



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

FIRST SECTION

CASE OF OOO PTK “MERKURIY” v. RUSSIA

(Application no. 3790/05)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

12/11/2007

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 OOO PTK “Merkuriy” 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 24 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 3790/05) 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 OOO PTK “Merkuriy”, a Russian limited-liability company having its registered office in Khabarovsk (“the applicant company”), on 29 December 2004.

2. The applicant company was represented by its founders, Mr V. Shevelev and Ms L. Kuznetsova. 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 company alleged that the State had failed to honour a judgment debt.

4. On 18 March 2005 the Court decided to communicate 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

THE CIRCUMSTANCES OF THE CASE

5. On 12 October 2000 the applicant company's premises were expropriated and demolished. The applicant company sued the Khabarovsk Town Council for compensation for the expropriated property. On 3 May

2001 the Commercial Court of the Khabarovsk Region allowed the claim and awarded it 5,335,963 Russian roubles (RUR, approximately 208,000 euros) against the Khabarovsk Town Council.

6. On 11 April 2003 the Appellate Division of the Commercial Court of the Khabarovsk Region upheld the judgment on appeal. The judgment became enforceable.

7. On 22 May 2003 the bailiffs' service opened enforcement proceedings. They were subsequently stayed at the debtor's request until 21 June 2003.

8. On 29 July 2003 the Federal Commercial Court of the Far-Eastern Circuit upheld the judgment of 3 May 2001 in the final instance.

9. On 8 September 2003 the Commercial Court of the Khabarovsk Region stayed the enforcement proceedings until 23 September 2003.

10. On 23 September 2003 the Khabarovsk Town Council challenged before a court the bailiff's order to write the debt off its bank account. It also asked the court to stay the enforcement proceedings pending examination of the complaint. On 25 September 2003 the Commercial Court of the Khabarovsk Region granted the request for a stay of the enforcement proceedings.

11. On 17 December 2003 the Appellate Division of the Commercial Court of the Khabarovsk Region held in the final instance that the bailiff's order had been lawful. On 31 December 2003 the enforcement proceedings were resumed.

12. On an unspecified date the applicant company received RUR 260,000.

13. The Khabarovsk Town Council, for a third time, applied to a court for a stay of the enforcement proceedings because it had no available funds. On 23 August 2004 the Commercial Court of the Khabarovsk Region allowed the Council's request and ordered a stay of the enforcement proceedings until 31 December 2004.

14. On 17 January 2005 the applicant company and the Khabarovsk Town Council concluded a remission-of-debt agreement. The Town Council undertook to pay the applicant company RUR 4,000,000 by 20 January 2005. The applicant company agreed to make a charitable contribution of the outstanding amount of RUR 1,075,963 for the purposes of town development. The agreement continued as follows:

“[The applicant company] undertakes to withdraw and not to resubmit the writ of execution no. 0009949, issued pursuant to the judgment [of 3 May 2001], and renounces all other pecuniary claims against the Khabarovsk Town Council relating to the demolition of [the applicant company's premises] and to the circumstances established by the above court judgment.”

15. On 19 January 2005 the applicant company received RUR 4,000,000.

16. On 26 January 2005 the applicant company withdrew the writ of execution. On 8 February 2005 the bailiffs discontinued the enforcement proceedings because the judgment of 3 May 2001 had been fully enforced.

THE LAW

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

17. The applicant company complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment of the Commercial Court of the Khabarovsk Region of 3 May 2001. 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.”

18. The Government submitted that the Khabarovsk Town Council had not paid the award in 2003 and 2004 because it had lodged an application for supervisory review of the judgment of 3 May 2001 and obtained several stay-of-execution orders. The Town Council cannot be blamed for the attempts to protect its legitimate interests by contesting the judgment it did not agree with. In January 2005 the applicant company and the Town Council had signed a friendly-settlement agreement and the judgment had been fully enforced. The applicant company had withdrawn the writ of execution and requested to discontinue the enforcement proceedings. Therefore, the application was manifestly ill-founded.

19. The applicant company argued that the remission-of-debt agreement had not deprived it of its victim status because the domestic authorities had not acknowledged the breach of the Convention and had not afforded

adequate redress. The judgment of 3 May 2001 had been enforced only in part and the applicant company had not received any compensation for the delay in enforcement.

