



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

FIRST SECTION

CASE OF MIZYUK v. RUSSIA

(Application no. 9253/06)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

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 Mizyuk 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 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 9253/06) 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 Yuriy Vladimirovich Mizyuk ("the applicant"), on 28 January 2006.

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 1953 and lives in the town of Omsk.

5. On 20 July 2004 the Tsentralniy District Court of Omsk accepted the applicant's action against the Omsk Town Council and ordered that the Council should provide the applicant and his family members with a well-equipped flat, taking into account that the applicant had the right to an additional room. The judgment was upheld on appeal by the Omsk Regional Court on 25 August 2004.

6. On 16 September 2004 enforcement proceedings were instituted.

7. On 28 December 2004 the Tsentralniy District Court clarified its judgment of 20 July 2004, noting that the Council should buy a flat at the expense of the federal budget.

8. The judgment remains unenforced because the Federal Treasury did not provide the Council with necessary funds.

THE LAW

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

9. The applicant complained that the judgment in his favour remained unenforced. 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

10. 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

11. The Government submitted that the judgment of 20 July 2004 remained unenforced because there were complex arrangements between budgets of different levels within the Russian Federation and there existed no clear legal basis for a transfer of funds between the budgets.

12. The applicant maintained his claims.

13. The Court observes that on 20 July 2004 the applicant obtained a judgment in his favour by which he and his family members were to be granted a flat. The judgment was upheld on appeal on 25 August 2004 and became enforceable on the same day. The judgment of 20 July 2004 has not been enforced yet. It thus remains unenforced for approximately two and a half years.

14. 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 *Malinovskiy v. Russia*, no. 41302/02, § 35 et seq., ECHR 2005; *Teteriny v. Russia*, no. 11931/03, § 41 et seq., 9 June 2005; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Burdov*, cited above, § 34 et seq., ECHR 2002-III).

15. 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 notes that the judgment was not enforced because the debtor did not have financial recourses to purchase a flat. However, the Court reiterates that it is not open to a State authority to cite the lack of funds or other resources, such as housing, as an excuse for not honouring a judgment debt (see *Malinovskiy v. Russia*, no. 41302/02, § 35, 16 June 2005; *Plotnikov v. Russia*, no. 43883/02, § 23, 24 February 2005). The same principle applies to difficulties experienced by the State enforcement services and the complexity of the budgetary arrangement (see *Wasserman v. Russia*, no. 15021/02, § 38, 18 November 2004 and *Chernyshov and 11 Others v. Russia*, no. 10415/02, § 14, 28 September 2006).

16. The Court finds 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 a flat he could reasonably have expected to receive.

17. 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

18. 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

19. The applicant claimed compensation in respect of non-pecuniary damage. He left the determination of the sum to the discretion of the Court.

20. The Government submitted that no compensation should be granted to the applicant in respect of pecuniary damage because he had not made the respective claim. As regards the non-pecuniary damage, the applicant should be granted the same amount as the applicants in the cases of *Teteriny v. Russia* (no. 11931/03, 30 June 2005) and *Shpakovskiy v. Russia* (no. 41307/02, 7 July 2005).

21. The Court reiterates that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the judicial decision in the applicant's favour was not enforced. 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 had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found (cf *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). The State's outstanding obligation to enforce the judgment in the applicant's favour is not in dispute. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the judgment of 20 July 2004, as upheld on appeal on 25 August 2004.

22. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in his favour. The Court takes into account the relevant aspects, such as the length of non-enforcement and the nature of the domestic award, and making its assessment on an equitable basis, awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

23. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and the Court.

24. Accordingly, the Court does not award anything under this head.

C. Default interest

25. 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, 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 judgment made by the domestic court in the applicant's favour, and pay the applicant 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 the 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President