



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

THIRD SECTION

CASE OF GAYVORONSKIY v. RUSSIA

(Application no. 13519/02)

JUDGMENT

STRASBOURG

25 March 2008

FINAL

25/06/2008

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 Gayvoronskiy v. Russia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Anatoly Kovler,

Alvina Gyulumyan,

Egbert Myjer, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 4 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 13519/02) 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 Petr Dmirtriyeovich Gayvoronskiy (“the applicant”), on 9 February 2002.

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 Mrs V. Milinchuk.

3. The applicant complained, in particular, about delays in enforcement of several judgments in his favour.

4. On 12 September 2006 the Court decided to communicate the non-enforcement complaint 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 1946 and lives in Kaliningrad.

6. On 19 March 1997 the applicant was convicted of assault and battery and sentenced to one year’s imprisonment.

7. On 29 March 1999 the Kaliningrad Regional Court quashed the judgment of 19 March 1997 on supervisory review and discontinued the criminal case against the applicant for the lack of *corpus delicti* in his actions.

A. Proceedings for compensation for non-pecuniary damage sustained as a result of wrongful conviction

8. On 11 October 2000 the Tsentralniy District Court of Kaliningrad awarded the applicant 10,000 Russian roubles (RUB) against the Ministry of Finance in compensation for the non-pecuniary damage sustained as a result of wrongful conviction and unlawful detention. It also ordered that the Ministry of Finance reimburse the legal fee paid by the applicant in the amount of RUB 500.

9. On 27 December 2000 the Kaliningrad Regional Court increased the award to RUB 20,000.

10. On 26 March 2001 the Presidium of the Kaliningrad Regional Court, acting on supervisory review, increased the award to RUB 50,500. The judgment became enforceable on the same day. On 9 August 2001 the court issued a writ of execution.

11. On 17 October 2001 the applicant submitted the writ of execution to the local office of the Ministry of Finance which forwarded the writ to the central office of the Ministry of Finance. The Ministry of Finance received it on 30 October 2001.

12. On 6 June 2002 the Ministry of Finance returned the writ to the applicant because he had not indicated his bank details and had not submitted a certified copy of the judgment of 26 March 2001.

13. On 27 July 2002 the applicant resubmitted the writ to the Ministry of Finance. On 17 September 2002 the Ministry returned the writ to the applicant for the same reasons as before.

14. On 26 September 2002 the applicant submitted the writ to the local bailiffs' service. On 17 October 2002 the bailiffs forwarded the writ to the Moscow bailiffs' service. On 1 January 2003 the Moscow bailiffs' service returned the writ to the applicant and advised him to submit it to the Ministry of Finance.

15. On 9 January 2003 the applicant for a third time submitted the writ to the Ministry of Finance.

16. The applicant received the award on 20 March 2003.

B. Proceedings for compensation for pecuniary damage sustained as a result of wrongful conviction

17. On 24 September 2001 the Leningradskiy District Court awarded the applicant RUB 60,753 against the Ministry of Finance as compensation for the loss of salary during his detention, plus reimbursement of the legal fees. The judgment became enforceable ten days later.

18. On 17 October 2001 the applicant submitted the writ of execution to the local office of the Ministry of Finance which forwarded it to the Ministry of Finance.

19. On 31 January 2002 the Leningradskiy District Court issued a duplicate writ and sent it to the local bailiffs' service. On 10 September 2002 the bailiffs opened enforcement proceedings.

20. On 16 October 2002 the bailiffs forwarded the writ to the Moscow bailiffs' service.

21. By letter of 23 May 2003, the Moscow bailiffs' service informed the applicant that the writ had been returned to the Leningradskiy District Court on 28 November 2002 for corrections in the debtor's name and address.

22. On 30 May 2003 the applicant asked the Leningradskiy District Court to issue a duplicate writ of execution. The court issued a duplicate writ on 21 July 2003.

