



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

FIRST SECTION

CASE OF FURMAN v. RUSSIA

(Application no. 5945/04)

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 Furman v. Russia,

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

Mr C.L. ROZAKIS, *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 15 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 5945/04) 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 Login Arsenyevich Furman (“the applicant”), on 19 January 2004.

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. The applicant complained about the non-enforcement of the final judgment in his favour and alleged a violation of his property rights.

4. On 30 March 2006 the Court communicated the application to the respondent 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 1945 and lives in Bolshaya Markha in the Republic of Sakha (Yakutiya).

6. In 1994 the applicant founded an individual enterprise “Pyramid” (*Частное Индивидуальное Предприятие «Пирамида»*).

7. On 15 March 1999 he signed an agreement with a State-owned maintenance company “Department of housing and communal services of Yakutsk” according to which the applicant's company undertook to perform certain construction works for the company. Upon the completion of the works, the maintenance company refused to pay. Following a financial dispute, the parties signed a friendly settlement, according to which the maintenance company owed the applicant's company 43,517 RUR (~ EUR 1,609).

8. This settlement was confirmed by a judgment of the Commercial Court of the Republic of Sakha (Yakutiya) delivered on 11 June 2002, and became enforceable.

9. On 25 March 2003 the bailiffs informed the applicant about the impossibility to enforce the settlement because the maintenance company lacked funds. On 26 March 2003 they closed the enforcement proceedings.

10. The applicant contested the bailiffs' decision before the Commercial Court of the Republic of Sakha but on 11 July 2003 his application was left without consideration due to the failure to comply with the procedural requirements.

11. Meanwhile the State-owned maintenance company changed its structure and became a municipal maintenance company (*Муниципальное учреждение «Дирекция единого заказчика»*).

12. In March 2004 the applicant retired, liquidated his enterprise and closed its accounts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENT IN THE APPLICANT'S FAVOUR

13. The applicant complained that the prolonged non-enforcement of the judgment in his favour violated his “right to a court” under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions provided in Article 1 of Protocol No. 1 to the Convention. 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 ... 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

14. The Government contested the admissibility of the application on two grounds: 1) the applicant failed to exhaust domestic remedies as he had not applied to the bailiffs' service for enforcement of the judgment after the closure of the proceedings; 2) the applicant failed to apply for substitution of the debtor as the State-owned company was reorganised and acquired a new structure and name.

15. The applicant did not accept that he had to file the writ of execution for a second time to the bailiffs. He contended that he had applied to the bailiffs' service in due course and that the Russian Federation was responsible for the non-execution of the judgment. The applicant made no comments as to the failure to apply for the substitution of the debtor in his case.

16. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further recalls that the domestic remedies must be “effective” in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

17. The Court notes that the validity of the judgment of 11 June 2002 against the State maintenance company is undisputed. The Court considers that, having obtained a judgment and an execution order against a particular State authority, the applicant should not be required to take any further steps in order to have it enforced. Moreover, even assuming that the applicant would have filed the writ of execution to the bailiffs for the second time, the

underlying problem of the non-enforcement of the judgment of 11 June 2002 would remain. The Court concludes that such an action would not have been an effective remedy within the meaning of Article 35 § 1 of the Convention.

18. Concerning the Government's argument as to the applicant's failure to request the substitution of the debtor, no such action was to be demanded of the applicant. The fact that the State-owned company changed its status and became a municipal company did not result in a change of its individual tax number or bank requisites and did not lift its obligation under the judgment in the applicant's favour. It was incumbent on the bailiffs to follow the procedure prescribed by law for cases when the debtor was undergoing reorganisation and to recover the debt.

19. Lastly, the Court notes that the Government accepted that in the light of the Court's case-law, the applicant could be considered a victim of the alleged violation of the Convention, as Mr Furman was the sole founder and proprietor of all property of the individual enterprise "Pyramid" and was its "higher authority" (see, *mutatis mutandis*, *Ankarcrona v. Sweden* (dec.), no. 35178/97, 27 June 2000).

20. The Court notes, accordingly, 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

21. The Court observes that on 11 June 2002 the applicant obtained a judgment in his favour against the State-owned maintenance company. As no appeal was lodged within the established time-limit, the judgment became final and enforceable. However, it has not been enforced to date.

22. The Government do not contest the State's responsibility for the debts of the municipal enterprise arising from the judgment in the applicant's favour (see, by contrast, *Gerasimova v. Russia* (dec.), no. 24669/02, 16 September 2004). Neither did the Government contest that the applicant's status allowed him to be a victim of the alleged violation. However, they did not give any justification for the prolonged non-enforcement of the judgment of 11 June 2002.

23. The applicant maintained his claims.

24. 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, ECHR 2002-III, *Reynbakh v. Russia*, no. 23405/03, 29 September 2005).

25. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delay in enforcement of the judgment. It finds, and that is not

disputed by the Government, that by failing for years 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.

26. 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

27. 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

28. In respect of the pecuniary damage, the applicant claimed the amount due to him under the judgment of 11 June 2002, which is RUR 43 517, and the interests thereof, the total sum amounting to RUR 112 518. The applicant produced certificates of the National Bank of the Republic of Sakha (Yakutiya) showing the marginal interest rates adopted by the Central Bank of the Russian Federation during the period from July 1998 to July 2006. He further claimed RUR 70 000 in respect of non-pecuniary damage.

29. The Government submitted that the applicant's claims relating to the failure to execute the judgment of the Commercial Court of the Republic of Sakha (Yakutiya) of 11 June 2002 were excessive and unsubstantiated. In respect of non-pecuniary damage, they submit that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

30. The Court notes that the State's outstanding obligation to enforce the judgment of the Commercial Court of the Republic of Sakha (Yakutiya) of 11 June 2002 is not in dispute. Accordingly, the applicant is 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 in had the requirements of Article 6 not been disregarded (see *Makarova and Others v. Russia*, no. 7023/03, § 47, 24 February 2005 and *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). The Court finds that in the present case the same principle applies, having regard to the violations found. It

therefore considers that the Government should secure, by appropriate means, the enforcement of the award made by the domestic courts. It further considers 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 (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 National Bank of the Republic of Sakha (Yakutiya) showing the inflation rate in the period from July 1998 to July 2006. As the Government did not comment on the applicant's method of calculation of compensation, the Court accepts the applicant's claim in respect of the pecuniary damage caused by inflation losses. The Court notes, nevertheless, that the period referred to by the applicant starts when the applicant should have received the award for his work from the debtor, e.g. in July 1999. However, the Court considers that the period to be taken into the consideration starts in June 2002 when the judgment securing the friendly settlement was delivered and entered into force. Having regard to the materials in its possession and the fact that the Government did not furnish any objection as to the applicant's method of calculation of compensation, the Court awards the applicant EUR 750 in respect of pecuniary damage, plus any tax that may be chargeable.

31. The Court accepts that the applicant suffered distress because of the State authorities' failure to enforce the judgment at issue during four years. The Court takes into account the applicant's claim for non-pecuniary damage, the amount and nature of the award and the fact that the judgment has not been enforced. Making its assessment on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

32. The applicant did not make any claims in respect of the costs and expenses incurred before the domestic courts and before the Court.

33. Accordingly, the Court makes no award under this head.

C. Default interest

34. 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 § 1 of the Convention and Article 1 of Protocol No.1 to the Convention;
3. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court, and in addition pay the applicant EUR 750 (seven hundred fifty euros) in respect of pecuniary damage and EUR 2,000 (two 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;
 - (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 5 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President