



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

FIRST SECTION

CASE OF KURYANOV v. RUSSIA

(Application no. 37643/04)

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 Kuryanov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoli Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *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. 37643/04) 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 Viktor Alekseyevich Kuryanov (“the applicant”), on 30 August 2004.

2. The applicant was represented by Mrs S. Poznakhirina, an NGO expert working in Novovoronezh.

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

4. On 29 May 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**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1952 and lives in the town of Novovoronezh in the Voronezh Region.

6. He sued the Welfare Office of Novovoronezh and the local department of the Federal Treasury for unpaid social benefits and obtained five judgments in his favour.

A. First judgment and its indexation

7. On 30 June 2003 the Novovoronezh Town Court of the Voronezh Region ("the Town Court") awarded the applicant 19,315.50 Russian roubles (RUB) in arrears relating to a disability allowance. On 7 August 2003 the Voronezh Regional Court upheld the judgment. It was enforced in full on 17 December 2004.

8. On 31 May 2005 the Town Court awarded the applicant RUB 3,204.51 in penalties for the delayed enforcement of the judgment of 30 June 2003. The judgment acquired legal force on 14 June 2005. It has not been enforced to date.

B. Second judgment and its indexation

9. On 24 March 2004 the Town Court awarded the applicant RUB 16,765.50 in arrears relating to a disability allowance. The judgment entered into force on 5 April 2004. It was enforced in full on 3 August 2005.

10. On 26 September 2005 the Town Court awarded the applicant RUB 3,412.28 in penalties for the delayed enforcement of the judgment of 24 March 2004. The judgment acquired legal force on 7 October 2005. It has not been enforced to date.

C. Third judgment

11. On 1 April 2004 the Town Court awarded the applicant RUB 4,329.72 in arrears relating to a food allowance and RUB 643.85 in arrears relating to a disability allowance. The judgment acquired legal force on 12 April 2004. It has not been enforced to date.

D. Fourth judgment and its indexation

12. On 8 June 2004 the Town Court awarded the applicant RUB 9,494.52 in arrears relating to a disability allowance and held that as of 1 April 2004 the applicant had been entitled to a monthly disability allowance in the amount of RUB 5,664.84, to be index-linked in accordance with legislation. The judgment entered into force on 18 June 2004. However, the authorities failed to backdate the increase as of 1 April 2004 and continued to underpay the applicant until August 2004.

13. On 30 November 2004 the Town Court examined the applicant's complaint about the non-enforcement of the judgment of 8 June 2004 and recovered RUB 15,824 for the debt accrued as a result of the underpayment between April and August 2004. The judgment of 30 November 2004 entered into force on 14 December 2004.

14. The judgments of 8 June and 30 November 2004 were enforced in full on 22 December 2005.

15. On 27 February 2006 the Town Court awarded the applicant RUB 3,165.25 in penalties for the delayed enforcement of the judgments of 8 June and 30 November 2004. The judgment became final on 10 March 2006. It has not been enforced to date.

E. Fifth judgment

16. On 8 June 2004 the Town Court recovered in the applicant's favour the unpaid food allowance in the amount of RUB 1,139.34 and the unpaid annual disability allowance in the amount of RUB 632.97. The court furthermore held that as of 1 April 2004 the applicant had been entitled to a monthly food allowance in the amount of RUB 679.78, to be index-linked in accordance with legislation. The court also held that as of 2005 the applicant was entitled to a disability allowance, to be index-linked in accordance with legislation. The judgment entered into force on 18 June 2004. It has not been enforced to date.

THE LAW

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

17. The applicant complained about the lengthy non-enforcement of the judgments of 30 June 2003, 24 March and 1 April 2004, and of both judgments of 8 June 2004. He referred to Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. These Articles, in so far as relevant, 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

18. The Court observes, and it is not contested by the parties, that the applicant was awarded compensation for the delays in enforcement of the judgments of 30 June 2003, 24 March and of one of the judgments delivered on 8 June 2004 (see paragraphs 8, 10 and 15 above). The Court does not exclude that such compensatory awards could constitute redress for the State's previous failure to comply with the judgments within a reasonable time, provided that those awards have been paid in full without any delay. However, the Government did not adduce any evidence showing that those awards had been paid to the applicant in full and in good time. Accordingly, the Court considers that the applicant may still claim to be a “victim” in respect of his complaint about the delays in enforcement of the judgments of 30 June 2003, 24 March and 8 June 2004.

19. The Court concludes 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

20. The Government submitted that the judgments of 30 June 2003, 24 March 2004 and the judgment of 8 June 2004, by which the applicant had been awarded RUB 9,494.52, had been enforced in full. They further submitted that the judgments of 1 April and 8 June 2004 had not been enforced. They acknowledged that the lengthy non-enforcement of the judgments in the applicant's favour violated his rights guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

21. The applicant did not dispute that the judgments of 30 June 2003, 24 March 2004 and the judgment of 8 June 2004, by which he had been awarded RUB 9,494.52, had been enforced in full. However, he considered that the authorities had failed to take due measures to enforce them in good time. He further submitted that the judgments of 1 April and 8 June 2004 had not been enforced.

22. The Court observes that in 2003 and 2004 the applicant obtained five judgments by which the Welfare Office of Novovoronezh, a state body, was to pay him arrears in respect of social benefits. Three of those judgments were enforced in full with substantial delays varying from nearly sixteen months to eighteen months; two judgments had not been enforced to date.

23. 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*, no. 59498/00, ECHR 2002-III, and *Baygayev v. Russia*, no. 36398/04, 5 July 2007).

24. 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 lengthy non-enforcement of the judgments in the applicant's favour. It finds that by failing, for long periods of time, to comply with the enforceable judgments 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.

25. 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

26. 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

27. The applicant claimed 8,015 euros (EUR) in respect of pecuniary damage, representing the outstanding debt due to him under the judgments which had not been enforced together with the compensatory awards. He claimed EUR 6,000 in respect of non-pecuniary damage

28. The Government submitted that the applicant was still entitled to recover the court awards in the domestic proceedings. They considered that having regard to the nature of the awards in the present case, the amount of compensation for non-pecuniary damage should be determined in accordance with the Court's practice in similar cases.

29. 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 he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found (see *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). It therefore considers that the Government shall secure, by appropriate means, the enforcement of the judgments of 1 April and 8 June 2004. As regards the judgments which have been enforced with substantial delays, the Court considers that the enforcement of the compensatory awards would constitute the appropriate redress for the violations found. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the judgments of 31 May and 26 September 2005 and of 27 February 2006.

30. Finally, the Court considers that the applicant must have suffered certain distress and frustration resulting from the authorities' failure to enforce the final judgments in his favour in good time. However, the amount claimed appears to be excessive. Taking into account the length of the enforcement proceedings, the number of the awards and their nature and making its assessment on an equitable basis, the Court awards the applicant EUR 3,100 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

31. The applicant did not make any claim for costs and expenses incurred before the domestic courts and before the Court. Accordingly, the Court makes no award under this head.

C. Default interest

32. 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 awards made by the domestic court on 1 April and 8 June 2004, 31 May and 26 September 2005, 27 February 2006 and in addition pay the applicant EUR 3,100 (three thousand one 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;
 - (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 claim for just satisfaction.

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