejects those claims. As regards the pecuniary damage claimed by the applicant in respect of inflation losses and the interest, the Court observes that the applicant's calculations are speculative. He did not submit any evidence to substantiate his calculations, for example, certificates showing the inflation rate in the period of non-enforcement or the marginal interest rate of the Russian Central Bank in the same period. The Court therefore rejects his claim for pecuniary damage.

28. The Court considers that the applicant must have suffered certain distress and frustration resulting from the State authorities' failure to enforce a judgment in his favour. However, the amount claimed appears excessive. The Court takes into account the relevant aspects, in particular, the length of the enforcement proceedings and the fact that the nature of the award in the present case was connected to the applicant's livelihood. Making its assessment on equitable basis, it 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

29. The applicant also claimed RUR 10,000 for the costs and expenses incurred before the domestic courts and the Court. However, he did not submit any receipts or other vouchers in support of his claim. Accordingly, the Court does not make any award under this head.

C. Default interest

30. 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 3,900 (three thousand nine hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the 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 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President