A. Admissibility

20. The Court notes that on 17 January 2005 the applicant company signed a remission-of-debt agreement under which it received a portion of the award and abandoned its claim for the remainder. It undertook to withdraw the writ of execution and not to resubmit it. On 19 January 2005 the applicant company received the amount specified in the agreement and the judgment of 3 May 2001 was thereby enforced.

21. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). The domestic authorities did not acknowledge that the delay in enforcement had breached the Convention. In the absence of such acknowledgment, the Court considers that it cannot declare the application inadmissible on the ground that the applicant company can no longer claim to be the victim of the alleged violations.

22. 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

23. The Court observes that on 3 May 2001 the applicant company obtained a judgment in its favour against the Khabarovsk Town Council. The judgment became enforceable on 11 April 2003. However, it remained unenforced until 19 January 2005, that is for more than a year and nine months.

24. The Court reiterates that a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). In the present case the debtor obtained several stay-of-execution orders on the grounds that it contested the judgment before the higher courts, challenged the bailiffs' actions or had no available funds. In their observations the Government advanced the same

three justifications for the delay in the enforcement. The Court will examine each of the grounds in turn.

25. The Government first claimed that the Khabarovsk Town Council was justified in not paying the judgment debt while it contested the judgment before the higher courts. The Court is not persuaded by this argument. The fact that the debtor did not agree with the judgment and used extraordinary remedies, like supervisory review, to challenge it did not absolve the debtor from the obligation to enforce the judgment which was binding and enforceable under domestic law.

26. As the Town Council failed to comply with the judgment, the applicant company had to institute enforcement proceedings. The debtor then cited its intention to challenge the bailiffs' actions as an excuse for not paying the judgment debt. Given that it was incumbent on the State authority to comply with the judgment in the applicant company's favour and that the applicant company was not required to resort to enforcement proceedings in order to have it executed (see *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005), the Court cannot accept the debtor's discontent with the conduct of the enforcement proceedings as a justification for the failure to pay the judgment debt.

27. As to the third justification advanced by the domestic authorities, the Court reiterates that it is not open to a State authority to cite the lack of funds or resources as an excuse for not honouring a judgment debt. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Plotnikovy v. Russia*, no. 43883/02, § 23, 24 February 2005; and *OOO Rusatommet v. Russia*, no. 61651/00, § 23, 14 June 2005).

28. The Court concludes that the Government did not offer any plausible justification for the delay in the enforcement of the judgment in the applicant company's favour. It 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 *Gizatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Burdov v. Russia*, cited above, § 34 et seq.).

29. 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. Having regard to its case-law on the subject, the Court finds that by failing for months to comply with the enforceable judgment in the applicant company's favour the domestic authorities prevented it from receiving the money it could reasonably have expected to receive.

30. 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

31. 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

32. As regards the pecuniary damage, the applicant company claimed RUR 5,230,498 in respect of interest on the judgment debt for the period from 12 October 2000 to 19 January 2005 calculated at the marginal interest rate of the Russian Central Bank. It further claimed RUR 21,254,902 which represented the current value of the demolished property less the amount awarded, RUR 320,157 in respect of the taxes it had paid on the judgment award, and RUR 1,589,124 in respect of the taxes it would have to pay on the amount awarded by the Court. The applicant company's founders also claimed 10,000 euros each in respect of the non-pecuniary damage.

33. The Government considered that the finding of a violation would in itself constitute sufficient just satisfaction. In any event, the applicant company could only claim interest for the period from 1 to 19 January 2005. There was no causal link between the alleged violations and the remainder of the pecuniary damage claimed by the applicant company. The applicant company did not submit any claims in respect of non-pecuniary damage, the claims submitted by its founders being irrelevant.

34. The Court notes that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the judgment in the applicant company's favour had only been enforced after a significant delay. In this connection the Court 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 *Reynbakh*, cited above, § 35, with further references). Taking into account that the Government did not dispute the method of calculation employed by the applicant company, the Court accepts the applicant company's claim in respect of interest accrued on the judgment debt. The Court notes however that the judgment in the applicant company's favour became enforceable on 11 April 2003. Therefore, it awards the applicant company the sum of RUR 1,836,233 in respect of interest accrued in the period from 11 April 2003 to 19 January 2005, plus any tax that may be chargeable on that amount.

