



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

FIRST SECTION

CASE OF RAYLYAN v. RUSSIA

(Application no. 22000/03)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

09/07/2007

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 Raylyan v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr L. LOUCAIDES, *President*,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 22000/03) 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, Valentin Valentinovich Raylyan (“the applicant”), on 21 May 2003.

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. The applicant complained about the interference with his right to peaceful enjoyment of his possessions and his right to respect for his private and family life.

4. On 2 December 2005 the Court decided to give notice of the first complaint 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 1964 and lives in Maykop, the Republic of Adygeya.

6. The applicant is a businessman. In 1996 he purchased a saw-mill with the intention of operating it as a going concern.

7. In March 1998 the local authority ordered him to shut the saw-mill down because it was situated in the vicinity of sewage disposal installations and threatened the town's sanitation.

8. The applicant brought proceedings against the Maykop municipal maintenance company (*муниципальное жилищно-коммунальное хозяйство города Майкопа*) and the Maykop municipal water supply company (*муниципальное унитарное предприятие «Водоканал»*), hereinafter “the water supply company”), in which he sought an order requiring them to lift the ban on the operation of the saw-mill and damages.

9. On 17 December 1999 the Maykop Town Court of the Republic of Adygeya ordered the water supply company not to prevent the applicant from carrying on his activity. The judgment was not appealed against and became final.

10. However, it was not enforced. Instead, the water supply company blocked the road leading to the saw-mill and switched off the electricity supply.

11. The applicant was not issued with a warrant of execution until 28 April 2002 pending a decision in another case in which a third party was trying to challenge his title to the saw-mill.

12. On 14 May 2002 the enforcement proceedings were set in motion.

13. Three months later the bailiff suspended the enforcement proceedings and applied for clarification of the judgment of 17 December 1999.

14. On 29 October 2002 the Maykop Town Court held that the judgment of 17 December 1999 had to be enforced exactly as it was worded.

15. On 8 January 2003 the bailiff brought the enforcement proceedings to an end. However, the access road remained blocked and the electricity supply was not restored.

16. The applicant appealed against the decision to discontinue the enforcement proceedings.

17. On 21 February 2003 the Maykop Town Court quashed that decision.

18. On 25 March 2003 the Supreme Court of the Republic of Adygeya upheld the above judgment on appeal.

19. On 13 January 2006 the enforcement proceedings were resumed.

20. On 18 January 2006 the director of the water supply company issued access passes to the applicant and his nominees.

21. On 19 January 2006 free access to the saw-mill was restored, and the obstacles preventing the applicant from using it were removed. He was invited to collect the passes, but failed to do so. When the bailiffs went to the applicant's home to serve him with papers concerning the enforcement, they were unable to find him, but were met instead by his father, who refused to look at the papers and explained that the applicant had moved to another city.

22. On 26 January 2006 the enforcement proceedings were discontinued. The applicant did not appeal against that decision.

THE LAW

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

23. The applicant complained of a violation of his right to the peaceful enjoyment of his possessions on account of the authorities' prolonged failure to comply with the judgment in his favour. The Court, in line with its well-established case-law in similar cases (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III) considers that this complaint falls to be examined under Article 6 § 1 of the Convention and 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.

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

24. The Court notes that this 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

25. In their observations the respondent Government informed the Court that on 18 to 19 January 2006 the judgment of 17 December 1999 was enforced, and that on 26 January 2006 the bailiffs' service had discontinued the enforcement proceedings. The Government admitted that the judgment had not been enforced in a timely manner, as the enforcement had taken place six years and one month after it had become final and enforceable. However, they submitted that the applicant had contributed to the length of the enforcement proceedings. In particular, he had not submitted the warrant of execution to the bailiffs' service until 28 April 2002, that is two years and four months after the judgment of 17 December 1999 came into effect. The Government further admitted that the delay from 14 May 2002, when the enforcement proceedings were commenced, until 8 January 2003, when they were discontinued, was attributable to the domestic authorities. However, the subsequent delay, which started on 25 March 2003, when the domestic court of last instance reversed the decision of 8 January 2003 to discontinue the enforcement proceedings, and continued until the enforcement of the judgment in January 2006, was again attributable to the applicant since he had failed to re-apply for the warrant of execution necessary to proceed with the enforcement. As a result, after 25 March 2003 the enforcement of the judgment of 17 December 1999 was only made possible by the bailiffs' voluntary referral to the court for a warrant of execution enabling them to enforce the judgment. Therefore, the Government concluded that there had been interference with the applicant's rights under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto with regard to the period from 14 May 2002 to 8 January 2003. However, the period of 7 months and 25 days was not so long as to amount to a violation of the aforementioned provisions (see *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005; and *Kolotkov v. Russia*, no. 41146/02, 9 March 2006).

26. The applicant averred that he could not be blamed for not lodging the warrant of execution with the bailiffs' service until 28 April 2002, because no order had been issued to him before that date as all parties were awaiting the outcome of separate litigation in which a third party had tried to challenge his title to the saw-mill. He further submitted that after the bailiff's decision of 8 January 2003 to discontinue the enforcement proceedings he was not required to apply for a fresh enforcement order. Finally, he expressed his dissatisfaction with the delays in the enforcement of the judgment, saying that by the time the judgment was eventually complied with his property had been ransacked and its condition had deteriorated.

