



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

FIRST SECTION

CASE OF USTALOV v. RUSSIA

(Application no. 24770/04)

JUDGMENT

STRASBOURG

6 December 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 Ustalov 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. 24770/04) 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 Aleksandr Alekseyevich Ustalov (“the applicant”), on 25 May 2004.

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 applicant complained about non-enforcement of the judgment in his favour.

4. On 9 October 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 is an active officer of the Russian army in the rank of captain. He lives in St Petersburg.

6. On 4 February 2004 the Military Court of the Sertolovo Garrison granted the applicant's action against his military unit and awarded him 304,487 Russian roubles (RUB) in wage arrears. The judgment was not appealed against and became final on 17 February 2004.

7. On 29 March 2004 the applicant sent a copy of the judgment to the military unit. According to the acknowledgment-of-receipt card, the military unit received the letter on 29 April 2004.

8. The applicant complained about non-enforcement to the local department of the Ministry of Defence. By letter of 25 May 2004, the local department of the Ministry of Defence instructed the military unit to pay the judgment debt.

9. The judgment has not been enforced to date.

THE LAW

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

10. The applicant complained about non-enforcement of the judgment of the Military Court of the Sertolovo Garrison of 4 February 2004. He relied on Article 6 § 1 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...”

A. Admissibility

1. *The Government's objection as to applicability of Article 6 of the Convention*

11. The Government, relying on the Court's judgment in the case of *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII), argued that the applicant's complaint under Article 6 of the Convention was incompatible *ratione materiae* because the applicant was a military officer and the judgment award had concerned wage arrears for his military service.

12. The Court accepts that in the *Pellegrin* judgment it attempted to establish an autonomous interpretation of the term “civil service”. To that end the Court introduced a functional criterion based on the nature of the employee's duties and responsibilities. However, in its recent judgment in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, 19 April 2007), the Court found that the functional criterion, adopted in the *Pellegrin* judgment, did not simplify the analysis of the applicability of Article 6 in proceedings to which a civil servant was a party or brought about a greater degree of certainty in this area as intended (§ 55). For these reasons the Court decided to further develop the functional criterion set out in *Pellegrin* and adopted the following approach (see *Vilho Eskelinen*, cited above, § 62):

“To recapitulate, in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant is in a sector or department which participates in the exercise of power conferred by public law is not in itself decisive. In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in the *Pellegrin* judgment, a “special bond of trust and loyalty” between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that a civil-servant applicant does not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant is justified”.

13. Turning to the facts of the present case, the Court notes that the applicant had access to a court under national law. He made use of his right and introduced an action against his employer. The Military Court of the Sertolovo Garrison examined the applicant's claims and accepted them, awarding wage arrears to the applicant. Neither the domestic courts nor the Government indicated that the domestic system barred the applicant's access to a court. Accordingly, Article 6 is applicable (compare *Dovguchits v. Russia*, no. 2999/03, § 24, 7 June 2007).

2. The Government's objection as to applicability of Article 1 of Protocol No. 1

14. The Government claimed that the applicant had received the wage arrears in full in 2003. The Military Court of the Sertolovo Garrison had made the award on the basis of untrue information submitted by the applicant. Therefore, the claim established by the judgment of 4 February

2004 did not constitute a “possession” within the meaning of Article 1 of Protocol No. 1.

15. 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 (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). On 4 February 2004 the applicant obtained a judgment by which the military unit was to pay him wage arrears. The judgment had become final and enforceable as no ordinary appeal was made against it. The Court concludes that the applicant's claim was sufficiently established to constitute a “possession” in the meaning of Article 1 of Protocol No. 1. That Article was therefore applicable.

3. The Government's objection as to the exhaustion of domestic remedies

16. The Government argued that the applicant had not exhausted domestic remedies. He had not submitted the writ of execution to the debtor. The debtor had had no knowledge of the judgment of 4 February 2004 and had not therefore had an opportunity to enforce it.

17. The Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The applicant sent a copy of the judgment to the debtor (see paragraph 7 above). The State authorities were thus made aware of the applicant's claims, and, as soon as the judgment in his favour became enforceable, it was incumbent on the State to comply with it. The Court therefore dismisses the Government's objection.

4. Conclusion

18. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. The Government made no comments on the merits of the complaint.

20. The applicant maintained his claims.

21. The Court observes that that on 4 February 2004 the applicant obtained a judgment in his favour against his military unit. However, it has not been enforced to date.

22. 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; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005; *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 30 et seq., 17 March 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).

23. 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 to comply with the enforceable judgment in the applicant's favour the domestic authorities violated his right to a court and prevented him from receiving the money he could reasonably have expected to receive.

24. 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

25. 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.”

26. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

27. The Court observes, however, 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 award in the applicant's favour had not been paid to him. The Court notes that the State's outstanding obligation to enforce the judgment of 4 February 2004 is undisputed. Accordingly, the applicant remains entitled to recover the judgment debts in the domestic proceedings. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant is put as far as possible in the position in which he would have been had the requirements of Article 6 not been disregarded. It finds that this principle applies in the present case too, having regard to the violation found. It therefore considers that the Government should secure, by appropriate means, the enforcement of the award made by the domestic courts (see *Poznakhirina v. Russia*, no. 25964/02, § 33; *Makarova and Others v. Russia*, no. 7023/03, § 37, judgments of 24 February 2005).

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;
3. *Holds* that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the domestic courts' judgment of 4 February 2004;
4. *Decides* to make no other award under Article 41 of the Convention.

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