



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

FIRST SECTION

CASE OF CHERKASHIN v. RUSSIA

(Application no. 7412/02)

JUDGMENT

STRASBOURG

7 February 2008

FINAL

07/05/2008

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 Cherkashin v. Russia,

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

Christos Rozakis, *President*,

Anatoli Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 7412/02) 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 Yuriy Ilyich Cherkashin (“the applicant”), on 15 December 2001.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of the State's failure to enforce the final judgment in his favour.

4. On 30 March 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the non-enforcement 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1928 and lives in the town of Rossosh, in the Voronezh Region.

A. Proceedings before domestic courts

6. Between 1979 and 1992 the applicant and his wife, then residents of Grozny, Chechnya, opened several savings accounts with the Grozny branch of the Chechen Savings Bank, which was an integral part of the USSR Savings Bank.

7. In May 2000 the applicant issued civil proceedings against the Savings Bank of Russia and the Ministry of Finance in the Gagarinskiy District Court, Moscow, claiming damages for the fall in the value of his savings and those of his deceased wife, default interest and compensation of the deposits and non-pecuniary damage.

8. By a judgment of 16 January 2001 the Gagarinskiy District Court granted the applicant's claims in part. The court confirmed the fact that between 1979 and 1992 the applicant and his wife had made deposits with the Grozny branch of the USSR Savings Bank and held that under governmental decree of 19 April 2000 no. 352 the applicant was eligible for compensation in the amount of 1,000 Russian roubles (RUB), approximately 30 euros (EUR) for reimbursement of expenses for the burial of his wife. Accordingly, the court ordered the defendant to pay the applicant the said amount "from the funds allocated for that purpose in the State budget for the year concerned". The court further noted that the remainder of the applicant's claims had no basis in national law and rejected them accordingly.

9. On 4 July 2001 the judgment of 16 January 2001 was upheld on appeal by the Moscow City Court and became final and enforceable.

B. Enforcement proceedings

10. On 19 February 2001 the applicant was issued with a writ of execution in respect of the judgment of 16 January 2001.

11. According to the applicant, in November 2001 he submitted the said judgment and the writ of execution to the Lukoyanov branch of the Savings Bank of Russia for enforcement, but was refused. Thereafter he applied to the bailiffs' service of the Nizhniy Novgorod Region.

12. On 7 January 2002 the applicant moved and settled in the Voronezh Region, having notified the bailiffs of his new address.

13. On 15 January 2002 he received a letter from the Lukoyanov branch of the Savings Bank of Russia dated 9 January 2002, which invited him to receive in person the amount due pursuant to the judgment of 16 January 2001.

14. According to the applicant, he was unable to go to the Lukoyanov branch of the Savings Bank of Russia, as he lived 1,200 km away.

15. On 13 February 2002 the bailiffs' service of the Nizhniy Novgorod Region returned the execution documents to the applicant. They also

enclosed a letter from the Lukoyanov branch of the Savings Bank of Russia dated 11 February 2002 which stated that in connection with the warfare in the Chechen Republic and the loss of documents relating to deposits made there, the Savings Bank of Russia had taken a decision to terminate any transactions relating to deposits made with the Chechen Savings Bank until further notice. It continued that a list of former depositors of the Chechen Savings Bank was being drawn up, and that compensation would be paid to those registered on that list after the Government of Russia had taken a decision to that effect, and the Savings Bank of Russia had reached agreement with the Ministry of Finance. The letter concluded that the compensation would be paid to the applicant after the aforementioned documents had been adopted. With reference to this letter the bailiffs discontinued the enforcement proceedings and invited the applicant to request a branch of the Savings Bank of Russia near his home to put him on the list of former depositors of the Chechen Savings Bank.

16. In the applicant's submission, he had applied to a local branch of the Savings Bank of Russia in the town of Rossosh, in the Voronezh Region, where he then lived. The bank had refused to comply with the writ of execution, stating that the Ministry of Finance had not allocated any funds for that purpose.

17. The applicant then submitted his execution documents to the bailiffs of the Voronezh Region, who refused to institute enforcement proceedings, stating that the central office of the defendant bank was located in Moscow, outside the territory of the Voronezh Region.

18. In a letter of 3 April 2003 the Rossosh branch of the Savings Bank of Russia notified the applicant that from 15 April 2003 the bank would commence repaying the savings deposited with the Chechen Savings Bank prior to 20 June 1991 and compensation, as provided by governmental decree of 19 February 2003 no. 117. It next stated that due to the redenomination of 1998 the remainder of the deposits would be recalculated and reduced by a factor of 1,000.