Article 6 § 1 of the Convention

27. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

28. Turning to the instant case, the Court notes that the Government did not contest State responsibility for the municipal company's obligation under the judgment in the applicant's favour (see, by contrast, *Gerasimova v. Russia* (dec.), no. 24669/02, 16 September 2004). Nor do the parties contest that the judgment in the applicant's favour has now been executed. The Court observes, however, that the execution of the judgment of 17 December 1999 took more than six years. It was not until 19 January 2006 that the enforcement took place.

29. In this connection, the Court reiterates that a delay in the execution of a judgment may be justified in particular circumstances, but the delay must not be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov v. Russia*, cited above, § 35; *Androsov v. Russia*, no. 63973/00, § 52, 6 October 2005; and *Gizzatova v. Russia*, no. 5124/03, § 20, 13 January 2005).

30. Accordingly, the Court's task will be to establish whether the delay in executing the judgment in the applicant's favour was justified in the particular circumstances of the present case.

31. The Court observes that the reasonableness of the delay in the enforcement proceedings will depend on different factors, such as the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, the amount and the nature of court award (see, by analogy, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; see also *Grishchenko v. Russia*, (dec.), no. 75907/01, 8 July 2004; and *Gorokhov and Rusyayev v. Russia*, no. 38305/02, 17 March 2005, § 31).

32. Turning to the present case, the Court notes that in the judgment of 17 December 1999 the Maykop Town Court ordered the water supply company not to prevent the operation of the saw-mill belonging to the applicant. Appropriate enforcement measures would have entailed unblocking the access road to the saw-mill and restoring the electricity supply to the production site. Hence, the judgment would not have been particularly difficult to execute.

33. As regards the conduct of the parties, the Court observes that the State authorities were aware of the applicant's claim, and that as soon as the judgment in the applicant's favour came into effect it was incumbent on them to comply with it. It is true that the enforcement proceedings were initiated by the applicant after a delay (see paragraph 11 above). However, the applicant cannot be considered responsible, since the court would not have issued him with a warrant of execution until 28 April 2002 in any event. As soon as the applicant had obtained the warrant, he lodged it with the bailiffs' service. As to the Government's allegation regarding the applicant's failure to re-apply for a warrant of execution after the decision of 8 January 2003 to discontinue the enforcement proceedings was quashed on appeal, the national legislation did not, in fact, require the applicant to take any action since the resumption of the enforcement proceedings was within the bailiff service's responsibility. In any event, as has emerged from the materials before the Court, the only reason for the non-compliance was the authorities' reluctance to act in accordance with the order of the court (see paragraph 10 above). Therefore, whether the bailiffs were involved in the enforcement proceedings or not did not change the situation. Moreover, 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 *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Gorokhov and Rusyayev v. Russia*, cited above, § 33; *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; and *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005). The Court therefore concludes that the whole period between 27 December 1999, when the judgment of 17 December 1999 became final and enforceable, and 19 January 2006, when the water supply company finally removed the obstacles which had prevented the applicant from operating his saw-mill, should be considered as a delay in execution for which the State authorities are responsible.

34. As to what was at stake for the applicant in the present case, the Court notes that non-compliance for over six years with the injunction issued by the Maykop Town Court resulted in considerable disruption of the applicant's business.

35. Regard being had to the above considerations, the Court concludes that the length of the enforcement proceedings in the applicant's case was

clearly excessive. The Court accordingly finds that the judgment of 17 December 1999 was not complied with within a “reasonable time”.

There has accordingly been a violation of Article 6 § 1 of the Convention.

Article 1 of Protocol No. 1 to the Convention

36. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40; and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). The judgment of 17 December 1999 provided the applicant with an enforceable claim. The judgment had become final, as no ordinary appeal was lodged against it, and enforcement proceedings were instituted. It follows that the applicant's inability to have the judgment enforced for a substantial period of time constituted interference with his right to the peaceful enjoyment of his possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

37. Since it has not found any justification for such an interference (see paragraph 33 above), the Court concludes that there has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicant further complained of a violation of his rights under Article 8 of the Convention. Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

39. The Court notes that the applicant did not specify his allegation under the abovementioned provision or substantiate it. It follows, therefore, that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 § 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 20,000,000 Russian roubles (approximately 600,000 euros (EUR)) in respect of pecuniary and non-pecuniary damage.

42. The Government considered these claims excessive and unsubstantiated and suggested that a token amount of EUR 100 would constitute equitable satisfaction for the non-pecuniary damage suffered by the applicant.

43. The applicant has not submitted documentary evidence of the losses sustained. The Court therefore rejects this claim. On the other hand, it accepts that the applicant suffered distress and frustration because of the excessive delay in the enforcement proceedings. Making its assessment on an equitable basis, it awards him EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. The applicant did not claim reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

45. 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 complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No.1 to the Convention;
4. *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 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President