



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

FIRST SECTION

CASE OF SVITICH v. RUSSIA

(Application no. 39013/05)

JUDGMENT

STRASBOURG

31 July 2007

FINAL

31/10/2007

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 Svitch 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 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 39013/05) 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 Aleksandr Petrovich Svitch, (“the applicant”), on 19 September 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 5 December 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1960 and lives in Pskov, the Pskov Region.

5. In 1986 he took part in the emergency operations at the site of the Chernobyl nuclear plant disaster. As a result he suffered from the extensive exposure to radioactive emissions. On unspecified dates the applicant underwent medical examinations which established the link between his poor health and his involvement in the Chernobyl events. The applicant was awarded social benefits, to be paid monthly.

6. On 13 August 2002 the Pskov Town Court of the Pskov Region granted the applicant's claim against the Welfare Office of the administration of Pskov (*Управление Социальной защиты населения администрации г. Пскова*) for increase of food allowance. The court awarded the applicant 1,089.60 Russian roubles (RUR) to be paid monthly and ordered the defendant to adjust the forthcoming payments proportionally to the increase of the minimum subsistence level.

7. On 24 September 2002 the judgment of 13 August 2002 acquired legal force, after it had been upheld on appeal by the Pskov Regional Court.

8. In December 2003 the defendant filed an application for supervisory review of the judgment of 13 August 2002, as upheld on 24 September 2002, with the Pskov Regional Court.

9. On 24 May 2004 the Presidium of the Pskov Regional Court quashed the judgment of 13 August 2002 in part concerning the future adjustments of the allowance and upheld the remainder of the judgment.

10. By a judgment of 23 December 2003 the Pskov Town Court of the Pskov Region granted another of the applicant's actions against the Welfare Office of the administration of Pskov for adjustment of the food allowance. The court increased the monthly payments to RUR 1,231. The judgment was not appealed against and entered into force on 5 January 2004.

11. The Welfare Office of the administration of Pskov failed to execute the judgments of 13 August 2002 and 23 December 2003.

12. In February 2006 the local authorities contacted the applicant with a view of reaching an agreement in the matter. However, the applicant refused to accept the terms of the agreement.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION AS TO THE ALLEGED ABUSE OF THE RIGHT OF PETITION

13. In their correspondence to the Court of 28 July 2006 the Government submitted that in his observations of 2 May 2006 the applicant “allowed himself obvious and groundless insults in respect of the authorities of the Russian Federation”. They requested the Court to examine the possibility of striking the application out of its list of cases. The Court will examine the Government's request from the standpoint of Article 35 which provides, as far as relevant, as follows:

“3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of application.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.”

14. The applicant denied that he had made any offensive remarks against the Russian authorities. He further submitted that the Government had failed to substantiate their objection.

15. The Court recalls that, whilst the use of offensive language in proceedings before it is undoubtedly inappropriate, an application may only be rejected as abusive in extraordinary circumstances, for instance if it was knowingly based on untrue facts (see, for example, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1206, §§ 53-54, and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). However, in certain exceptional cases the persistent use of insulting or provocative language by an applicant against the respondent Government may be considered an abuse of the right of petition within the meaning of Article 35 § 3 of the Convention (see *Duringer and Grunge v. France* (dec.), nos. 61164/00 and 18589/02, ECHR 2003-II, and *Chernitsyn v. Russia*, no. 5964/02, § 25, 6 April 2006).

16. The Court notes that in the present case the Government did not allege that the application was based on any untrue facts or that there existed any other extraordinary circumstances which would allow rejecting the application as abusive. It further observes that the Government did not indicate which expressions or passages in the applicant's observations they considered insulting or abusive and the Court does not observe any gratuitous offence, outrage or provocation in the applicant's submissions (see *Kolosovskiy v. Latvia* (dec.), no. 50183/99, 29 January 2004).

17. The Court considers that although some of the applicant's statements were irrelevant and excessively emotional, they did not amount to the circumstances of the kind that would justify a decision to declare the application inadmissible as an abuse of the right of petition. It follows that the Government's plea must be rejected.

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

18. The applicant complained under Articles 6 and 13 of the Convention and under Article 1 of Protocol No. 1 about the non-enforcement of the judgments of 13 August 2002 and 23 December 2003. The Court will examine his complaints under Article 6 and Article 1 of Protocol No. 1. These provisions, as far as relevant, 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

19. The Government informed the Court that the authorities of the Pskov Region had attempted to secure a friendly settlement which the applicant had refused to accept. Referring to that refusal and 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.

20. The applicant maintained his complaint. He submitted that the judgments in his favour had not been enforced. He further claimed that the Government had not offered compensation for the loss of the value of the judgments' debts.

21. The Court observes that it has already on a number of occasions examined the same argument by the Russian Government and rejected it (see *Silchenko v. Russia*, no. 32786/03, §§ 33-37, 28 September 2006, and *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.

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 Government acknowledged that the judgments of 13 August 2002 and 23 December 2003 had not been enforced. They further conceded that the applicant's rights set out in Article 6 of the Convention and Article 1 of Protocol No. 1 had been violated as a result of the non-enforcement of the final judgments in his favour.

24. The applicant maintained his claims.

25. The Court observes that on 13 August 2002 the applicant obtained a judgment by which the Welfare Office of the administration of Pskov, a State body, was to pay him a monthly food allowance in a particular amount. The judgment acquired legal force on 24 September 2002 when it was upheld on appeal. It has remained without enforcement to date. No justification was advanced by the Government who acknowledged a violation of the Convention.

26. The Court further observes that on 23 December 2003 the applicant obtained another judgment in his favour against the Welfare Office by which he was to receive the adjusted food allowance. The judgment entered into force on 1 January 2004. It has remained without enforcement to date. No justification was advanced by the Government who acknowledged a violation of the Convention.

27. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues to the ones in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; *Blagovestnyy v. Russia*, no. 72558/01, 4 July 2006; and *Silchenko v. Russia*, no. 32786/03, 28 September 2006).

28. 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 to comply with the enforceable judgments 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 had reasonably expected to receive.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. As regards pecuniary damage, the applicant considered that the Russian authorities were under obligation to enforce the judgments of 13 August 2002 and 23 December 2003. He also claimed 9,000 euros (EUR) in respect of non-pecuniary damage.

32. The Government considered that the applicant's claim was excessive and unreasonable. They submitted that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction.

33. The Court notes that the State's outstanding obligation to enforce the judgment at issue is undisputed. Accordingly, the applicant is still entitled to receive court awards in the domestic proceedings. 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 awards made by the domestic courts.

34. The Court considers that the applicant must have suffered certain distress and frustration resulting from the State's authorities' failure to enforce judgments in his favour. However, the amount claimed appears excessive. The Court takes into account the nature of the awards at stake in the present case, the length of the enforcement proceedings and other relevant aspects. Making its assessment on an equitable basis, it 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

35. The applicant claimed 146,2 Russian roubles for postal expenses.

36. The Government did not comment.

37. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5 for the applicant's postal expenses.

C. Default interest

38. 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. *Dismisses* the Government's preliminary objection concerning the abuse of the right of petition;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
4. *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, is to secure, by appropriate means, the enforcement of the awards made by the domestic courts, and, in addition, to pay the applicant the following amounts:
 - (i) EUR 3,900 (three thousand nine hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 5 (five euros) in respect of postal expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that the above amounts shall be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President