



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

FIRST SECTION

CASE OF KHARITICH v. RUSSIA

(Application no. 21268/04)

JUDGMENT

STRASBOURG

6 December 2007

FINAL

06/03/2008

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 Kharitich 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 G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 21268/04) 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 a Russian national, Mr Aleksey Nikolayevich Kharitich, (“the applicant”), on 13 May 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 4 November 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 1962 and lives in St Petersburg.

5. He brought a court action against the Finance and Control Committee of the Omsk Regional administration to recover the monetary value of the promissory notes issued by the Omsk Region.

6. By a judgment of 24 July 2000 the Kuybyshevskiy District Court of St Petersburg granted the applicant's claim and awarded him 32,613.33 Russian roubles (RUB). The sum included the main debt of RUB 23,200, the interest in the amount of RUB 9,357.33 and legal costs of RUB 56. The judgment was not appealed against and entered into force on 4 August 2000.

7. On 9 August 2000 the applicant sent the writ of execution to the bailiffs' service of the Omsk Region and on 4 October 2000 the bailiffs initiated the enforcement proceedings.

8. On 23 November 2000 the applicant received the main debt under the judgment of 24 July 2000 in the amount of RUB 23,200.

9. By a judgment of 3 February 2004 the Kuybyshevskiy District Court of St Petersburg awarded the applicant RUB 7,407 as a penalty for the lengthy non-enforcement of the judgment of 24 July 2000. No appeal was lodged against the judgment and it acquired legal force on 16 February 2004. On 18 February 2004 the Kuybyshevskiy District Court of St Petersburg issued a writ of execution.

10. On 24 February 2004 the Finance and Control Committee was reorganized into the Ministry of Finance of the Omsk Region and its accounts in the credit institutions were closed.

11. On 16 March 2004 the applicant forwarded the writ of execution for the judgment of 3 February 2004 to the bailiffs' service.

12. The enforcement proceedings in respect of both judgments were discontinued on 21 April 2004 and the writs of execution were returned to the applicant who had been advised to apply to a court in order to define the debtor's legal successor and to resubmit the writs of executions to the bailiffs. According to the Government, the applicant failed to do so.

13. On 12 May 2005 the Ministry of Finance of the Omsk Region transferred to the applicant the remainder of the court award of 24 July 2000. The judgment of 3 February 2004 was fully enforced on 21 February 2006.

THE LAW

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

14. The applicant complained about the non-enforcement of the judgments of the Kuybyshevskiy District Court of St Petersburg of 24 July 2000 and of 3 February 2004. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of

Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). 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

15. 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. Concerning the enforcement of the judgment of 24 July 2000

16. The Government submitted that the judgment of 24 July 2000 had been fully enforced on 12 May 2005. They conceded that the delay in the enforcement of that judgment was not compatible with Article 6 of the Convention. At the same time they considered that as far as the judgment of 24 July 2000 had been enforced fully, its continuing non-enforcement was compatible with the applicant's right to “peaceful enjoyment of his possessions” within the meaning of Article 1 of Protocol No. 1. They further pointed out that the main debt due to the judgment of 24 July 2000 had been paid to the applicant within a reasonable time, on 23 November 2000, and that the sum of RUB 9,357 was the payment of the interest, it was not the applicant's main income and therefore, the delay in payment of that amount caused no considerable damage to the applicant.

17. The applicant did not dispute that the judgment of 24 July 2000 had been fully enforced. However, he considered that the length of the enforcement proceedings had been excessive.

18. The Court observes that on 24 July 2000 the applicant obtained a judgment by which the Finance and Control Committee of the Omsk regional administration, a State body, was to pay him a substantial amount of money. The judgment acquired legal force on 4 August 2000. It was fully enforced on 12 May 2005. It thus remained unenforced for approximately four years and nine months.

19. The Court cannot accept the Government's argument that the lengthy non-enforcement of the judgment of 24 July 2000 was compatible with the applicant's right to "peaceful enjoyment of his possessions" within the meaning of Article 1 of Protocol No. 1 as far as the judgment has been enforced in full. It recalls that authorities' failure to comply with a final judgment in favour of an applicant for a long period of time constitutes an interference with his right to peaceful enjoyment of his possessions. The authorities have not provided any justification for such interference in the present case.

20. The Court further notes that both awards made by the judgment of 24 July 2000 were monetary awards. These amounts constituted a judgment debt and the authorities were under obligation to enforce it in full, without dividing them in two separate payments.

21. 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 *Burdov v. Russia*, cited above, and *Reynbakh v. Russia*, no. 23405/03, 29 September 2005).

22. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delay in enforcement of the judgment of 24 July 2000. The Court finds that by failing for years 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 legitimately expected to receive.

23. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the lengthy non-enforcement of the judgment of 24 July 2000.

