



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

FIRST SECTION

CASE OF TRUNOV v. RUSSIA

(Application no. 9769/04)

JUDGMENT

STRASBOURG

6 March 2008

FINAL

06/06/2008

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 Trunov v. Russia,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoli Kovler,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 9769/04) 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 Igor Leonidovich Trunov (“the applicant”), on 5 January 2004.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about prolonged non-enforcement of a judgment in his favour.

4. On 21 February 2007 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

5. The applicant was born in 1961 and lives in Moscow.

6. On 22 September 1997 the applicant was convicted on several counts of fraud and sentenced to three and a half years’ imprisonment and a fine. On 28 October 1998 the Supreme Court of the Russian Federation quashed the conviction, finding that the applicant’s guilt had not been proved.

7. The applicant sued the Ministry of Finance for damages incurred through the unlawful criminal prosecution.

8. On 4 April 2001 the Khoroshevskiy District Court of Moscow granted his claim in part and awarded him 23,400 Russian roubles, payable by the Ministry of Finance within one month. On 13 June 2001 the Moscow City Court upheld the judgment on appeal.

9. On 11 October 2001 a writ of execution was issued.

10. On 11 March 2003 the applicant sent a complaint to the Ministry of Finance about non-enforcement of the judgment. No reply was received.

11. On 18 March 2006 the Ministry of Finance paid the judgment debt to the applicant.

THE LAW

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

12. The applicant complained about non-enforcement of the judgment of 4 April 2001, as upheld on appeal on 13 June 2001. 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

13. The Government raised two objections as to the admissibility of the present case. They claimed firstly that the applicant had not exhausted the domestic remedies because he had not complained to a court about the actions of the Ministry of Finance which was, in their view, “a manifestly effective remedy”. Secondly, they pointed out that the application had been lodged on 5 January 2004, that is more than six months after the applicant had for the last time attempted to obtain enforcement of the judgment by sending a complaint to the Ministry of Finance on 11 March 2003.

14. The Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). In the present case the Government omitted to comment on the efficiency of the remedy they suggested. They did not explain how the lodging of a complaint against the Ministry of Finance could have put an end to the continued non-enforcement of the judgment or what kind of redress the applicant could have been provided with as a result of the action. Even if the applicant had obtained a judicial decision confirming that the non-enforcement was unlawful in domestic terms, the outcome of such a claim would only have produced repetitive results, namely a writ of execution requiring the Ministry of Finance to proceed with the enforcement of the original judgment (compare, among many others, *Yavorivskaya v. Russia* (dec.), no. 34687/02, 13 May 2004). The Court dismisses the Government's objection as to the non-exhaustion of domestic remedies.

15. As regards the compliance with the six-month rule, the Court reiterates that non-enforcement of a judgment is a continuing situation which excludes the application of this rule (see, for example, *Nazarchuk v. Ukraine*, no. 9670/02, § 20, 19 April 2005). Accordingly, this objection by the Government must also be dismissed.

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 Government acknowledged that a long delay in enforcement amounted to a breach of the applicant's rights under Article 6 of the Convention and Article 1 of Protocol No. 1.

18. The applicant maintained his complaints.

19. The Court observes that on 4 April 2001 the applicant obtained a judgment in his favour which became enforceable on 13 June 2001. However, it was only enforced on 18 March 2006, that is four years and nine months later.

20. 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; *Gizatova 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).

21. 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.

22. 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

23. 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."

24. The applicant did not submit an itemised claim for just satisfaction as required by Rule 60 of the Rules of Court. 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. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 6 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President