



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

FIRST SECTION

CASE OF POGULYAYEV v. RUSSIA

(Application no. 34150/04)

JUDGMENT

STRASBOURG

3 April 2008

FINAL

03/07/2008

This judgment may be subject to editorial revision.

In the case of Pogulyayev v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 34150/04) 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 Yuriy Dmitriyevich Pogulyayev (“the applicant”), on 30 July 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 non-enforcement of judgments in his favour.

4. On 9 March 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 1946 and lives in Chelyabinsk.

6. On 13 May 2002 the Justice of the Peace of Court Circuit no. 2 of the Sovetskiy District of Chelyabinsk granted the applicant’s claim against the Chelyabinsk Tank Institute for compensation for the purchase of teaching aids. The applicant was awarded 9,600 Russian roubles (“RUB”). According to the Government, the Tank Institute is a State institution for higher education owned by the Ministry of Defence and funded from the federal budget.

7. On 12 August 2002 the applicant submitted the writ of execution to the Tank Institute. By letter of 15 December 2002, the applicant was informed that the writ had not been received.

8. The applicant brought a further claim against Tank Institute, seeking adjustment of the award for inflation and recovery of the interest for the period of non-enforcement.

9. On 15 August 2003 the Justice of the Peace granted the claim and additionally awarded him RUR 8,350.22 in respect of the period from 13 August 2002 to 15 August 2003.

10. On 3 November 2003 a court bailiff issued decision to discontinue enforcement proceedings because the Tank Institute had no assets from which recovery could be made.

THE LAW

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

11. The applicant complained about non-enforcement of the judgments of 13 May 2002 and 15 August 2003. 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

12. The Government claimed that the applicant had not exhausted the domestic remedies because he had not sued the Ministry of Defence, which was vicariously liable for the Tank Institute’s debts as its owner, and because he had not brought a claim for inflation losses arising out of protracted enforcement of the judgments.

13. As regards the possibility of suing the institutional owner of a State-funded organisation under the vicarious liability provisions, the Court recalls that it has already examined and rejected a similar objection in the case of *Yavorivskaya v. Russia* (dec., no. 34687/02, 13 May 2004) since the Government were unable to produce any case-law showing the effectiveness of that remedy. In the present case the Government's objection was again confined to the assertion that such a claim would have been an effective remedy, without reference to any judicial practice. In this connection 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). Furthermore, as regards the possibility of lodging a claim for inflation losses, such an action would only have produced repetitive results, namely a writ of execution which would not be enforceable because of insufficient funding of the Tank Institute. In fact, the applicant had availed himself of that remedy on one occasion but the judgment he had obtained remained without enforcement, for the same reasons as the original one. In these circumstances, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies.

14. 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

15. The Government submitted that, following the discontinuation of the enforcement proceedings on 3 November 2003, the applicant did not resubmit the writs of execution to the local branch of the federal treasury. Thus, he had not shown due diligence in pursuing the enforcement proceedings.

16. The applicant maintained that it had been incumbent on court bailiffs to forward the writs to the competent body.

17. The Court observes that on 13 May 2002 and 15 August 2003 the applicant obtained two judgments in his favour which he submitted to court bailiffs for enforcement. The judgments have not been enforced to date because the Tank Institute did not have sufficient funding.

18. 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).

19. In particular, the Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed. The State authorities were aware of the applicant's claims, and, as soon as the judgments in the applicant's favour became enforceable, it was incumbent on the State to comply with them. It would impose an excessive burden on the applicant if he were required to follow every change in the domestic law and forward the writ of execution from one competent State agency to another (see *Reynbakh*, §§ 23-24, cited above).

20. 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.

21. 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

22. 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."

23. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

24. The Court observes, however, that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the awards in the applicant's favour had not been paid to him. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant is put as far as possible in the position in which he would have been had the requirements of Article 6 not been disregarded. It finds that this principle applies in the present case too, 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 *Poznakhirina v. Russia*, no. 25964/02, § 33, and *Makarova and Others v. Russia*, no. 7023/03, § 37, judgments of 24 February 2005).

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* that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the judgments of 13 May 2002 and 15 August 2003;
4. *Decides* to make no other award under Article 41 of the Convention.

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

Søren Nielsen
Registrar

Christos Rozakis
President