2. Concerning the enforcement of the judgment of 3 February 2004

24. The Government submitted that the judgment of 3 February 2004 had been fully enforced on 21 February 2006. They believed that the delay in the enforcement of the judgment was compatible with Article 6 of the Convention and Article 1 of Protocol No. 1, as far as the debtor had been reorganised and the applicant had failed to apply to a court in order to define the debtor's legal successor.

25. The applicant did not dispute that the judgment of 3 February 2004 had been fully enforced. However, he considered that the length of the enforcement proceedings had been excessive.

26. The Court observes that on 3 February 2004 a judgment in the applicant's favour ordered the Finance and Control Committee of the Omsk regional administration, a State body, to pay the applicant the penalties for the lengthy non-enforcement of the judgment 24 July 2000. The judgment entered into force on 16 February 2004. It was enforced in full on 21 February 2006. It thus remained unenforced for approximately two years.

27. As regards the Government's argument that the applicant had failed to apply for the substitution of a debtor, the Court recalls that no such action was to be required from the applicant. The fact that the Finance and Control Committee was reorganised into a different state body, did not lift its obligation under the judgment in the applicant's favour. It was incumbent on the bailiffs to follow the procedure prescribed by law for cases when the debtor was undergoing reorganisation and to recover the debt (see, for example, *Furman v. Russia*, no. 5945/04, § 18, 5 April 2007).

28. 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 *Burdov* and *Reynbakh*, both cited above).

29. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delay in enforcement of the judgment of 3 February 2004. The Court finds that by failing for years 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 legitimately expected to receive.

30. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the lengthy non-enforcement of the judgment of 3 February 2004.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 21,344 Russian roubles (RUB) in respect of pecuniary damage for the lengthy non-enforcement of the judgment of 24 July 2000 referring to the refinancing rate of 23% established by the Central Bank of Russia. He claimed RUB 1,930 in respect of pecuniary damage for the delayed enforcement of the judgment of 3 February 2004 referring to the refinancing rate of 13%. The applicant also claimed RUB 115,000 in respect of indirect pecuniary damage caused by the delayed enforcement of the final judgments in his favour referring to the inflation. He claimed RUB 300,000 in respect of non-pecuniary damage.

33. The Government submitted that the applicant's claims for pecuniary and non-pecuniary damage as regards the lengthy non-enforcement of the judgment of 24 July 2000 were excessive and unsubstantiated. They considered that the sum of RUB 5,645 would be an adequate compensation for non-pecuniary damage caused by the lengthy non-enforcement of the judgment of 24 July 2000. They further submitted that the applicant's claim for compensation for indirect pecuniary damage was unsubstantiated and had no connection with the case. According to the Government, it was still open to the applicant to apply to domestic courts in order to receive compensation for pecuniary damage.

34. As regards the lengthy non-enforcement of the judgment of 3 February 2004, the Government submitted that no compensation should be awarded to the applicant as they did not see any violation of the applicant's rights. If the Court was to find any violation of Article 6 of the Convention or Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of that judgment, the finding of a violation would be an adequate just satisfaction.

35. The Court reiterates, firstly, that an applicant cannot be required to exhaust domestic remedies to obtain compensation for pecuniary loss since this would prolong the procedure before the Court in a manner incompatible with the effective protection of human rights (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, § 40, and *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). Nor is there a requirement that an applicant furnish any proof of the non-pecuniary damage he or she sustained.

36. As regards any possible material losses sustained by the applicant as result of the lengthy non-enforcement of the judgments in his favour, the Court points out that under Rule 60 of the Rules of the Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Court may reject in whole or in part.

37. In so far as the applicant's claim relates to the to the inflation losses in the amount of RUB 115,000, the Court notes that the applicant has not indicated the inflation rate on which he based his calculations and has not explained why he had failed to do so. Therefore, the Court rejects his claim in this part. As regards the remaining claims in respect of pecuniary damage, the Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the awards in the applicant's favour had not been paid to him in good time. It recalls that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce the value of the award, such as an extended delay in enforcement (see *Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005). Having regard to the materials in its possession and the fact that the Government did not furnish any objection to the applicant's method of calculation of compensation, the Court awards the applicant 650 euros (EUR) in respect of pecuniary damage, plus any tax that maybe chargeable.

38. The Court further considers that the applicant must have suffered certain distress and frustration resulting from the State's authorities' failure to enforce the final judgments in his favour in good time. However, the amount claimed appears to be excessive. Making its assessment on an equitable basis, it awards the applicant EUR 3,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

39. The applicant claimed reimbursement of postal expenses in the amount of RUB 300. He did not submit any receipts to the Court.

40. The Government considered that no compensation should be awarded as the applicant did not substantiate his claim by any evidence.

41. 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 the applicant did not submit any materials to substantiate his claims. Therefore the Court rejects his claims for costs and expenses.

C. Default interest

42. 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 of the Convention and Article 1 of Protocol No. 1 on account of the lengthy non-enforcement of the judgments of 24 July 2000 and 3 February 2004;
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 650 (six hundred and fifty euros) in respect of pecuniary damage and EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus 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 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President