



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

FIRST SECTION

**CASE OF DENISOV v. RUSSIA**

*(Application no. 21823/03)*

JUDGMENT

STRASBOURG

25 January 2007

**FINAL**

*25/04/2007*

*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 Denisov 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 4 January 2007,

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

## PROCEDURE

1. The case originated in an application (no. 21823/03) 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 Aleksandr Ivanovich Denisov, (“the applicant”), on 9 June 2003.

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

3. On 5 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

### THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in the Tyumen Region.

5. In 1999 he brought a court action against the Ministry of Finance of the Russian Federation. He sought to recover the monetary value of the state-issued promissory notes for the purchase of a Russian-made car.

6. By judgment of 6 March 2001 the Armizonskiy District Court of the Tyumen Region awarded the applicant 38,368.92 Russian roubles (RUR) and recovered in his favour RUR 673 in compensation for court fee. The

District Court specified that those amounts had to be paid by the Ministry of Finance at the expenses of the Treasury of the Russian Federation. The judgment was upheld on appeal by the Tyumen Regional Court on 23 July 2001.

7. On an unspecified date the President of the Tyumen Regional Court granted the Ministry of Finance's request to file a motion for supervisory review with the Presidium of the Tyumen Regional Court.

8. On 22 February 2002 the Presidium of the Tyumen Regional Court, by way of supervisory review, upheld the judgment of 6 March 2001.

9. The judgment of 6 March 2001, as upheld on 23 July 2001, remains unenforced to date.

## THE LAW

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

10. The applicant complained about the non-enforcement of the judgment of 6 March 2001. The Court will examine this complaint under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention. These Articles, in so far as relevant, read as follows:

#### **Article 6 § 1**

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... 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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

#### **A. Admissibility**

11. 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**

12. The Government did not give any justification for the non-enforcement of the judgment of 6 March 2001.

13. The applicant maintained his claims.

14. The Court observes that on 6 March 2001 the applicant obtained an enforceable judgment by which the Ministry of Finance was to pay him a substantial amount of money. The judgment was upheld on appeal on 23 July 2001 and has not been enforced to date.

15. 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, ECHR 2002-III, *Reynbakh v. Russia*, no. 23405/03, 29 September 2005).

16. 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.

17. 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**

18. 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**

19. The applicant claimed that the Government should compensate loss incurred as a result of the non-enforcement of the judgment in his favour, but he did not specify his claim. He also claimed 8,900 euros (EUR) in respect of non-pecuniary damage.

20. The Government considered that no compensation should be awarded in respect of pecuniary damage, as the applicant had failed to

specify it. As regards non-pecuniary damage, the Government considered that the applicant's claim was excessive and unreasonable.

21. 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 judgment debt 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.

22. The Court notes that the applicant has failed to substantiate his claim for pecuniary damage. It therefore rejects this claim. On the other hand, the Court 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 amount and nature of the award in the instant case, a long period of the authorities' inactivity, and the fact that the judgment has not been enforced. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

## **B. Costs and expenses**

23. The applicant requested the Court to reimburse costs and expenses incurred before the domestic courts and postal expenses. He submitted receipts which amounted to 600 Russian roubles (RUR).

24. The Government did not comment.

25. 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 20 covering costs under all heads, plus any tax that may be chargeable on the above amount.

**C. Default interest**

26. 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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 20 (twenty euros) in respect of costs and expenses, 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 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President