



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

FIRST SECTION

CASE OF ALEKSANDR POPOV v. RUSSIA

(Application no. 38720/03)

JUDGMENT

STRASBOURG

5 April 2007

FINAL

05/07/2007

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 Aleksandr Popov 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 K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 38720/03) 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 Viktorovich Popov ("the applicant"), on 17 November 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. 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. On 4 May 2006 the Court put additional questions to the parties.

THE FACTS

4. The applicant was born in 1975 and lives in the town of Shakhty of the Rostov Region.

A. Proceedings concerning payment of arrears and a penalty

5. In the 1980s the applicant's father took part in the emergency operation at the site of the Chernobyl nuclear plant disaster. Until March 1996 the Shakhty Town Social Security Service (hereafter - the Service) made monthly payments to the father as a compensation for health damage.

6. After the Service stopped payments, the father sued it for arrears and a penalty. On 28 February 1997 the Shakhty Town Court awarded him 30,640,341 Russian roubles ("RUR") in arrears and the same amount as the penalty.

7. On 24 April 1997 the arrears, but not the penalty, were paid.

8. After the father's death, on 26 March 1999 a notary public issued the applicant with an inheritance certificate certifying his right to one half of the penalty awarded by the judgment of 28 February 1997. The applicant's grandmother was issued with a certificate confirming her right to the second half of the penalty.

9. As the penalty had not been paid, the Shakhty Town Court, upon the applicant's and his grandmother's request, ordered the following increases of the penalty to take account of the inflation:

- in the judgment of 14 February 2000, by RUR 57,165.71;
- in the judgment of 13 August 2001, by RUR 29,764.6; and
- in the judgment of 29 March 2002, by RUR 17,254.96.

Those judgments were not appealed against and became final.

10. On 30 May 2002 the Service paid the penalty in the original amount established in the judgment of 28 February 1997, but not the amounts awarded in the subsequent judgments.

11. In 2003 the applicant and his grandmother asked the Shakhty Town Court to reconfirm their right to the sums awarded by the judgments of 14 February 2000, 13 August 2001 and 29 March 2002.

12. On 14 March 2003 the Shakhty Town Court held that the applicant and his grandmother each should receive RUR 52,092.63 (approximately 1,540 euros), representing one half of the amounts awarded by the judgments of 14 February 2000, 13 August 2001 and 29 March 2002. The judgment of 14 March 2003 was not appealed against and became final.

13. On 20 December 2004 the money due to the applicant and his grandmother under the judgments of 14 February 2000, 13 August 2001 and 29 March 2002, as pronounced by the judgment of 14 March 2003, were paid to them in full.

B. Pension dispute concerning survivor's benefits

14. On 11 May 2004 the Shakhty Town Court accepted the applicant's action against the Service and awarded him a lump sum of RUR 22,341.78 in pension arrears for the period from 1 January 2002 to 31 March 2004 and RUR 3,296.86 in monthly payments. On 26 July 2004 the Rostov Regional Court upheld the judgment.

15. Enforcement proceedings were instituted and the Service began payment of the monthly pension in the amount established by the judgment of 11 May 2004. The lump sum of pension arrears was not paid.

16. On 30 June 2005 the Presidium of the Rostov Regional Court, upon an application of the acting President of the Rostov Regional Court and by way of a supervisory review, quashed the judgments of 11 May and 26 July 2004 and remitted the case for a fresh examination.

17. On 24 November 2005 the Shakhty Town Court granted the action and awarded the applicant RUR 6,120.61 in monthly payments and RUR 198,520.64 in pension arrears for the period from 1 July 2000 to 31 October 2005. On 13 February 2006 the Rostov Regional Court, acting on appeal, increased monthly payments to RUR 7,118.91 and the lump sum of pension arrears to RUR 203,985.37.

18. Enforcement proceedings were instituted and the Service began payment of monthly pension in the amount awarded by the judgment of 24 November 2005, as amended on 13 February 2006. In May 2006 the lump sum of pension arrears was credited to the applicant's account.

C. Other proceedings against the Service

19. On 11 and 29 June, 23 August and 22 September 2004 the Shakhty Town Court accepted the applicant's actions against the Service for the adjustment of various unrelated judgment awards made in his favour in 1997, 1999, 2000 and 2003 and awarded him RUR 720.5 (approximately EUR 21), RUR 16,887.60 (approximately EUR 481), RUR 7,545.76 (approximately EUR 210), RUR 3,627.14 (approximately EUR 101) and RUR 14,475.70 (approximately EUR 403). The judgments were not appealed against and became final.

20. The judgments were enforced in full on 2 November 2005 when the sums were credited to the applicant's account.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF PROTRACTED NON-ENFORCEMENT OF THE JUDGMENTS OF 14 FEBRUARY 2000, 13 AUGUST 2001, 29 MARCH 2002, 14 MARCH 2003, 11 AND 29 JUNE, 23 AUGUST AND 22 SEPTEMBER 2004

21. The applicant complained under Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1 that the final judgments of 14 February 2000, 13 August 2001, 29 March 2002, 14 March 2003, 11 and 29 June, 23 August and 22 September 2004 had not been 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...”

