



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

FIRST SECTION

CASE OF GALKIN v. RUSSIA

(Application no. 33459/04)

JUDGMENT

STRASBOURG

4 October 2007

FINAL

04/01/2008

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 Galkin 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 D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 13 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 33459/04) 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 Mr Vladimir Vasilyevich Galkin (“the applicant”), on 29 July 2004.

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 6 March 2006 the Court decided to communicate the complaint concerning the non-enforcement of a judgment in the applicant favour 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 1939 and lives in Barnaul, the Altay Region.

5. On 20 December 1998 police searched the applicant's house.

6. On 20 June 2000 the Industrialnyy District Court of Barnaul found, upon the applicant's complaint, that the search had been unlawful. The judgment was not appealed against and acquired legal force ten days later.

On 8 May 2001 the Presidium of the Altay Regional Court rejected the Prosecutor's application for supervisory review and upheld the judgment of 20 June 2000.

7. On 18 December 2003 the Oktyabrskiy District Court of Barnaul granted the applicant's action against the Ministry of Finance of the Russian Federation for compensation of non-pecuniary damage sustained as a result of the unlawful search and awarded the applicant 5,000 Russian roubles. By a decision of 24 March 2004 the Altay Regional Court upheld the judgment on appeal. On 29 July 2004 the Oktyabrskiy District Court issued a writ of execution.

8. On 15 October 2004 the applicant forwarded the writ of execution to the Ministry of Finance, but on 10 November 2004 the Ministry of Finance returned it to the applicant on the ground that he had failed to submit a duly certified copy of the judgment of 18 December 2003 and a payment request with indication of his bank account.

9. On 6 December 2004 the applicant re-submitted the enforcement materials to the Ministry of Finance. However, on 12 January 2005 the Ministry of Finance returned them to the applicant for the reason that the date of delivery of the judgment had been indicated incorrectly.

10. On 8 February 2005 the enforcement documents were once again forwarded to the Ministry of Finance.

11. The date on which the judgment was enforced is disputed by the parties. According to the Government, the judgment was fully enforced on 2 May 2005. From the applicant's submissions it follows that he had received the amount awarded by the judgment of 18 December 2003 on 2 May 2006.

THE LAW

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

12. The applicant complained under Article 6 about the non-enforcement of the judgment of 18 December 2003, as upheld on 24 March 2004. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These provisions, in so 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

13. The Court notes that the applicant's complaint 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

14. The Government submitted that the applicant had forwarded the enforcement materials in respect of the judgment of 18 December 2003 to the Ministry of Finance only on 15 October 2004. They further pointed out that the judgment in question was fully enforced on 2 May 2005. Therefore, the delay in the enforcement of the judgment amounted to six months and 23 days and should be considered reasonable. In support of their arguments the Government provided the Court with a copy of the payment order No. 5683 issued on 2 May 2006. Referring to the Court's decision in *Presnyakov v. Russia* case (no. 41145/02, 10 November 2005), the Government concluded that the applicant's complaint should be rejected as manifestly ill-founded.

15. The applicant did not dispute that he had forwarded the writ of execution to the Ministry of Finance on 15 October 2004. However, he insisted on the fact that the judgment of 18 December 2003 was fully enforced only on 2 May 2006.

16. The Court observes that a copy of the payment order provided by the Government dated 2 May 2006. The order bore a confirmation signed by a representative of the Moscow department of the Federal Treasury that the payment had been made on 2 May 2006. It follows that the judgment of 18 December 2003 was enforced in full on 2 May 2006.

17. The Court further observes that on 18 December 2003 the applicant obtained a judgment in his favour by which the Ministry of Finance was to pay him a compensation for non-pecuniary damage sustained as a result of the unlawful search of his house. The judgment acquired legal force on

24 March 2004 after it had been upheld on appeal. The applicant duly submitted the writ of execution to the Ministry of Finance on 15 October 2004, but the judgment had not been enforced until 2 May 2006. Thus, the period of the non-enforcement imputable to the State amounts to one year and six months.

18. 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 *Malinovskiy v. Russia*, no. 41302/02, ECHR 2005-..., *Mikryukov v. Russia*, no. 7363/04, 8 December 2005).

19. 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 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 had reasonably expected to receive.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. Lastly, the applicant complained under Articles 6 and 8 about the insufficient amount of compensation for non-pecuniary damage awarded by the domestic courts. However, having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 5,000 Russian roubles (RUR) in respect of pecuniary damage and 10,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government submitted that the applicant had failed to substantiate his claim for pecuniary damage and therefore it should be rejected. As regards the non-pecuniary damage, the Government considered that the applicant's claim was excessive and unreasonable. They believed that the amount of the compensation should be similar to the ones awarded in the cases of *Shvedov v. Russia* (no. 69306/01, 20 October 2005) and *Wasserman v. Russia* (no. 15021/02, 18 November 2004).

25. The Court notes that the applicant failed to substantiate his claim for pecuniary damage. It accepts the Government's arguments in this respect and rejects this claim. On the other hand, the Court considers that the applicant must have suffered certain distress and frustration resulting from the State's authorities' failure to enforce the judgment in his favour. However, the amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

26. The applicant claimed RUR 55,000 for legal costs, of which RUR 10,000 represented the amount he had paid for drafting his application to the Court. He also claimed RUR 400 for postal expenses. The applicant submitted a receipt only for RUR 10,000.

27. The Government argued that only expenses in the amount of RUR 10,030 were supported by the relevant documents, while the rest of the applicant's claims were unsubstantiated. They considered that the expenses for drafting the application to the Court, as indicated by the applicant, were excessive.

28. 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 285 covering costs under all heads.

C. Default interest

29. 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 complaint concerning the non-enforcement of the judgment in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the lengthy non-enforcement of the judgment of 18 December 2003;
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 900 (nine hundred euros) in respect of non-pecuniary damage and EUR 285 (two hundred and eighty-five euros) in respect of costs and expenses, plus any tax that may be chargeable on these 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President