



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

FIRST SECTION

**CASE OF NIKISHIN v. RUSSIA**

*(Application no. 20515/04)*

JUDGMENT

STRASBOURG

8 February 2007

**FINAL**

*08/05/2007*

*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 Nikishin 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 K. HAJIYEV,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 18 January 2007,

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

## PROCEDURE

1. The case originated in an application (no. 20515/04) 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 Yuriy Nikolaevich Nikishin (“the applicant”), on 23 April 2004.

2. The applicant was represented before the Court by Mr M. Melnichenko, a lawyer practising in the Orenburg Region. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, under Article 6 of the Convention and Article 1 of Protocol No. 1, about continued non-enforcement of a judgment in his favour.

4. On 28 February 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

5. The applicant was born in 1952 and lives in the Orenburg Region.

6. In April 2003 the applicant, a retired military officer, sued the Military Department of the Orenburg Region for an increase of his pension and compensation for pecuniary damage.

7. On 16 April 2003 the Totalskiy District Court of the Orenburg Region allowed the applicant's action and awarded him 20,989.90 Russian roubles (RUR).

8. On 11 June 2003 the bailiffs opened enforcement proceedings.

9. On 12 August 2003 the bailiffs' service discontinued the enforcement proceedings because the debtor had no available funds. It advised the applicant to apply to the Orenburg regional department of the Ministry of Finance.

10. By letter of 10 October 2003, the Orenburg regional department advised the applicant to apply to head office of the Ministry of Finance.

11. On 25 December 2003 the Ministry of Finance refused to pay the award and referred the applicant back to the bailiffs.

12. On 9 January 2004 the applicant resubmitted the writ of execution to the bailiffs' service. On 15 March 2004 the bailiffs again discontinued enforcement because the debtor had no available funds.

13. On 10 March 2005 the Military Department transferred the amount due into the applicant's bank account.

14. On 16 May 2005 a prosecutor decided not to institute criminal proceedings against the head of the Military Department for his failure to enforce the judgment, finding that he had not acted with intent.

## THE LAW

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

15. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgment of 16 April 2003 had not been enforced in good time. The relevant parts of the invoked 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**

16. 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**

17. The applicant maintained that the delay in enforcement had been excessively long and that the bailiffs had not used the legal means available to them for compelling the Military Department to make payment.

18. The Government stressed that at the material time the Military Department had experienced financial difficulties and that the judgment had been eventually enforced.

19. The Court observes that on 16 April 2003 the applicant obtained a judgment in his favour by which he was to receive a certain sum of money from the Military Department. The judgment was not appealed against and became enforceable ten days later. However, the debt was only paid on 10 March 2005. It follows that the judgment of 16 April 2003 remained without enforcement for almost two 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, § 35, ECHR 2002-III.; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; and *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

21. 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. Having regard to its case-law on the subject, the Court finds that by failing, for an extended period of time, 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 could reasonably have expected to receive.

22. 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

23. 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

24. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage. He also claimed an unspecified amount in respect of pecuniary damage, representing the adjustment of the original award in line with inflation on the basis of the marginal interest rate of the Russian Central Bank.

25. The Government submitted that a finding of a violation would constitute a sufficient just satisfaction and that, in any event, the award should not exceed the original debt.

26. The Court notes that the applicant did not indicate the exact amount he claimed in respect of pecuniary damage. Nor did he produce the elements – such as information on fluctuation of the Central Bank's interest rate – which would have enabled the Court to calculate the award in a precise manner. Accordingly, the Court rejects his claim in respect of pecuniary damage.

27. The Court, however, considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in his favour. Taking into account the relevant aspects, such as the length of enforcement and the nature of the award, and making its assessment on an equitable basis, it awards the applicant EUR 1,600 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

28. The applicant also claimed RUR 2,000 for his representation before the Court. He submitted a copy of the contract with his representative.

29. The Government did not make specific comments.

30. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the amount claimed, that is, RUR 2,000, plus any tax that may be chargeable on it.

### C. Default interest

31. 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:
    - (i) EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement;
    - (ii) RUR 2,000 (two thousand Russian roubles) in respect of costs and expenses;
    - (iii) 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 8 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President