



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

FIRST SECTION

CASE OF OOO PKG "SIB-YUKASS" v. RUSSIA

(Application no. 34283/05)

JUDGMENT

STRASBOURG

8 November 2007

FINAL

02/06/2008

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 OOO PKG “Sib-YUKASS” v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 18 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 34283/05) 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 OOO PKG “Sib-YUKASS” (*ООО Промышленно-коммерческая группа “Сиб-ЮКАСС”*, “the applicant company”), on 26 August 2005.

2. The applicant was represented by Mr I. Tanzybayev, its director-general, and by Mr O. Fedorov, a lawyer practising in Irkutsk. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant company alleged that the State had failed to honour a judgment debt.

4. On 3 July 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 applicant a Russian limited liability company having its registered office in Irkutsk.

6. On 26 August 1997 a limited liability company PKG “SVL” (“the SVL company”) signed a fuel supply agreement with the Primorskiy Regional Department of Housing Maintenance and Fuel Supplies

(Департамент по жилищно-коммунальному хозяйству и топливным ресурсам администрации Приморского края, hereinafter "the housing department").

7. As the housing department did not pay for the fuel, the SVL company sued it for arrears and penalty.

8. On 23 July 1998 the Commercial Court of the Primorskiy Region awarded the SVL company 8,701,895.73 Russian roubles (RUB) in arrears and RUB 6,330,764.07 in penalty against the housing department.

9. On 22 April 1999 the Commercial Court of the Primorskiy Region ordered that the housing department pay the SVL company an additional penalty of RUB 2,958,526.20.

10. On an unspecified date the housing department paid the SVL company RUB 4,351,143.95.

11. On 20 January 2000 the Commercial Court of the Primorskiy Region awarded the SVL company RUB 3,907,856.05 by way of penalty against the housing department.

12. The SVL company submitted three writs of execution to the bailiffs' service. The bailiffs opened joint enforcement proceedings. They established that the housing department owed in total RUB 9,882,908.24 to the SVL company.

13. On 8 October 2000 the SVL company sold the debt to the applicant company. The bailiffs recognized the applicant company as the successor of the SVL company in the enforcement proceedings.

14. On 8 June 2001 the prosecutor's office of the Leninskiy District of Vladivostok opened criminal proceedings against persons unknown on suspicion that the writs of execution had been a forgery. On 16 July 2001 the writs were taken away from the bailiffs and attached to the criminal case-file.

15. On 19 December 2001 the bailiffs discontinued the enforcement proceedings. On 27 March 2003 the Commercial Court of the Primorskiy Region held that the decision of 19 December 2001 had been unlawful and quashed it.

16. By letter of 5 November 2003, the Ministry of the Internal Affairs informed the applicant company that the criminal case into forgery of the writs of execution had been opened unlawfully. On an unspecified date in 2004 the criminal proceedings were discontinued and the writs of execution were returned to the applicant company.

17. On 18 October 2004 the Federal Commercial Court of the Far-Eastern Circuit changed the debtor and ordered that the outstanding debt of RUB 9,882,908.24 should be payable by the Primorskiy Regional Government.

18. On 18 November 2004 the bailiffs' service opened enforcement proceedings against the Primorskiy Regional Government.

19. On 23 December 2004 the Commercial Court of the Primorskiy Region allowed the debtor's request to stay the enforcement proceedings until 1 May 2005. On 19 May 2005 the Federal Commercial Court of the Far-Eastern Circuit upheld the decision on appeal.

20. On 26 February 2006 the applicant company withdrew the writs of execution from the bailiffs' service. On 23 March 2006 the enforcement proceedings were discontinued and the writs were returned to the applicant company. On the same day it received RUB 221,826.81.

21. On 22 June 2006 the applicant company submitted the writs to the financial department of the Primorskiy Regional Government. On 20 September 2006 it received RUB 9,661,081.43.

THE LAW

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

22. The applicant complained about non-enforcement of the judgments of the Commercial Court of the Primorskiy Region of 23 July 1998, 22 April 1999 and 20 January 2000, and the judgment of the Federal Commercial Court of the Far-Eastern Circuit of 18 October 2004. It relied on Article 6 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time... 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

23. 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

24. The Government acknowledged that the delay in enforcement of the judgment of 18 October 2004 had breached Article 6 of the Convention and Article 1 of Protocol No. 1. However, they argued that the applicant company had not been entitled to claim enforcement of the judgments of 23 July 1998, 22 April 1999 and 20 January 2000 which had been made in favour of the SVL company.

25. The applicant company submitted that on 8 October 2000 it had bought the debt from the SVL company. Since that date it had been entitled to claim enforcement of the judgments of 23 July 1998, 22 April 1999 and 20 January 2000.

26. The Court observes that on 8 October 2000 the applicant company bought the debt under the judgments of 23 July 1998, 22 April 1999 and 20 January 2000 from the SVL company. It became entitled to seek enforcement of those judgments, which was confirmed by the bailiffs' decision to recognise it as the successor in the enforcement proceedings. The judgment of 18 October 2004 did not confer any new entitlement on the applicant company, it only confirmed the amount of the debt and transferred it from one State agency to another (see paragraph 17 above). The debt had not been paid until 20 September 2006. It follows that the enforcement proceedings in respect of the applicant company lasted five years and eleven months.

27. 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; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 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).

28. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgments the domestic authorities violated the applicant company's right to a court and prevented it from receiving the money it 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

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 RUB 11,665,146 in respect of interest on the judgment debt for the period from 28 February 2001 to 19 September 2006 calculated at the marginal lending rate of the Russian Central Bank.

31. The Government did not submit their comments within the established time-limit.

32. The Court notes that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the judgments in the applicant company’s favour had only been enforced with a significant delay. In this connection the Court recalls that 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 *Reynbakh*, cited above, § 35, with further references). The Court accepts the applicant company’s claim in respect of interest accrued on the judgment debt. It notes however that the applicant company’s calculations contained an arithmetical mistake in that they employed 28 February 2000 instead of 28 February 2001 as the starting date. Having regard to the materials in its possession, it awards the applicant company RUB 8,798,560, which was equivalent to 253,560 euros (EUR) at the date on which the applicant company lodged its claims, plus any tax that may be chargeable on that amount. It dismisses the remainder of the claim for pecuniary damage.

B. Costs and expenses

33. The applicant company claimed RUB 360,000 for its representation by Mr O. Fedorov in the domestic proceedings and before the Court.

34. The Government did not submit their comments within the established time-limit.

35. According to the Court’s case-law, the applicant company is entitled to reimbursement of its costs and expenses 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 documents in its possession and taking into account the work performed by the applicant company’s representative in order to obtain the enforcement of the

judgments and put right the violations at the domestic level, the Court considers it reasonable to award the sum of EUR 10,000, plus any tax that may be chargeable on that amount.

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 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, 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 253,560 (two hundred and fifty-three thousand five hundred and sixty euros) in respect of the pecuniary damage;
 - (ii) EUR 10,000 (ten thousand 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 8 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President