A. Admissibility

22. The Government informed the Court that the Service had attempted to secure a friendly settlement which the applicant had refused to accept. Referring to that refusal, to the fact that the judgments in the applicant's favour had been fully enforced, and to the Court's decision in the case of *Aleksentseva and Others v. Russia* (nos. 75025/01 et seq., 4 September 2003), the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention.

23. The applicant disagreed with the Government. He claimed that the Government had not offered compensation for the loss of the value of the judgment debts. The sum offered had not covered the pecuniary and non-pecuniary damage he had sustained due to protracted non-enforcement of the judgments.

24. The Court observes that it has already on a number of occasions examined the same argument by the Russian Government and rejected it (see *Silchenko v. Russia*, no. 32786/03, §§ 33-37, 28 September 2006; *Kazartsev v. Russia*, no. 26410/02, §§ 11-15, 2 November 2006, etc.). The Court does not find any reason to depart from that finding in the present case and dismisses the Government's request to strike the application out under Article 37 of the Convention.

25. The Court notes that the 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

26. The Government claimed that the judgments had remained unenforced because it had taken the debtor, a State body, “a certain period of time for performance of the procedures... for unconditional financial maintenance of execution of such judicial decisions”.

27. The applicant maintained his complaints.

28. The Court observes that on 14 February 2000, 13 August 2001 and 29 March 2002 the applicant obtained judgments in his favour by which he was to be paid certain sums of money by the Shakhty Town Social Security Service, a State body. The judgments were not appealed against and became final and enforceable. On 14 March 2003 the Shakhty Town Court, by the final judgment, confirmed the applicant's right to receive the money under the abovementioned judgments. The judgments of 14 February 2000, 13 August 2001 and 29 March 2002, as pronounced on 14 March 2003, were fully enforced on 20 December 2004 when the sums were credited to the applicant's account. Thus, the judgments remained unenforced for several years.

29. The Court further notes that on 11 and 29 June, 23 August and 22 September 2004 the Shakhty Town Court issued judgments in the applicant's favour by which the Service was to pay the applicant certain sums of money. The judgments were not appealed against, became final and were enforced on 2 November 2005. Thus, those judgments remained unenforced for more than a year.

30. 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).

31. 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 years to comply with the enforceable judgments 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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENT OF 11 MAY 2004

33. The applicant complained under Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment of 11 May 2004, as upheld on 26 July 2004. The Court 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 are cited above.

A. Admissibility

34. The Court notes that the 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

1. Article 6 § 1 of the Convention

35. The Government submitted that the judgment of 11 May 2004, as upheld on 26 July 2004, could not be enforced because it had been quashed by way of supervisory review.

36. The applicant maintained his claims.

37. Turning to the facts of the present case, the Court observes that on 11 May 2004 the applicant obtained a judgment by which the Service was to pay him monthly pension and a certain sum of money in pension arrears. The judgment was upheld on appeal on 26 July 2004 and became enforceable on that date. From that moment on, it was incumbent on the Service, a State body, to comply with it. The Service began payment of monthly pension in the amount awarded under the judgment of 11 May 2004. However, no attempts were made to pay the lump sum in pension arrears. On 30 June 2005 the Presidium of the Rostov Regional Court quashed the judgments of 11 May and 26 July 2004 and remitted the case for a fresh examination. On 24 November 2005 the applicant obtained a new judgment by which the Service was to pay him a higher monthly pension and a lump sum in pension arrears for a longer period. The judgment of 24 November 2005 was amended on appeal on 13 February 2006.

38. It follows that at least from 26 July 2004 to 30 June 2005 the judgment of 11 May 2004 was enforceable and it was incumbent on the Service to abide by its terms.

39. The Government cited the quashing of the judgment of 11 May 2004 as the sole reason for its non-enforcement. In this respect, the Court reiterates that it has recently addressed and dismissed the same argument by the Government in the cases of *Sukhobokov v. Russia* (no. 75470/01, 13 April 2006) and *Velskaya v. Russia* (no. 21769/03, 5 October 2006). In particular, the Court held that “the quashing of the judgment, which did not respect the principle of legal certainty and the applicant’s “right to a court”, cannot be accepted as a reason to justify the non-enforcement of the judgment” (see *Sukhobokov*, cited above, § 26; and *Velskaya*, cited above, § 19).

40. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case. The Government did not advance any other justification for the failure to enforce the judgment of 11 May 2004, as upheld on appeal on 26 July 2004. Having regard to its case-law on the subject (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005; *Wasserman v. Russia*, no. 15021/02, 18 November 2004), the Court finds that by failing to comply with the judgment of 11 May 2004 in the applicant’s favour the domestic authorities violated his right to a court.

