



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

FIRST SECTION

CASE OF ZHELTKOV v. RUSSIA

(Application no. 8582/05)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

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 Zheltkov 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 24 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 8582/05) 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 a Russian national, Mr Vladimir Grigoryevich Zheltkov ("the applicant"), on 3 February 2005.

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. On 24 October 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.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

5. The applicant was born in 1953 and lives in the town of Chistopol, Tatarstan Republic. He is handicapped suffering from a double above-knee amputation.

6. In early 1990s the applicant acquired State commodity bonds for purchase of a Russian-made VAZ passenger car.

7. After the State had failed to exchange his bonds for a car, in 1999 the applicant brought a civil action against the Ministry of Finance of the

Russian Federation. On 28 February 2000 the Supreme Court of the Tatarstan Republic ordered the Ministry of Finance to pay the applicant 67,300 Russian roubles (RUR).

8. In April 2000 a writ of execution was submitted to the Bailiffs Service of the Ministry of Justice for a further transfer to the local bailiff office which was competent to enforce the judgment.

9. On 17 November 2000 the Bailiffs Office of the Central Administrative District of Moscow requested the applicant to submit details of his bank account.

10. In reply to the applicant's complaint about non-enforcement, on 4 December 2000 the Bailiffs Department of the Ministry of Justice told him that he could collect the award from the Bailiff Office of the Central Administrative Circuit of Moscow. On 4 January 2001 the Ministry of Finance informed the applicant that all questions relating to the enforcement of the judgment in his favour had to be addressed to the bailiff service.

11. It appears that the applicant wrote to the Bailiffs Office of the Central Administrative District of Moscow in October and December 2001, and in March 2002. He also unsuccessfully sought supervisory review of the judgment of 28 February 2000.

12. According to the Government, on 25 May 2001 a certain Mr K., pretending to act on the applicant's behalf, received the award under the judgment of 28 February 2000.

13. On 19 June 2006 the monies due to the applicant were transferred into his bank account.

THE LAW

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

14. The applicant complained firstly that his claim for a car had not been granted and, secondly, that the judgment of 28 February 2000 had not been enforced. His complaints fall to be examined under Article 6 of the Convention and Article 1 of Protocol No.1, which read, in so far as relevant, as follows:

Article 6

“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

15. In so far as the applicant complained that the courts had not awarded him a car, the Court notes that the applicant did not appeal against the judgment of 28 February 2000. As the applicant only lodged his application with the Court on 3 February 2005, this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention as introduced out of time or for a failure to exhaust the domestic remedies.

16. In so far as the applicant complained about non-enforcement of the judgment of 28 February 2000, the Government claimed that the applicant should have sued the bailiff service, or complained to the prosecutor's office or other public authorities. The applicant replied that he had complained about non-enforcement to various public authorities.

17. The Court observes, and it is not contested by the parties, that the applicant was not provided with any information about the progress in the enforcement proceedings, in particular that the payment under the judgment of 28 February 2000 had been made to an unauthorised person. Being unaware of that fact, the applicant could not be expected to challenge any allegedly unlawful action on the part of the bailiffs. The Court therefore rejects the Government's objection of non-exhaustion of domestic remedies.

18. The Court concludes that the part of the application concerning non-enforcement of the judgment of 28 February 2000 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

19. The Government claimed that the applicant had not submitted his bank details to the bailiff service and that he should have enquired about the state of enforcement after May 2001. They acknowledged, however, that a payment to an unauthorised person had been effected through the fault of the Bailiffs Office of the Central Administrative District of Moscow which

had not verified the authenticity of Mr K.'s authority form. The Government admitted a violation of Article 6 of the Convention and Article 1 of Protocol No.1.

20. The applicant replied that he had submitted his bank details to the bailiff service in good time.

21. The Court notes, and it is not contested by the parties, that the judgment of 28 February 2000 was enforced in full on 19 June 2006. It follows that this judgment remained without enforcement for approximately six years and three months. A substantial part of that six-year period is attributable to the domestic authorities' failure to verify whether the person claiming to act on the applicant's behalf had been indeed authorised to do so.

22. 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, § 35, ECHR 2002-III.; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; and *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

23. Having regard to its case-law on the subject and the Government's acknowledgment of a violation, the Court finds that by failing, for a long period of time, 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 could reasonably have expected to receive.

24. 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

25. 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

26. The applicant claimed a VAZ car and RUR 1,000,000 in respect of non-pecuniary damage.

27. The Government submitted that a finding of a violation would be a sufficient just satisfaction.

28. The Court notes that the applicant's claim for a car relates to the complaint which was declared inadmissible as submitted out of time (see

paragraph 15 above); it therefore rejects this claim. On the other hand, the Court considers that the applicant suffered distress because of the authorities' failure to enforce the judgment in his favour within a "reasonable time". However, the particular amount claimed is excessive. Taking into account the relevant aspects, such as the length of enforcement, and making its assessment on an equitable basis, the Court 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

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

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

C. Default interest

31. 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 applicant's complaint about the belated enforcement of the judgment of 28 February 2000 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;
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, EUR 3,900 (three thousand nine hundred 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;

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

Done in English, and notified in writing on 24 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President