



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

FIRST SECTION

CASE OF ARAPOVY v. RUSSIA

(Application no. 16115/06)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

29/02/2008

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 Arapovy 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 A. WAMPACH, *Section Registrar*,

Having deliberated in private on 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 16115/06) 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 two Russian nationals, Mrs Valentina Mikhaylovna Arapova and Mr Nikolay Stepanovich Arapov (“the applicants”), on 10 March 2006.

2. The applicants were represented by Mr I. Sivoldayev, a lawyer practising in Voronezh. The Russian Government (“the Government”) were represented at the material time by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 29 August 2006 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

4. The applicants were born in 1929. Mrs Arapova died in 2006. Mr Arapov lives in Voronezh. He decided to pursue the application of his late wife Mrs Arapova.

5. From April 1998 to April 1999 the applicants received their old-age pensions, totalling approximately 377 and 430 Russian roubles (RUB) per month, several months in arrears.

6. On 14 July 2000 each applicant lodged an action against the Sovetskiy District Social Security Authority of Voronezh for index-linking of their delayed pension payments in line with inflation.

7. On 1 November 2000 the Sovetskiy District Court of Voronezh granted the applicants' claims and awarded the applicants RUB 977.50 (Mrs Arapova) and RUB 1,117.61 (Mr Arapov). Both judgments came into force on 12 November 2000.

8. The District Court issued writs of execution and forwarded them to the Sovetskiy District Bailiff's Service of Voronezh for execution.

9. In April 2001 the Bailiff's Service returned the writs of execution to the applicants advising them to apply to the local office of the Federal Treasury. The Treasury refused to execute the judgments.

10. In 2001-2003 the applicants applied to the Bailiff's Service on numerous occasions. The Bailiff's Service refused to accept the writs of execution because the defendant did not have funds.

11. It was not before November 2005 that the writs of execution were accepted for payment by the Sovetskiy District Social Security Authority of Voronezh.

12. The money awarded by the judgments was transferred to the applicants' bank accounts on 2 December 2005, and received by the applicants on 5 December 2005.

THE LAW

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

13. The applicants complained about the long non-enforcement of the final judgments in their favour. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, provide 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

14. The Government acknowledged a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the long non-enforcement of the judgments in the applicants' favour between 12 November 2000 and 2 December 2005.

15. The applicants maintained their complaints. They noted that the money awarded by the judgments lost a significant part of its value having been paid after a long delay.

16. 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

17. The Court first notes that the judgments in the applicants' favour, which came into force on 12 November 2000, remained without enforcement until 2 December 2005, i.e. for the period of more than five years.

18. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many cases raising issues similar to the ones in the present case (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Kazartsev v. Russia*, no. 26410/02, 2 November 2006).

19. Having noted the Government's acknowledgement that there had been a violation of the said Convention provisions and in view of its case-law on the subject, the Court finds that by failing for such a substantial period to comply with the enforceable judgments in the applicants' favour the domestic authorities impaired the essence of their right to a court and prevented them from receiving the money which they were entitled to receive.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicants each claimed 3,900 euros (EUR) in respect of non-pecuniary damage.

23. The Government found the claims excessive.

24. The Court considers that the applicants must have suffered certain distress and frustration as a result of the violations at issue. It takes into account the relevant aspects, in particular, the length of the enforcement and the fact that the nature of the award in the present case was connected to the applicants' livelihood. Making its assessment on equitable basis, it grants the applicants' claims and awards each applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

25. The applicants did not seek reimbursement of their costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

26. 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 to the Convention;

3. *Holds*

(a) that the respondent State is to pay the second applicant Mr N.S. Arapov, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the total of EUR 7,800 (seven thousand eight hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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.

Done in English, and notified in writing on 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André WAMPACH
Deputy Registrar

Loukis LOUCAIDES
President