



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

FIRST SECTION

CASE OF VOLOKITIN v. RUSSIA

(Application no. 374/03)

JUDGMENT

STRASBOURG

9 November 2006

FINAL

09/02/2007

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 Volokitin 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 19 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 374/03) 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 Konstantin Vladimirovich Volokitin (“the applicant”), on 1 November 2002.

2. 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 29 June 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Novoaltaysk in the Altay Region. He is a practising lawyer.

5. The applicant is the legal owner of State commodity bonds *Harvest-90* (чеки «Урожай-90») having a total nominal value of 64,000 Russian roubles (“RUR”). These bonds were a special money substitute issued by the USSR Government in 1990 in order to finance the purchase of the harvest for further distribution among the population. In addition to a

certain nominal value, the bonds gave their bearers an opportunity to purchase goods that had then been in short supply.

6. In 2001 the applicant brought a civil action against the Russian Government and Ministry of Finance, seeking to recover the value of his bonds. He argued that in 1991, the bearer of bonds worth 16,000 Russian roubles could exchange them for a Russian-made *Vaz* passenger car.

7. On 6 September 2001 the Novoaltaysk Town Court of the Altay Region granted the applicant's claim and awarded him RUR 455,080 (approximately 17,400 euros).

8. On 9 January 2002 the Altay Regional Court upheld the judgment on appeal. It held as follows:

“The [first-instance] court correctly found that, once the State has recognised the obligations [arising from the commodity bonds], they should be discharged in good faith, pursuant to Article 309 of the Civil Code. The court correctly noted that the failure to adopt a federal law governing the procedure for redemption of the State's obligations did not prevent the plaintiff from seeking judicial protection of his legitimate interests. By virtue of Article 310 of the Civil Code, unilateral repudiation of an obligation or unilateral modification of its terms are not permissible, unless the law provides otherwise. At present there is no federal law on unilateral modification of the terms of the obligation. Accordingly, the court correctly applies the norms of the Civil Code.

Pursuant to Article 314 of the Civil Code, if an obligation is to be discharged on a specific day or within a specific period of time, it may be discharged at any moment within that period. The plaintiff's bonds provided for his right to receive four *Vaz* cars by 1 October 1991. However, this obligation has not been discharged to date. In this connection the court correctly concluded that the plaintiff has the right to pecuniary compensation equivalent to the value of four *Vaz* cars at the day of the judgment...”

9. On 22 June 2002 the applicant submitted a writ of execution and his bank details to the Ministry of Finance for enforcement.

10. By letter of 8 October 2002, a deputy Minister of Finance acknowledged receipt of the documents and informed him that the courts had erred in granting his claim and that the Altay Regional Treasury would submit an application for institution of supervisory-review proceedings against the judgments. It appears that that application was rejected by the Supreme Court of the Russian Federation on an unspecified date.

11. On 17 August 2005 the Ministry of Finance applied for a stay of execution of the judgment on the ground that the 2005 Federal Budget Act had suspended payments under the *Harvest-90* bonds until 31 December 2005.

12. On 6 September 2005 the Novoaltaysk Town Court refused the Ministry's application. It pointed out that judicial decisions were binding on all State authorities and that the suspension of payments from the federal budget was not a ground for staying enforcement of an enforceable judgment. On 19 October 2005 the Altay Regional Court upheld that decision on appeal.

13. The judgment of 6 September 2001, as upheld on appeal on 9 January 2002, has not yet been enforced.

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 of 6 September 2001, as upheld on appeal on 9 January 2002, violated his right to a court under Article 6 of the Convention and his right to peaceful enjoyment of his 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 applicant maintained his complaints.

17. The Government acknowledged that the prolonged failure to enforce the judgment in the applicant's favour violated his right to a fair hearing and to peaceful enjoyment of his possessions.

18. The Court observes that on 9 January 2002 the applicant obtained an enforceable judgment by which the federal treasury was to pay him a substantial amount. The judgment has not been enforced to date.

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

20. 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. It finds, and that is not disputed by the Government, 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.

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 455,080 Russian roubles (RUR) in respect of pecuniary damage and RUR 300,000 in respect of non-pecuniary damage.

24. The Government submitted that the applicant's claims should be rejected because he had not been an agricultural worker himself and had purchased the *Harvest-90* bonds on the market.

25. The Court notes that the State's outstanding obligation to enforce the judgment in the applicant's favour is not in dispute. Accordingly, the applicant is still entitled to recover the principal amount in the domestic proceedings. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 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, § 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 (see *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). It therefore considers that the Government shall secure, by appropriate means, the enforcement of the award made by the domestic courts in the applicant's favour.

26. 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. Making its assessment on an equitable basis, the Court awards the applicant 2,700 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

C. Default interest

28. 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court, and in addition pay the applicant EUR 2,700 (two thousand seven 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 9 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President