CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF VYALYKH v. RUSSIA

(Application no. 5225/06)

JUDGMENT

STRASBOURG

22 February 2007

FINAL

22/05/2007

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 Vyalykh 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 N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr S.E. JEBENS,
Mr G. MALINVERNI, *judges,*
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 5225/06) 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 Andrey Anatolevich Vyalykh (“the applicant”), on 23 December 2005.

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. On 4 April 2006 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

4. The applicant was born in 1960 and lives in Irkutsk.

5. In October 1993 criminal proceedings were instituted against the applicant on suspicion of unlawful possession of weapons. On 14 March 1994 he was arrested and spent ten months and three days in custody until his release on a written undertaking not to leave the town.

6. On 12 February 2001 the Irkutsk Regional Court acquitted the applicant. On 13 March 2002 the judgment became final.

7. The applicant sued the Irkutsk Regional prosecutor's office and the Ministry of Finance for compensation for damage.

8. On 7 October 2004 the Kirovskiy District Court of Irkutsk accepted the action and awarded the applicant 230,099.52 Russian roubles (RUR, approximately 6,415 euros) in compensation for damage and RUR 35,000 (approximately 976 euros) in costs for legal representation. The judgment was upheld on appeal and became final on 26 November 2004.

9. On 5 April 2006 the sum of the judgment award was credited to the applicant's bank account.

THE LAW

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

10. The applicant complained under Articles 1, 6 and 13 of the Convention and Article 1 of Protocol No. 1 that the judgment 7 October 2004, as upheld on appeal on 26 November 2004, was not enforced in good time. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). 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..."

11. The Government argued that the judgment had been fully enforced in April 2006.

A. Admissibility

12. 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

13. The Government considered that the judgment of 7 October 2004 had been enforced in good time.

14. The applicant maintained his complaints.

15. The Court observes that on 7 October 2004 the applicant obtained a judgment in his favour by which he was to be paid a certain sum of money by the Ministry of Finance, a State body. The judgment was upheld on appeal and became final and enforceable on 26 November 2004. It was fully enforced on 5 April 2006 when the judgment debt was paid to the applicant. Thus, the judgment of 7 October 2004, as upheld on 26 November 2004, remained unenforced for approximately fifteen months.

16. 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, § 19 et seq., ECHR 2002-III; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

17. 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. The Court finds that by failing for more than sixteen months 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.

18. 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

19. 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

20. The applicant claimed RUR 2,107,373.22 in respect of pecuniary damage, representing the interest rate on the sum of the judgment debt calculated from 23 October 1993 to 5 April 2006. The applicant further claimed EUR 30,000 in respect of non-pecuniary damage.

21. The Government argued that the sums were excessive and there was no causal link between the alleged violation and the compensation claimed in respect of pecuniary damage. If, however, the Court decides to accept the applicant's claims in respect of pecuniary damage, the compensation should only be awarded for the period when the Ministry of Finance was at fault for the non-enforcement of the judgment of 7 October 2004. That period, according to the Government, amounted to nine months and twelve days.

22. The Court reiterates that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the award in the applicant's favour had not been paid to him in good time. It recalls that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce the value of the award, such as an extended delay in enforcement (see *Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005; *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). The applicant produced a certificate by the Irkutsk Regional Main Department of the Central Bank of the Russian Federation showing the annual interest rates from October 1993 to April 2006. As the Government did not furnish any objection to the applicant's method of calculation of compensation, save for the period to be taken into consideration, the Court accepts the applicant's claim in respect of the pecuniary damage accrued in the period when the judgment of 7 October 2004, as upheld on appeal on 26 November 2004, remained unenforced. Making its assessment on the basis of materials submitted by the applicant, the Court awards him the sum of RUR 40,148 under this head, plus any tax that may be chargeable on that amount.

23. 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. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the award, and

making its assessment on an equitable basis, awards the applicant EUR 1,200 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

24. The applicant also claimed RUR 25,000 for the costs and expenses incurred before the Court. The sum represented lawyer's fees.

25. The Government argued that the sum claimed was excessive and unreasonable.

26. 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 rejects the claim for legal expenses as the applicant was not represented by a lawyer in the Strasbourg proceedings. Accordingly, the Court does not make any award under this head.

C. Default interest

27. 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) RUR 40,148 (forty thousand one hundred and forty-eight Russian roubles) in respect of pecuniary damage;
(ii) EUR 1,200 (one thousand and two hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement;

(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 22 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President