



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

FIRST SECTION

CASE OF POLITOVA AND POLITOV v. RUSSIA

(Application no. 34422/03)

JUDGMENT

STRASBOURG

1 February 2007

FINAL

01/05/2007

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 Politova and Politov 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 11 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 34422/03) 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 two Russian nationals, Mrs Natalya Nikolayevna Politova and Mr Yuriy Yefimovich Politov (“the applicants”), on 12 September 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 15 September 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 applicants were born in 1959 and 1952 respectively and live in the village of Vengerovo in the Novosibirsk region of Russia.

5. In late 2000 the applicants brought a civil action against the Russian Government and the Savings Bank seeking to enforce State-issued promissory notes for the purchase of a Russian-made car or to recover the monetary value thereof. Upon the judge's request the applicants submitted the original promissory notes to the court.

6. On 15 January 2001 the Gagarinskiy District Court of Moscow ordered the Ministry of Finance of the Russian Federation acting through

the Savings Bank to ensure redemption of the applicants' bonds from the funds of the federal budget for 12,800 Russian roubles (RUR) payable to the first applicant and RUR 18,000 to the second applicant. The judgment stated that following its execution the promissory notes should be handed over to the Federal Government. Apparently, no appeal was lodged against this judgment and it became final and enforceable.

7. On an unspecified date the applicants submitted their writs of execution to the Ministry of Finance of the Russian Federation.

8. On 21 May 2003 the Ministry of Finance sent a letter to the applicants stating that the judgment of 15 January 2001 did not comply with the requirements of the legislation. The applicants were also informed that the Ministry of Finance would lodge a request for supervisory review of this judgment and seek suspension of the enforcement proceedings.

9. It appears, however, that no supervisory review has taken place and the judgment remained final and binding.

10. The applicants brought civil proceedings claiming pecuniary and non-pecuniary damages due to the continued non-enforcement of the judgment of 15 January 2001. On 8 October 2003 the Basmannyy District Court of Moscow rejected their claims.

11. The Ministry of Finance wrote on 5 June 2006 to the applicants informing them that the judgment of 15 January 2001 would be enforced only after presentation of the original promissory notes, as required by Articles 816-817 of the Russian Civil Code. It appears that these promissory notes remain in the case file kept by the registry of the Gagarinskiy District Court of Moscow. The judgment of 15 January 2001 remains without enforcement.

THE LAW

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

12. The applicants complained that the non-enforcement of the judgment of 15 January 2001 violated their “right to court” under Article 6 § 1 of the Convention and their right to the peaceful enjoyment of their possessions as guaranteed in Article 1 of Protocol No. 1. These Articles in so far as relevant provide 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

13. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

14. The Government claimed that the judgment of 15 January 2001 could not be enforced because the applicants had not submitted the original promissory notes to the Ministry of Finance. Pursuant to the Russian Civil Code, in order to obtain redemption of a promissory note, it shall be handed over to the Government.

15. The applicants responded that they could not submit the original promissory notes because they were kept in the case file at the Gagarinskiy District Court of Moscow.

16. The Court observes that the judgment of 15 January 2001 has not been enforced at least as of 5 June 2006, i.e. for the period of more than five years and four months (see § 11 above). A competent State agency, the Ministry of Finance of the Russian Federation, was promptly served with the writs of execution.

17. The Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The State authorities were aware of the applicants' claims, and, as soon as the judgment in the applicants' favour became enforceable, it was incumbent on the State to comply with it, in particular by organising its legal system in such a way that secures honouring of the State's judgment debts in good time.

18. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many cases raising issues similar to the ones in the present application (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, and, more recently, *Reynbakh v. Russia*, no. 23405/03, 29 September 2005).

19. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that, by failing for such a substantial period to comply with the enforceable judgment in the applicants' favour, the domestic authorities prevented them from receiving the money which they were entitled to receive under the final and binding judgment.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicants claimed the enforcement of the respective court decision and claimed in general terms a compensation for “non-pecuniary damage taking account of inflation”.

23. The Government submitted that the applicants' pecuniary claims were limited to the principal debt under the judgment of 15 January 2001, and that it remains the obligation of the Russian authorities to enforce it. They considered that as the applicants did not claim compensation for any other pecuniary or non-pecuniary damage, no compensation should be awarded under these heads.

24. The Court notes that the State's unfulfilled obligation to enforce the judgment in question is not in dispute. Accordingly, insofar as the judgment has not yet been enforced, the applicants are still entitled to recover the principal amount of the debt in the course of domestic proceedings. The Court recalls 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, p. 16, § 12, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003 and *Makarova and Others v. Russia*, no. 7023/03, § 37, 24 February 2005). Having regard to the violations found, this principle equally applies in the present case. The Court therefore considers that the Government shall secure, by appropriate means, the enforcement of the awards made by the domestic court.

25. As regards pecuniary damages, the Court observes that the applicants have not quantified their claims. Accordingly, the Court considers that there is no call to award the applicants any sum on that account. At the same time, the Court accepts that the applicants suffered some distress as a result of the violations found and therefore awards each applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

26. The applicants did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the awards made by the domestic court. Furthermore, the respondent State, within the same time-limit, shall pay to each applicant EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on 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.

Done in English, and notified in writing on 1 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President