19. On 5 and 7 May 2003 the Rossosh branch of the Savings Bank of Russia paid the applicant the remainder of his deposits and those of his late wife, made prior to 1991, with interest as well as compensation in the amount of 2,000 RUB per deposit, totalling RUB 10,317.26. He also withdrew savings with interest from one of the accounts opened in 1992, which after the redenomination amounted to RUB 21.31. The applicant also submitted the execution documents in respect of the judgment of 16 January 2001, but the bank refused to comply, having referred to the fact that the writ of execution prescribed "to recover from the Savings Bank of Russia [in the applicant's favour] compensation in the amount of RUB 1,000 from the funds allocated for that purpose in the State budget for the year concerned". In the bank's view, "the year concerned" meant the year 2001, when the writ of execution was issued, whereas the applicant sought the

enforcement of his court award in 2003, when no funds for that purpose had been allocated in the State budget.

20. It appears that the judgment of 16 January 2001 remains unenforced.

II. RELEVANT DOMESTIC LAW

21. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow should the defendant fail to comply with the time-limit.

22. Under Section 13 of the Law, the enforcement proceedings should be completed within two months of receipt of the writ of enforcement by the bailiff.

THE LAW

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

23. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgment of 16 January 2001 given in his favour had not been enforced. These Articles, in their relevant parts, 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

24. The Court notes firstly that the judgment in the present case was given against the Savings Bank of Russia. Leaving open the question whether the State shall be held liable for the actions of the Savings Bank of Russia, which is now a joint stock commercial bank with the majority of its shares owned by the Central Bank of Russia, the Court has no doubt that the State was responsible for payment of the judgment debt – and hence for the non-enforcement – in the circumstances of the present case, because the judgment of 16 January 2001 was expressed against the State, and required payment “from the funds allocated for that purpose in the State budget for the year concerned”. The State's responsibility is therefore engaged.

25. 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

26. The applicant maintained his complaint.

27. The Government, with reference to the information from the Savings Bank of Russia, admitted that the payment received by the applicant in May 2003 had not constituted enforcement of the judgment of 16 January 2001 and stated that the Savings Bank of Russia was ready to pay the amount due pursuant to that judgment on the applicant's first demand. They also argued that on 31 March 2004 a domestic court had ruled that the amount specified in the judgment of 16 January 2001 should be recovered according to the procedure established by the Law on Enforcement Proceedings, and that the applicant had not applied to the bank or bailiffs for the enforcement.

28. The Court leaves open the question whether the applicant was required to apply of his own motion to bailiffs or to the bank for the enforcement of the judgment in his favour, since in any event it is clear from the facts of the case that the applicant repeatedly requested the authorities and the bank to comply with the judgment in question (see paragraphs 11, 16 and 17).

29. It further observes that the judgment of 16 January 2001, as upheld on 4 July 2001, in its part awarding the applicant compensation, remains inoperative until the present moment, which is for over six years. No justification has been advanced by the Government for this delay.

30. 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 v. Russia*, no. 59498/00, ECHR 2002-III and, more recently, *Koltsov v. Russia*, no. 41304/02, 24 February 2005).

31. 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.

32. 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

33. 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

34. The applicant claimed compensation in respect of non-pecuniary damage, leaving its amount to the Court's discretion.

35. The Government considered that should the Court find a violation in the present case, the mere finding of a violation would suffice.

36. The Court firstly notes that the State's outstanding obligation to enforce the judgment at issue is undisputed. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position in which he would have been had the requirements of Article 6 not been disregarded (see *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005, with further references). The Court finds that in the present case this principle applies as well, 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, most recently, *Pylnov v. Russia*, no. 7111/05, § 30, 12 July 2007).

37. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to execute a final judicial decision in her favour, and that this cannot be sufficiently compensated for by the finding of a violation. The Court has taken into account the award it made in the case of *Burdov* (cited above), the nature of the decision whose non-execution was at issue in the present case, the delay in the execution proceedings and other relevant considerations. Making its assessment on an equitable basis, it awards the applicant EUR 500 in

respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

38. The applicant did not submit any claim in respect of costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

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 according to Article 44 § 2 of the Convention:
 - (i) shall secure the enforcement of the award made by the domestic courts in the applicant's favour under the judgment of 16 January 2001, that is to pay the applicant RUB 1,000 (one thousand Russian roubles);
 - (ii) shall pay the applicant EUR 500 (five hundred euros) in respect of non-pecuniary damage to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) shall pay 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.

Done in English, and notified in writing on 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President