



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

FIRST SECTION

CASE OF PARFENENKOV v. RUSSIA

(Application no. 12115/03)

JUDGMENT

STRASBOURG

24 January 2008

FINAL

24/04/2008

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 Parfenenkov v. Russia,

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

Loukis Loucaides, *President*,

Nina Vajić,

Anatoli Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 12115/03) 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 Vladimir Dmitriyevich Parfenenkov (“the applicant”), on 15 March 2003.

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. On 10 October 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 applicant was born in 1948 and lives in Smolensk.

5. On 2 July 1996 the applicant obtained a judgment in his favour by which a private company was obliged to reimburse the applicant's share in the company's capital stock. On 4 November 1996 the applicant also obtained a court order, which obliged the above company to pay him salary arrears.

6. On an unspecified date in 2001 the applicant brought proceedings against the Ministry of Justice challenging the efficiency of the State Bailiff's Service in the enforcement proceedings and claiming damages.

7. By a judgment of 27 August 2001 the Promyshlenniy District Court of Smolensk acknowledged that the lack of activity of behalf of the bailiffs made the enforcement of the judgment of 2 July 1996 and the court order of 4 November 1996 impossible and obliged the Ministry of Justice to pay the applicant 27,403.47 Russian roubles (RUB) in damages and interest at the annual rate of 25%. On 12 March 2002 the Smolensk Regional Court upheld the judgment of 27 August 2001 on appeal.

8. On 9 April 2002 the warrant of execution was issued to the applicant, which he submitted to the State Bailiffs' Service on 6 May 2002. However, on 14 May 2002 the Bailiffs' Service returned the warrant of execution to the applicant and informed him that he should submit it to the Federal Treasury.

9. On an unspecified date the applicant submitted the warrant of execution to the Federal Treasury. However, on 14 June 2002 the Federal Treasury returned the warrant of execution to the applicant for the following reasons: the judgment of 27 August 2001 did not indicate which of the debtor's accounts the sum adjudicated by the court should be debited to, the copy of the judgment was not duly certified and the warrant of execution contained no indication as to the deadline for its submission.

10. On 24 June 2002 the applicant again attempted to submit the warrant of execution to the Federal Treasury. However, on 7 October 2002 the Federal Treasury once again returned the warrant of execution to the applicant, because it contained certain corrections, whereas it should have been filled out accurately.

11. The judgment of 27 August 2001 has remained unenforced to date.

THE LAW

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

12. The applicant relied on Article 6 § 1 of the Convention and complained that the judgment of 27 August 2001, as upheld on appeal on 12 March 2002, had still not been enforced. 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 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

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

14. The Government advanced no arguments on the merits of the application.

15. The applicant maintained his complaint.

16. The Court observes that on 27 August 2001 the applicant obtained a judgment in his favour by which he was to be paid a certain sum of money by the Ministry of Justice, a State body. On 12 March 2002 the judgment became final and enforceable. However, the judgment of 27 August 2001 has remained without enforcement to date, that is for more than five years and nine months. No justification was advanced by the Government for this delay.

17. 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, among other authorities, *Burdov*, cited above, §§ 34 et seq.; and, more recently, *Shilyayev v. Russia*, no. 9647/02, §§ 32 et seq., 6 October 2005, and *Reynbakh v. Russia*, no. 23405/03, §§ 23 et seq., 29 September 2005).

18. Having examined the material submitted to it, 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. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving the money he could reasonably have expected to receive.

19. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. As regards the pecuniary damage, the applicant claimed the payment of the awards under the judgment of 2 July 1996 and the court order of 4 November 1996. The applicant further claimed 650,000 Russian roubles (RUB) in respect of the non-pecuniary damage.

22. The Government submitted that the applicant's claims for pecuniary damage do not have any connection with his application before the Court. As regards the applicant's claims for non-pecuniary damage, the Government argued that they were wholly excessive and falling outside the scope of the present application. In conclusion, the Government suggested that a finding of a violation would by itself constitute sufficient just satisfaction.

23. As to the pecuniary claim, the Court considers that no causal link can be discerned between the violations found and the applicant's claims for pecuniary damage. The Court notes, however, that the State's outstanding obligation to enforce the judgment of 27 August 2001, as upheld on appeal on 12 March 2002, is not in dispute. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the domestic award under the above judgment (see paragraph 7 above).

24. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in his favour. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the award, and making its assessment on an equitable basis, awards the applicant 3,000 euros in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

25. The applicant also claimed RUB 30,000 in compensation of the costs and expenses incurred before the Court.

26. The Government argued that no award should be made under this head since the applicant failed to support his claim by any documents.

27. 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 claim. Thus the Court rejects the claim for costs and expenses.

C. Default interest

28. 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;
3. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the judgment of 27 August 2001, as upheld on appeal on 12 March 2002, and in addition pay the applicant EUR 3,000 (three thousand 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 amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 claims for just satisfaction.

Done in English, and notified in writing on 24 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Loukis Loukaides
President