41. The Court finds accordingly that there was a violation of Article 6 § 1 of the Convention on account of the non-enforcement of the judgment of 11 May 2004.

2. Article 1 of Protocol No. 1

42. The Court notes that on 11 May 2004 the Shakhty Town Court awarded the applicant RUR 22,341.78 in pension arrears for the period from 1 January 2002 to 31 March 2004 and RUR 3,296.86 in monthly payments. As a result of the proceedings following the supervisory review, on 13 February 2006 the Rostov Regional Court, in the final instance, awarded the applicant RUR 7,118.91 in monthly payments and the lump sum of RUR 203,985.37 in pension arrears for the period from 1 July 2000 to 31 October 2005. The Court notes that the amount of arrears awarded by the judgment of 13 February 2006 related to a longer period than the amount awarded on 11 May 2004. At the same time, the amount of monthly benefits awarded by the judgment of 13 February 2006 exceeded the one awarded by the judgment of 11 May 2004.

43. Therefore, the award the applicant obtained as a result of the proceedings following the supervisory review exceeded the one under the initial judgment of 11 May 2004. The Court also does not lose sight of the

fact that the final judgment of 13 February 2006 was enforced in full without undue delay, in May 2006.

44. In the circumstances of the present case, the Court does not consider it necessary to rule on the question where there has been a violation of Article 1 of Protocol No. 1 (cf. *Zasurtsev v. Russia*, no. 67051/01, §§ 53-55, 27 April 2006).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. Lastly, in his observations submitted on 18 November 2006 the applicant complained under Articles 6 and 14 of the Convention that he was discriminated against by the domestic authorities and that the proceedings in the pension dispute were extremely long.

46. Having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed RUR 149,572 in respect of pecuniary damage, of which RUR 22,342 represented the award due to the applicant under the judgment of 11 May 2004 and RUR 127,230 represented inflation losses resulting from the lengthy non-enforcement of the judgment awards and interest on those awards at the marginal interest rate of the Russian Central Bank. The applicant further claimed EUR 28,667 in respect of non-pecuniary damage.

49. The Government argued that the applicant had failed to exhaust domestic remedies in respect of his claims for compensation for inflation losses. As to the claims in respect of non-pecuniary damage, they were unsubstantiated and unreasonable.

50. The Court reiterates, firstly, that an applicant cannot be required to exhaust domestic remedies to obtain compensation for pecuniary loss since

this would prolong the procedure before the Court in a manner incompatible with the effective protection of human rights (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, § 40, and *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). Nor is there a requirement that an applicant furnish any proof of the non-pecuniary damage he or she sustained.

51. As regards the applicant's claim in respect of the judgment award made on 11 May 2004, the Court observes that that on 13 February 2006, by the final judgment, the applicant was awarded pension arrears, including those for the period covered by the judgment of 11 May 2004. That sum was paid to the applicant in May 2006. Thus, the Court dismisses the applicant's claim under this head. As regards the remaining claims in respect of pecuniary damage, the Court observes 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 awards 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 its value, 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). Having regard to the materials in its possession and the fact that the Government did not furnish any objection to the applicant's method of calculation of compensation, the Court awards the applicant RUR 127,230 in respect of pecuniary damage, plus any tax that may be chargeable.

52. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgments in his favour. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the awards, and making its assessment on an equitable basis, awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

53. The applicant also claimed EUR 100 and RUR 1,223.30 for the costs and expenses incurred before the Court, of which RUR 1,223.30 represented postal expenses and expenses for preparation of documents and EUR 100 represented expenses for presentation of his case before the Court without legal assistance.

54. The Government argued that RUR 1,223.30 should only be granted to the applicant because those expenses were reasonable.

55. 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. The Court notes that the applicant was not represented in the Strasbourg proceedings. However, he must have incurred expenses in providing his written pleadings (see *Lauko v. Slovakia*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 75). The Court further observes that the applicant provided receipts and vouchers to substantiate his expenses for preparation of documents and sending them to the Court. Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 135 covering costs under all heads, plus any tax that may be chargeable on that amount.

C. Default interest

56. 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 complaints concerning the non-enforcement of the judgments in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the protracted non-enforcement of the judgments of 14 February 2000, 13 August 2001, 29 March 2002, 14 March 2003, 11 and 29 June, 23 August and 22 September 2004;
3. *Holds* that there has been a violation of Article 6 of the Convention on account of the non-enforcement of the judgment of 11 May 2004;
4. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 in respect of the non-enforcement of the judgment of 11 May 2004;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted, where appropriate, into Russian roubles at the rate applicable at the date of settlement:

- (i) RUR 127,230 (one hundred twenty-seven thousand two hundred and thirty Russian roubles) in respect of pecuniary damage;
- (ii) EUR 3,900 (three thousand and nine hundred euros) in respect of non-pecuniary damage;
- (iii) EUR 135 (one hundred and thirty-five euros) in respect of costs and expenses;
- (iv) 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President