35. The Court does not discern a causal link between the violation found and the applicant company's claim for the current value of the demolished property and the taxes paid on the judgment award. It therefore dismisses

the remainder of the applicant company's claim in respect of the pecuniary damage.

36. The claims in respect of non-pecuniary damage were submitted by the applicant company's founders. The Court notes that the violation was found in respect of the company which is the only applicant in this case. Its founders are not the applicants, therefore their claims in respect of the non-pecuniary damage must be dismissed.

B. Costs and expenses

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

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

C. Default interest

39. 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

1. *Declares* the application admissible by a majority;
2. *Holds* by five votes to two that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
3. *Holds* by five votes to two
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, RUR 1,836,233 (one million eight hundred and thirty-six thousand two hundred and thirty-three Russian roubles) in respect of pecuniary damage, 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;
4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinions are annexed to this judgment:

- (a) dissenting opinion of Mrs N. Vajić;
- (b) dissenting opinion of Mrs E. Steiner.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE VAJIĆ

1. I regret that I am unable to share the reasoning and the conclusions of the majority in the present case in finding that there has been a violation of Article 6 § 1 of the Convention combined with Article 1 of Protocol No. 1 and in making an award for pecuniary damage to the applicant company.

2. I do not agree with the approach of the majority whereby, in spite of the settlement reached by the parties (paragraph 14) under the terms of which the applicant renounced "...all other pecuniary claims against the Town Council...", and the fact that it received the relevant amount, the Court found a violation of Article 1 of Protocol No. 1 and decided to make an award to the applicant for pecuniary damage in respect of the interest on the judgment debt for the period of non-enforcement (paragraph 32).

Mindful of all the delays incurred in the enforcement proceedings, the applicant company agreed to settle the case. It was open to it to include in the settlement any issue negotiated with the Town Council, that is to say, whatever it considered appropriate: this might have included the amount of interest. On the other hand, the company could equally well have written off the whole debt. It was clearly the applicant's choice whether or not to settle the case and, in full knowledge of the circumstances, it decided to do so.

In these circumstances I consider that the matter has been resolved and find no reason to depart from the established case-law of the Court (see *Çiçek and Öztemel and 6 other cases v. Turkey*, nos 74069/01, 74703/01, 76380/01, 16809/02, 25710/02, 25714/02 and 30383/02, § 22, 3 May 2007). In my opinion the applicant can no longer be considered to be a victim of a violation of Article 1 of Protocol No. 1.

3. I would not, however, exclude the possibility that the Court might find a State responsible under Article 6 of the Convention for failure to execute a final judgment for a significant period of time even where a valid settlement has been reached between the parties (see, *mutatis mutandis*, *Guerrera and Fusco v. Italy*, no. 40601/98, § 54, 3 April 2003). Thus, I could have voted for a finding of a violation of Article 6 only, which in the present case did not entail any award for non-pecuniary damage.

DISSENTING OPINION OF JUDGE STEINER

I unfortunately cannot agree with the majority's finding in this case, that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 thereto, for the following reasons:

On 17 January 2005 the applicant company entered into an agreement with the Khabarovsk Town Council in order to settle the case. In this settlement it agreed explicitly to “renounce all other pecuniary claims”.

In my view, if the applicant company had wished to proceed with the application before us (especially as it was represented by a lawyer) this point would have been excluded from the settlement. For me the dispute was settled in its entirety by that compromise.

The reason why I have come to this conclusion is that Article 37 of the Convention provides a better reason for a decision in this case. Article 37 has been inserted in order to give the Court a broad margin of appreciation when it is clear that the facts of the case disclose a situation in which an applicant has succeeded in his basic complaints before the domestic courts.

To decide otherwise in the present case appears too formalistic and contrary to the spirit of Article 37. It would be difficult to explain to the outside world why the Court, after having ascertained that the applicant explicitly renounced all other pecuniary claims against Russia in the framework of an agreement entered into freely by both sides, has decided to continue the examination of a case which is in fact now an abstract one.