



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

FIRST SECTION

CASE OF OSHER AND OSHER v. RUSSIA

(Application no. 31296/02)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

31/03/2008

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 Osher and Osher 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 K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 4 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 31296/02) 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 Russian nationals, Mr Mikhail Ilyich Osher (“the first applicant”) and Mrs Inessa Samuilovna Osher (“the second applicant”), on 9 August 2001.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mrs V. Milinchuk.

3. The applicants complained about non-enforcement of two judgments in their favour and their subsequent quashing by way of supervisory review.

4. On 15 September 2006 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

5. The first applicant was born in 1933. The second applicant was born in 1935. They live in Lynn, MA, the United States of America.

6. On an unspecified date the applicants sued the Social Security Office of the Oktyabrskiy District of Rostov-on-Don (“the social security office”) for pension arrears for the period from 1 February 1998 to 31 March 1999.

7. On 20 October 1999 the Oktyabrskiy District Court of Rostov-on-Don granted the applicants' claims. The court awarded 2,050.16 Russian roubles (RUB) to the first applicant, and RUB 1,862 to the second applicant.

8. On 26 November 1999 the Oktyabrskiy District Court ordered that the social security office pay RUB 1,025.08 to the first applicant and RUB 931 to the second applicant in respect of pension arrears for the period from 1 April 1999 to 1 November 1999.

9. On 26 January 2000 the Rostov Regional Court upheld the judgments of 20 October 1999 and 26 November 1999 on appeal. The judgments became enforceable.

10. On an unspecified date the President of the Rostov Regional Court lodged an application for supervisory-review of the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000.

11. On 15 March 2001 the Presidium of the Rostov Regional Court found that the District Court had incorrectly applied domestic law, quashed the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000, and dismissed the applicants' claims.

THE LAW

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

12. The applicants complained about non-enforcement of the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000, and their subsequent quashing by way of supervisory review. They relied on Article 6 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

13. 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

1. Quashing of the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000, on supervisory review

14. The Government argued that the Presidium of the Rostov Regional Court quashed the judgments of 20 October and 26 November 1999 with a view to correcting the judicial error committed by the District Court.

15. The applicants maintained their claims.

(a) Article 6 § 1 of the Convention

16. The Court observes that on 20 October and 26 November 1999 the Oktyabrskiy District Court of Rostov-on-Don accepted the applicants' actions and awarded them pension arrears. On 26 January 2000 the Rostov Regional Court upheld the judgments on appeal and they became binding and enforceable. On 15 March 2001 those judgments were quashed by way of supervisory review initiated by the President of the Rostov Regional Court who was a State official but not a party to the proceedings (see paragraph 10 above).

17. The Court has found a violation of an applicant's “right to a court” guaranteed by Article 6 § 1 of the Convention in many cases in which a judicial decision that had become final and binding, was subsequently quashed by a higher court on an application by a State official whose power to intervene was not subject to any time-limit (see *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; and *Ryabykh v. Russia*, no. 52854/99, §§ 51-56, ECHR 2003-IX).

18. Having examined the materials submitted to it, the Court observes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the judgments given in the applicants' case by way of supervisory-review proceedings.

(b) Article 1 of Protocol No. 1

19. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the judgment beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

20. The Court observes that the final and enforceable judgments of 20 October and 26 November 1999, upheld on appeal on 26 January 2000, by which the applicants had been awarded certain sums of money were quashed on a supervisory review on 15 March 2001. The applicants' claims were dismissed. Thus, the applicants were prevented from receiving the initial awards through no fault of their own. The quashing of the enforceable judgments frustrated the applicants' reliance on the binding judicial decisions and deprived them of an opportunity to receive the money they had legitimately expected to receive. In these circumstances, the Court considers that the quashing of the enforceable judgments of 20 October and 26 November 1999, as upheld on 26 January 2000, by way of supervisory review placed an excessive burden on the applicants and was incompatible with Article 1 of Protocol No. 1. There has therefore been a violation of that Article.

2. Non-enforcement of the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000

21. The Government submitted that the judgments had not been enforced because they had been quashed on supervisory review.

22. The applicants maintained their claims.

23. The Court observes that on 20 October and 26 November 1999 the applicants obtained judgments by which the local social security office was to pay them pension arrears. The judgments were upheld on appeal on 26 January 2000 and became enforceable on that date. From that moment on, it was incumbent on the debtor, a State body, to comply with them. On 15 March 2001 the Presidium of the Rostov Regional Court quashed the judgments of 20 October and 26 November 1999.

24. It follows that at least from 26 January 2000 to 15 March 2001 the judgments of 20 October and 26 November 1999 were enforceable and it was incumbent on the State to abide by their terms (compare *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006).

25. The Government cited the institution of supervisory-review proceedings in respect of the judgments of 20 October and 26 November 1999 as the sole reason for the non-enforcement. In this respect, the Court reiterates that it has addressed and dismissed the same argument by the Government in the case of *Sukhobokov v. Russia* (no. 75470/01, 13 April

2006). In particular, the Court held that “the quashing of the judgment, which did not respect the principle of legal certainty and the applicant's 'right to a court', cannot be accepted as a reason to justify the non-enforcement of the judgment” (see *Sukhobokov*, cited above, § 26, and *Velskaya*, cited above, §§ 19-21).

26. Having examined the material submitted to it and taking into account its findings in paragraphs 18 and 20 above, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Government did not advance any other justification for the failure to enforce the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000. Having regard to its case-law on the subject (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; and *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III), the Court finds that by failing to comply with the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000, the domestic authorities violated the applicants' right to a court and prevented them from receiving the money which they were entitled to receive.

27. The Court finds accordingly that there was a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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.”

29. The applicants did not submit a claim for just satisfaction within the specified time-limit. Accordingly, the Court considers that there is no call to award them any sum on that account.

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 on account of the quashing of the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000;
3. *Holds* that that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the judgments of 20 October and 26 November 1999, as upheld on 26 January 2000;
4. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President