23. On 31 July 2003 the applicant submitted the writ to the Ministry of Finance.

24. The applicant received the award on 17 November 2003.

C. Proceedings for compensation of pecuniary damage sustained as a result of belated enforcement

25. On 19 June 2003 the Tsentralniy District Court of Kaliningrad awarded the applicant RUB 17,018 against the Ministry of Finance in respect of inflation losses sustained as a result of the belated enforcement of the judgment of 26 March 2001. The judgment became enforceable ten days later.

26. On 5 August 2003 the applicant submitted the writ of execution to the Ministry of Finance.

27. The applicant received the award on 3 May 2005.

D. Proceedings for compensation of non-pecuniary damage sustained as a result of belated enforcement

28. On 19 August 2004 the Tsentralniy District Court awarded the applicant RUB 1,200 against the Ministry of Finance in respect of non-pecuniary damage sustained as a result of the belated enforcement of the judgment of 26 March 2001.

29. On 10 February 2005 the applicant submitted the writ of execution to the Ministry of Finance.

30. The applicant received the award on 15 September 2006.

E. Other proceedings

31. The applicant sued the Ministry of Finance for compensation for the loss of profit during his detention. On 19 June 2001 the Tsentralniy District Court dismissed his claims as unsubstantiated. On 25 July 2001 the Kalinigrad Regional Court upheld the judgment on appeal.

32. The applicant sued the Ministry of Finance for the loss of income during his detention. On 24 January 2002 the Tsentralniy District Court dismissed his claim as unsubstantiated. On 27 February 2002 the Kaliningrad Regional Court upheld the judgment on appeal.

33. In 2002 the applicant brought two court proceedings against the bailiffs' service. On 31 July 2002 and 14 August 2002 the Kaliningrad Regional Court dismissed the applicant's claims in the final instance.

THE LAW

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

34. The applicant complained about the delay in enforcement of the judgments of 26 March and 24 September 2001, 19 June 2003, and 19 August 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

35. The Government submitted that the applicant had received compensation in respect of the pecuniary and non-pecuniary damage sustained as a result of the belated enforcement of the judgment of 26 March 2001. Therefore, he could no longer claim to be a victim. The applicant could have applied to a court for compensation in respect of the pecuniary and non-pecuniary damage sustained as a result of belated enforcement of the judgments of 19 June 2003 and 19 August 2004. As he had not done it, he had not exhausted domestic remedies.

36. The applicant maintained his claims.

37. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a

“victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). In cases where a judgment in the applicant’s favour had been enforced with a delay, the payment of compensation for the delay could, in principle, constitute appropriate and sufficient redress. However, one of the characteristics of sufficient redress relates to the amount awarded. The Court has already had occasion to indicate that an applicant’s victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court. The Court also reiterates that in order to constitute sufficient redress, the compensation must be paid without delays (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 198, 202 and 209, ECHR 2006-...; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 89, 93 and 101, ECHR 2006-...).

38. Turning to the facts of the present case, the Court observes that the judgment of 26 March 2001 was enforced in full on 20 March 2003. Subsequently, the applicant sued the Ministry of Finance for compensation for the damage caused by the delay in enforcement of that judgment. By judgments of 19 June 2003 and 19 August 2004, the courts granted his claims, acknowledging the delay and ordering the Ministry of Finance to pay the applicant compensation in respect of pecuniary and non-pecuniary damage.

39. With regard to pecuniary damage, the domestic courts are clearly in a better position to determine its existence and quantum (see *Scordino*, cited above, § 203). The Court therefore will not question the findings of the domestic courts in respect of the pecuniary damage. On the other hand, it will assess, on the basis of the material in its possession and in the light of its case-law, whether the compensation awarded in respect of non-pecuniary damage was sufficient. The applicant was awarded RUB 1,200 – which was equivalent to approximately 35 euros (EUR) at the date of the adoption of the judgment – for the two-year delay in enforcement. The Court observes that this amount is approximately one per cent of what it has normally awarded in similar cases against Russia. It therefore considers that the compensation awarded to the applicant in respect of non-pecuniary damage was insufficient (compare *Scordino*, cited above, §§ 214 and 215).

The Court further notes that the compensatory judgments were not enforced in good time, as it took the domestic authorities about two years to effect the payments.

