



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

FIRST SECTION

CASE OF NADEZHKIN v. RUSSIA

(Application no. 42940/02)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

12/09/2008

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 Nadezhkin v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 42940/02) 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 Yevgeniy Viktorovich Nadezhkin (“the applicant”), on 23 November 2002.

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

3. On 28 April 2005 the Court decided to communicate the complaint concerning non-enforcement of a domestic judgment to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in Khabarovsk, the Khabarovsk Region.

5. In 2000 the applicant sued the General Prosecutor’s Office and the Ministry of Finance for an unfounded criminal prosecution. On 15 December 2000 the Yelizovskiy District Court of the Kamchatka Regional Court awarded the applicant damages. This judgment became binding on 22 March 2001, but was not enforced immediately.

6. The applicant mailed enforcement papers to the bailiff's service having territorial jurisdiction over the Ministry of Finance's head office. The service returned the papers and explained that they should be mailed to the Treasury.

7. The applicant mailed the papers to the Treasury, but the Treasury returned them because of several defects: the copy of the judgment was not certified, the writ of enforcement contained no time-limit, and the name of the court indicated in the papers mismatched that indicated in the seals.

8. The applicant removed these defects and on 23 May 2002 resubmitted the papers. On 19 November 2002 the judgment was enforced.

II. RELEVANT DOMESTIC LAW

9. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment within three months.

THE LAW

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

10. The applicant complained of the lengthy non-enforcement of the judgment. The Court examined this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. As far as relevant, these Articles read as follows:

Article 6

"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

11. The Government argued that this complaint was manifestly ill-founded. The delay was attributable to the applicant’s failure to follow the correct enforcement procedure. The authorities had strictly respected the time-limits laid down in domestic law. Besides, at the material time, the rules of enforcement had been undergoing change in order to improve budgetary efficiency.

12. The applicant argued that this complaint was well-founded. The court had delayed the issue of the enforcement papers, and the papers which it did issue were defective.

13. The Court considers that this complaint 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

14. The Court reiterates that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Where a judgment is against the State, the defendant State authority must be duly notified thereof and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance. This especially applies where, in view of the complexities and possible overlapping of the execution and enforcement procedures, an applicant may have reasonable doubts about which authority is responsible for the execution or enforcement of the judgment.

15. The Court already admitted in the past that a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt, be it during a voluntary execution of a judgment by the State or during its enforcement by compulsory means (see *Shvedov v. Russia*, no. 69306/01, § 29–37, 20 October 2005). Accordingly, it is not unreasonable that the authorities request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of a judgment (see, *mutatis mutandis*, *Kosmidis and Kosmidou v. Greece*, no. 32141/04, § 24, 8 November 2007). In the Court’s view, the requirement of the creditor’s cooperation must not, however, go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the Convention to take timely and *ex officio* action, on the basis of the

information available to them, with a view to honouring the judgment against the State.

16. In the present case, by taking no initiative to comply with the judgment during one year and seven months, the State has breached Article 6 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 33–42, ECHR 2002–III).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The applicant also complained under Article 7 about the conduct of the proceedings by the domestic courts. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

18. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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.”

20. The applicant submitted a claim for just satisfaction, without, however, specifying and substantiating it. 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 complaint concerning non-enforcement of the judgment admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1;
3. *Dismisses* the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President