



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

FIRST SECTION

CASE OF AKASHEV v. RUSSIA

(Application no. 30616/05)

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 Akashev 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. 30616/05) 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 Nikolay Nikolayevich Akashev (“the applicant”), on 16 July 2005.

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

3. On 18 June 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Aykhal, a town in Yakutia.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. In 1991 the applicant subscribed to a State savings scheme for buying a car. The State failed to provide the car, and the applicant had to apply to a court.

7. On 19 August 2003 the Mirninskiy District Court of Yakutia awarded the applicant 138,967 Russian roubles (“RUB”) against the Ministry of Finance. On 6 October 2003 the judgment became binding, but was not enforced immediately.

8. On 23 October 2003 the district court mailed the writ of enforcement to the bailiff’s service. The bailiff’s service considered that the judgment should be enforced by the Ministry of Finance, and on 27 November 2003 returned the writ to the court. On 5 April 2004 the applicant collected the writ from the court and mailed it to the Ministry of Finance.

9. On 12 August 2004 the Ministry of Finance applied for a supervisory review of the judgment.

10. On 28 October 2004 the Presidium of the Supreme Court of Yakutia allowed the Ministry’s application and quashed the judgment. According to the applicant, he received a copy of this decision on 19 March 2005.

11. On 7 September 2005 the Ministry paid to the applicant RUB 50,247.98 under the State program of redemption of in-kind debentures.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF NON-ENFORCEMENT

13. The applicant complained that the non-enforcement of the judgment breached Articles 6 and 13 of the Convention, and Article 1 of Protocol No. 1. The Court will examine this complaint under Article 6 § 1 and Article 1 of Protocol No. 1. As far as relevant, these Articles 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*1. Six months*

14. The Government argued that the applicant had missed the six-month time-limit for applying to the Court laid down in Article 35 § 1 of the Convention. More than 11 months had passed from the date of the last domestic decision (28 October 2004) to the date of introduction (16 July 2005). Contrary to the applicant’s statement, the Supreme Court had duly notified the applicant of the upcoming supervisory-review hearing. It had mailed a notice to the applicant’s last known address, and in any event the State was not responsible for a possibly faulty postal service (see *Zagorodnikov v. Russia*, no. 66941/01, § 31, 7 June 2007).

15. The applicant insisted that he did respect the six-month time-limit. He presented a copy of the envelope that showed that the Supreme Court had mailed the notice to the wrong town, and that it was only on 19 March 2005 that the notice reached the correct town. The Supreme Court did know the applicant’s correct address because the applicant had many times indicated it in his pleadings.

16. The Court rejects the Government’s argument, because it follows from the evidence submitted by the applicant that the Supreme Court had indeed made a mistake in the applicant’s address.

2. Other grounds

17. The Government later submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. The Court, however, dismisses this argument because it is inconsistent with the Government’s previous argument. Indeed, if the applicant had had at his disposal further domestic remedies, the Government would not have suggested earlier that six months ran from the date of the Presidium’s decision.

18. The Court notes that the 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

19. The Government argued that of the whole period of non-enforcement, one year and 22 days, the State was responsible only for eight months and 12 days, and that this delay was reasonable. In particular, instead of mailing the writ of enforcement to the Ministry of Finance, the district court mailed it to the bailiff's service, and it then took the applicant four months and eight days to collect the writ of enforcement from the court and mail it to the Ministry.

20. The applicant retorted that he had caused no delay in the enforcement. The district court mailed the writ of enforcement to the bailiff's service only 17 days after the judgment had become binding, which proved that the applicant had acted promptly. It was not the applicant's fault that the district court had mistakenly mailed the writ to the bailiff's service instead of the Ministry.

21. 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.

22. 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.

23. In the present case, by taking no initiative to comply with the judgment during one year and 22 days, 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. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF SUPERVISORY REVIEW

24. The applicant complained that the supervisory review of his judgment also breached Articles 6 and 13 of the Convention, and Article 1 of Protocol No. 1. The Court will examine this complaint under Article 6 § 1 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

25. This complaint must be declared admissible for the same reasons as the previous one.

B. Merits

26. The Government argued that the supervisory review of the judgment did not breach Article 6 and the principle of legal certainty contained therein (see *Ryabykh v. Russia*, no. 52854/99, § 51–52, ECHR 2003-IX). First, the review had been initiated by a litigant, not an external agent. Second, the time between the judgment’s entry into force and the supervisory review had been short. Third, the supervisory review had been meant to cure the district court’s misapplication of material laws and hence sought to reach a fair balance between the interests of the applicant and the judicial system.

27. The applicant maintained his complaint.

28. The Court has earlier dismissed the Government's similar arguments and found a breach of Article 6 of the Convention and of Article 1 of Protocol No. 1 (see *Kot v. Russia*, no. 20887/03, §§ 21–33, 18 January 2007). Accordingly, in the present case there has also been a violation of these Articles.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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.”

30. The applicant claimed 160,000 euros (EUR) in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

31. The Government objected to these claims, stating that the applicant had shown no causal link between the alleged violation of the Convention and the damage, and that the applicant's calculations were arbitrary.

32. As to pecuniary damage, the Court reiterates that the best redress of a violation of Article 6 is to put the applicant as far as possible in the position he would have been if Article 6 had been respected (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, § 12). Applied to the case at hand, this principle would mean that the State must pay to the applicant RUB 138,967 that he should have received under the judgment of 19 August 2003 less RUB 50,247.98 that he has received in 2005. Accordingly, the Court awards EUR 2,400 under this head.

33. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress from the non-enforcement and quashing of his judgment. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,600 under this head.

B. Default interest

34. 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 of Article 1 of Protocol No. 1 on account of the non-enforcement of the domestic judgment;
3. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the supervisory review of the domestic judgment;
4. *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), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of 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