Having regard to the insufficient amount of the compensation in respect of non-pecuniary damage sustained as a result of the delay in enforcement of the judgment of 26 March 2001, which moreover was not paid promptly, the Court finds that the applicant did not receive sufficient redress for the alleged breaches of the Convention and can still claim to be a victim.

40. As to the exhaustion of domestic remedies, the Court reiterates that the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The exhaustion rule must be applied with some degree of flexibility and without excessive formalism. It is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that it must take realistic account, in particular, of the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 69).

41. The Court takes note of the Government's argument that the applicant could have applied for compensation for pecuniary and non-pecuniary damage incurred through the delay in enforcement of the judgments of 19 June 2003 and 19 August 2004. However, the applicant had already had recourse to that remedy in respect of the delay in enforcement of another judgment. The remedy proved to be ineffective because of the insufficient amount and belated payment of the compensation awarded (see paragraph 39 above). The Court considers that in those circumstances the applicant was not required to exhaust that remedy also in respect of the judgments of 19 June 2003 and 19 August 2004.

42. The Court concludes that the Government's objections must be rejected. It considers that this part of 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

43. The Government argued that the applicant had procrastinated in submitting to the Ministry of Finance the writ of execution in respect of the judgment of 24 September 2001 and a certified copy of the judgment of 26 March 2001 together with his bank details. The delay in the enforcement of those judgments had been therefore attributable to the applicant.

44. The applicant maintained his claims.

45. A delay in the execution of a judgment may be justified in particular circumstances. It remains therefore to be determined whether the delay was such as to amount to a breach of the applicant's right to benefit from the judgment debt (see *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004). The Court notes that the applicant promptly submitted the writ of

execution in respect of the judgment of 26 March 2001 to the Ministry of Finance. The Government claimed that the Ministry of Finance could not enforce it because the applicant had not submitted a certified copy of the judgment and had not indicated his bank details. The Court notes that the Ministry of Finance did not inform the applicant about those defects until seven months later. After the applicant re-submitted the writ, it took the authorities another six months to pay the award. The Court accepts that a certain delay in the enforcement of the judgment of 26 March 2001 was caused by the applicant's failure to indicate his bank details. However, having regard to the overall delay in the enforcement – at least thirteen months of which were attributable to the authorities – the Court finds that the judgment of 26 March 2001 was not enforced within a reasonable time.

46. As regards the judgment of 24 September 2001, the applicant immediately submitted the writ of execution to the local office of the Ministry of Finance (see paragraph 18 above). Several months later he submitted a duplicate writ to the bailiffs' service which was, at the relevant time, competent to institute enforcement proceedings against the State. However, the judgment remained unenforced for more than two years. The Government did not provide any justification for the delay. Nor did they provide justification for the two-year delay in enforcement of the judgments of 19 June 2003 and 19 August 2004.

47. 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).

48. 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 for a long time to comply with the enforceable judgments 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, it finds that those complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed EUR 10,000 in respect of the loss of profit during his unlawful detention and EUR 1,000 in respect of interest accrued on the judgment debt. He also claimed EUR 10,000 in respect of non-pecuniary damage.

53. The Government submitted that the claims were excessive. The finding of a violation would in itself constitute sufficient just satisfaction.

54. The Court does not discern any causal link between the violation found and the pecuniary damage alleged in respect of the loss of profit during the unlawful detention; it therefore rejects this claim. As regards the claim for the interest accrued on the judgment debt, the Court recalls that under Rule 60 of the Rules of the Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. The applicant failed to itemise his claim or submit supporting documents, and the Court therefore rejects the claim.

55. On the other hand, the Court accepts that the applicant suffered distress and frustration resulting from the delay in the enforcement of the judgments 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 EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

56. The applicant also claimed EUR 1,000 for costs and expenses. The Court notes that the applicant did not submit any receipts or other vouchers confirming that the expenses had been actually incurred. Accordingly, the Court does not make any award under this head.

C. Default interest

57. 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 complaint concerning the delay in enforcement of the judgments in the applicant's favour admissible and the remainder of the application inadmissible;
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 is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four 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;
 - (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 25 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President