



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

FIRST SECTION

CASE OF TIMISHEV v. RUSSIA (no. 3)

(Application no. 18465/05)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

30/01/2008

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 Timishev v. Russia (no. 3),

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. 18465/05) 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 Ilyas Yakubovich Timishev (“the applicant”), on 11 April 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. The applicant alleged that the State had failed to honour a judgment debt.

4. On 2 September 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. The applicant was born in 1950 and lives in the town of Nalchik, in the Kabardino-Balkaria Republic of the Russian Federation. The applicant is a lawyer.

6. On 28 November 2002 the Nalchik Town Court of the Kabardino-Balkaria Republic awarded the applicant 27,780 Russian roubles (RUR) in

outstanding child benefits against the Ministry of Labour of the Kabardino-Balkaria Republic. It also ordered that starting from 1 December 2002 the Ministry of Labour pay the applicant RUR 70 (about 2.2 euros) a month for each of his three children. The amount was to be increased in line with the statutory minimum wage.

7. On 14 April 2003 the lump sum was paid to the applicant.

8. On 18 November 2003 the bailiffs' service opened enforcement proceedings in respect of the monthly payments.

9. The bailiffs applied to the Nalchik Town Court, asking to clarify the operative part of the judgment of 28 November 2002. On 5 July 2004 the court amended the judgment and specified the names of the children and their dates of birth.

10. The Ministry of Labour asked the court to review the judgment of 28 November 2002 on account of newly-discovered facts. They submitted that the applicant had divorced his wife and that the children had stayed with the mother. The applicant thus no longer had the right to child benefits. On 2 December 2004 the Nalchik Town Court dismissed the request as having no basis in the domestic law.

11. The applicant challenged the bailiffs' failure to act before a court. On 7 February 2005 the Nalchik Town Court held that the bailiffs had failed to undertake the steps required under the domestic law to secure enforcement of the judgment. On 2 March 2005 the Supreme Court of the Kabardino-Balkaria Republic upheld the decision on appeal.

12. On 19 October 2005 the applicant received the child benefits for the period from December 2002 to September 2005, and on 10 April 2006 for the period from October 2005 to April 2006.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

13. Referring 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 on account of the applicant's refusal to accept a friendly settlement.

14. The applicant submitted that he had not accepted the friendly settlement because the compensation proposed by the domestic authorities had been negligible.

15. The Court observes that it has already 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.

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

16. The applicant complained about non-enforcement of the judgment of 28 November 2002. The Court considers that the 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 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

17. The Government submitted that the domestic authorities had paid the judgment debt in full and acknowledged a violation of the applicant's rights. Therefore, the applicant can no longer claim to be a victim.

18. The applicant maintained that the judgment debt had been paid with a significant delay for which he had received no compensation.

19. 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 Court notes that in the present case the Government had acknowledged the breach of the

Convention and paid the judgment debt. Nevertheless, the payment, which intervened only after a substantial delay and after the present application had been communicated to the Government, did not afford the applicant adequate redress (see *Burdov v. Russia*, no. 59498/00, § 31, ECHR 2002-III; *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The Court also takes into account that the applicant did not receive any compensation for the delay in the enforcement. In these circumstances, the Court considers that the applicant may still claim to be a victim of a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

20. 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

21. The Government contended that on 13 February 2004 the applicant had divorced his wife and that since that date the children had lived with their mother. Therefore, the applicant was no longer entitled to receive child benefits. They also claimed that the applicant did not distribute the money among the children but kept it for himself on his bank account.

22. The applicant maintained his claims. He argued that after the divorce he had not lost entitlement to receive child benefits, that he paid maintenance to his children, and that he had handed the money over to them. He submitted written affidavits by the children who confirmed that the applicant supported them financially. The children also stated that in early 2006 a bailiff had come to their flat and urged their mother to testify that the applicant had not distributed the child benefits among them.

23. The Court observes that on 28 November 2002 the applicant obtained a judgment in his favour against the local Ministry of Labour. However, it remained unenforced until 19 October 2005, that is for slightly less than two years and eleven months.

24. The Government argued that after the divorce the applicant had lost entitlement to receive child benefits. However, the Court notes that the domestic courts examined that argument, found that it had no basis in the domestic law, and confirmed that the applicant's entitlement to receive child benefits continued after the divorce (see paragraph 10 above).

25. As regards the Government's allegation that the applicant did not distribute the child benefits among the children, the Court notes that the child benefits are payable to the parents. The operative part of the judgment of 28 November 2002 expressly indicated that the benefits should be paid to the applicant rather than directly to the children. It was for the applicant to decide how to use the money in the children's best interest.

26. The Court concludes that the Government did not offer any plausible justification for the delay in the enforcement of the judgment in the applicant'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 *Reynbakh v. Russia*, no. 23405/03, § 23 et seq., 29 September 2005; *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*, cited above, § 34 et seq.).

27. 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 years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving the money he could reasonably have expected to receive.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed RUR 500,000 in respect of non-pecuniary damage.

31. The Government submitted that the claim should be rejected because the amount of the child benefits was insignificant.

32. The Court accepts that the applicant must have suffered distress and frustration resulting from the delay in the enforcement of the judgment in his favour. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the award, and making its assessment on an equitable basis, awards the applicant 1,800 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

33. The applicant also claimed RUR 2,000 for postal and translation expenses and RUR 28,500 (approximately EUR 800) in compensation for the nineteen days he had spent trying to recover the judgment debt through the domestic enforcement proceedings and preparing the materials for the Strasbourg proceedings.

34. The Government did not comment.

35. The Court notes that the applicant did not submit any receipts or other vouchers confirming that the postal and translation expenses had been actually incurred. Accordingly, the Court does not make any award under this head.

36. As to the remaining claims, it transpires from the applicant's submissions that he spent thirteen days on the domestic proceedings and six days drafting documents in the Strasbourg proceedings. The sum of RUR 1,500 (approximately EUR 43) claimed as the average value of a lawyer's working day does not appear excessive. Accordingly, having regard to the materials in its possession, the Court awards the applicant EUR 800 in respect of costs and expenses incurred before the domestic courts and the Court.

C. Default interest

37. 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;
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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 1,800 (one thousand and eight hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 800 (eight hundred euros) in respect of costs and expenses;

(iii) 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;

4. *Dismisses* the remainder of the applicant'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