



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

FIRST SECTION

CASE OF PYLNOV v. RUSSIA

(Application no. 7111/05)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

12/10/2007

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 Pylnov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

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 21 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 7111/05) 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 Aleksandrovich Pylnov (“the applicant”), on 7 February 2005.

2. The applicant was represented by Mr A. Bunchin, a lawyer practising in Kostroma. 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 1953 and lives in Kostroma.

6. On 22 September 2002 the Sverdlovskiy District Court of Kostroma allowed the applicant's action against the Kostroma Regional Government and awarded him 178,752 Russian roubles (RUR, approximately

5,500 euros) as financial aid for housing construction. The District Court found that the applicant was entitled to 29.4 square metres of surface, and that the average market price per square metre in Kostroma was RUR 6,080.

7. On 20 November 2002 the Kostroma Regional Court upheld the judgment on appeal. The judgment became enforceable.

8. The applicant submitted a writ of execution to the bailiffs' service. On 4 March 2003 the bailiffs' service opened enforcement proceedings.

9. On 26 March 2003 the bailiffs' service discontinued the enforcement proceedings because, according to the domestic law, the writs against the regional governments were to be submitted to the Federal Treasury.

10. The applicant submitted the writ of execution to the local office of the Federal Treasury. On 3 April 2003 the Federal Treasury refused to pay the award and referred the applicant back to the bailiffs' service.

11. On 7 April 2003 the bailiffs' service for a second time opened enforcement proceedings. On 6 June 2003 it discontinued the proceedings.

12. In November 2003 the applicant submitted the writ of execution to the Federal Treasury. On 18 November 2003 the Federal Treasury refused to pay the award because it did not consider itself liable for the debts of the Kostroma Regional Government. The applicant challenged that decision before a court. On 10 November 2004 the Kostroma Regional Court dismissed the applicant's claims in the final instance as having no basis in the domestic law.

13. The applicant re-submitted the writ of execution to the bailiffs' service. On 27 November 2003 the bailiffs' service for a third time opened enforcement proceedings.

14. On 27 September 2004 the bailiffs discontinued the enforcement proceedings because the debtor had no available funds.

15. The judgment of 22 September 2002 has remained unenforced to date.

THE LAW

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

16. The applicant complained that the continued non-enforcement of the judgment of 22 September 2002 violated his right of access to a court enshrined in Article 6 of the Convention and his right to peaceful enjoyment of possessions guaranteed by 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 claimed that the applicant had not challenged the bailiffs' actions before a court. Therefore, he did not exhaust domestic remedies.

18. The applicant submitted that he had challenged the bailiffs' actions on several occasions. However, the domestic courts disallowed his claims under various pretexts.

19. The Court observes that the applicant does not complain about any unlawful act of a bailiff but rather about the fact that the judgment in his favour was not enforced. The Government failed to provide any explanation how an action against the bailiffs could have put an end to the alleged continuing violation or what kind of redress the applicant could have been provided with as a result of the action. Even assuming that the applicant could have brought an action against the bailiffs and obtained a decision confirming that the non-enforcement had been unlawful in domestic terms, the outcome of such an action would only have produced repetitive results, namely a writ of execution enabling the bailiffs to proceed with the enforcement of the judgment of 22 September 2002 (compare *Yavorivskaya v. Russia* (dec.), no. 34687/02, 13 May 2004).

20. The Court therefore does not accept that the applicant was required to challenge the bailiffs' actions before a court in order to exhaust domestic remedies.

21. 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

22. The Government acknowledged that the continued non-enforcement of the judgment of 22 September 2002 had violated the applicant's rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

23. The applicant maintained his claims.

24. The Court observes that on 22 September 2002 the applicant obtained a judgment in his favour against the Kostroma Regional Government. On 20 November 2002 the judgment became enforceable. However, it has not been enforced to date.

25. 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 *Reynbakh v. Russia*, no. 23405/03, § 23 et seq., 29 September 2005; *Gizzatova 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*, no. 59498/00, § 34 et seq., ECHR 2002-III).

26. Having regard to its case-law on the subject and taking note of the Government's acknowledgment of a violation, 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. 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. The applicant claimed RUR 173,151 representing the difference between average market prices per square metre of housing in 2002 and 2006. He submitted a certificate of the Ministry of Regional Development

showing that the average market price per square metre in Kostroma in 2006 was RUR 11,960. He also claimed RUR 180,000 in respect of non-pecuniary damage.

29. The Government submitted that the award should not exceed the amount awarded by the Court in the *Mikryukov* case (see *Mikryukov v. Russia*, no. 7363/04, 8 December 2005).

30. The Court notes that the State's outstanding obligation to enforce the judgment at issue is undisputed. The Court reiterates 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 in which he would have been had the requirements of Article 6 not been disregarded (see *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005, with further references). The Court finds that in the present case this principle applies as well, having regard to the violation found. It therefore considers that the Government should secure, by appropriate means, the enforcement of the award made by the domestic courts.

31. In the present case the Court found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the award in the applicant's favour had not been paid to him. 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, *mutadis mutandis*, *Gizzatova*, cited above, § 28; *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). The Court notes that on 22 September 2002 the domestic courts awarded the applicant a sum of money for housing construction. The sum was calculated by multiplying the number of square metres to which the applicant was entitled by the average market price per square metre in Kostroma in 2002. To date, the applicant has not received this sum. By 2006 the average market price per square metre had increased, making the housing grant concerned insufficient to buy a flat of the surface area indicated in the judgment. The Court accepts that the judgment debt depreciated as a result of the continued non-enforcement of the judgment. Having regard to the materials in its possession and noting that the applicant's calculation contained an arithmetical mistake, the Court awards the applicant RUR 172,872, plus any tax that may be chargeable on that amount, and dismisses the remainder of the claim for pecuniary damage.

32. 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 the enforcement proceedings and the nature of the award, and making its assessment on an equitable basis, awards the applicant 3,500 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 85,000 for reimbursement of his legal and translation fees.

34. The Government submitted that the applicant's claim was not supported by relevant documents.

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

C. Default interest

36. 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 according to Article 44 § 2 of the Convention, is to secure the enforcement of the award made by the domestic courts in the applicant's favour under the judgment of 22 September 2002, that is to pay the applicant RUR 178,752 (one hundred and seventy-eight thousand seven hundred and fifty-two Russian roubles);
 - (b) 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:
 - (i) RUR 172,872 (one hundred and seventy-two thousand eight hundred and seventy-two Russian roubles) in respect of the pecuniary damage;
 - (ii) EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) any tax that may be chargeable on the above amounts;

(c) 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 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President