



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

FIRST SECTION

CASE OF MOROKO v. RUSSIA

(Application no. 20937/07)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

01/12/2008

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 Moroko 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *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. 20937/07) 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 Andrey Vladimirovich Moroko (“the applicant”), on 27 March 2007.

2. The applicant was represented by Ms G. Shakhmatova, a lawyer practising in Krasnoyarsk. 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 3 September 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 dismissed this objection.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1979 and lives in Krasnoyarsk.

5. In 2001–02 he stood trial for a drugs offence and was acquitted. He sued the State for compensation for the unfounded prosecution and pre-trial detention.

6. The case came before the Leninskiy District Court of Krasnoyarsk. By its judgments of 5 December 2003 and 21 September 2006 the court ordered the Ministry of Finance to compensate the applicant's non-pecuniary and pecuniary damage. The judgments became binding on 2 February 2004 and 16 November 2006, but were not enforced immediately.

7. The judgment of 5 December 2003 was enforced on 21 October 2005 when the Ministry credited the judgment debt to the applicant's bank account.

8. The judgment of 21 September 2006 which was enforceable as of 16 November 2006 was not enforced immediately. The writ of enforcement was sent by the court to the bailiff service two months and seven days after the judgment had become final. On the same date the bailiff service returned the writ to the court as it lacked competence to enforce this judgment under the relevant provisions of the Budgetary Code. Two months later, i.e. on 27 March 2007, the applicant sent the relevant documents to the Federal Treasury, and on 15 August 2007 the judgment debt was credited to the applicant's bank account.

II. RELEVANT DOMESTIC LAW

A. Time-limits for enforcement

9. 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 honour a judgment in three months.

B. Purported remedies against non-enforcement

10. Chapter 25 of the Code of Civil Procedure allows a person to appeal in court against an authority whose actions breach his rights (Article 254). If the appeal is well-founded, the court will order the authority to make good the breach (Article 258).

11. Article 208 of the Code of Civil Procedure empowers a court to upgrade the amount of a judgment debt, if a creditor so asks.

12. Chapter 59 § 4 of the Civil Code obliges the State to compensate a person's non-pecuniary damage caused by a breach of his property rights.

THE LAW

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

13. The applicant complained that the lengthy non-enforcement of the judgments breached Article 6 of the Convention 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. Exhaustion of domestic remedies

(a) The Government

14. The Government argued that the applicant had failed to exhaust domestic remedies in breach of Article 35 § 1 of the Convention. He had had at his disposal three remedies, but used none of them.

15. The first remedy had been a court complaint about the Ministry's negligence under Chapter 25 of the Code of Civil Procedure. This remedy had been effective, because it would have condemned the Ministry's negligence.

16. The second remedy had been a request to upgrade the judgment debt under section 208 of the Code of Civil Procedure. In certain earlier cases, the Court had found that the exhaustion of this remedy deprived the applicants of their victim status (see *Nemakina v. Russia* (dec.), no. 14217/04, 10 July 2007; *Derkach v. Russia* (dec.), no. 3352/05, 3 May

2007; *Yakimenko v. Russia* (dec.), no. 23500/04, 15 May 2007; and *Sarmina and Sarmin v. Russia* (dec.), no. 58830/00, 22 November 2005.). When domestic courts had upgraded a judgment debt, they had closely followed the official rate of inflation and compensated any loss caused by inflation.

17. The third remedy had been a claim for non-pecuniary damage under Chapter 59 § 4 of the Civil Code. In accordance with this Chapter, non-pecuniary damage may be awarded for non-enforcement of domestic judgments if the fact of moral suffering, the debtor's fault and the causal link between his acts and the negative consequences for the applicant are established in judicial proceedings. In the Government's view this remedy had proven its effectiveness in practice. For example, a family from Tatarstan had received 1,800 euros for late enforcement of a judgment in their favour (judgment of the Novo-Savinovskiy District Court of Kazan, no. 2-1962/2006, 23 October 2006).

(b) The applicant

18. The applicant retorted that he had no domestic remedies to exhaust.

19. The first remedy cited by the Government would have merely restated the original payment obligation contained in the first judgment.

20. As regards the second remedy quoted by the Government, the mere existence of the provision allowing to upgrade judicial awards was not sufficient to meet the requirements of Articles 6 and 13. In addition, the official rate of inflation applied by the courts lagged behind the real inflation.

21. The third remedy had not really existed, because the Civil Code stated that non-pecuniary damage could only be granted in the cases provided for by the law (Article 1099). The law did not, however, specifically provide for compensation of non-pecuniary damage in case of late enforcement of a judgment.

(c) The Court

22. The Court finds for the applicant.

23. Under Article 35 § 1 of the Convention, the Court may deal with an application only after all domestic remedies have been exhausted. This rule allows the State to put matters right domestically, without recourse to international litigation (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 65). This rule extends only to the normal use of remedies that are effective, sufficient, and available (see *Pine Valley Developments Ltd and Others v. Ireland*, no. 12742/87, Commission decision of 3 May 1989, *Decisions and Reports* (DR) 61, p. 206). The effective and available remedies are those which are accessible, capable of providing redress in respect of the applicant's complaints and offer reasonable prospects of success (see *Akdivar and Others v. Turkey* cited above, § 68).

24. The three remedies suggested by the Government lack this quality.

25. An appeal against the Ministry's negligence would yield a declaratory judgment that would reiterate what was in any event evident from the original judgment: the State was to honour its debt. This new judgment would not bring the applicant closer to his desired goal, that is the actual payment of the judicial award or, if appropriate, compensation for late payment (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikov v. Russia*, no. 43883/02, § 16, 24 February 2005).

26. As regards the possibility of upgrading the judgment debt, the Court had indeed noted in certain cases cited by the Government that the upgrading of judicial awards had effectively compensated the applicants for inflation losses. The Court held in these cases that the payment without undue delay of such compensation together with the acknowledgement of the violations by the authorities had deprived the applicants of their victim status (*Derkach, Yakimenko, Nemakhina*, cited above). However these decisions do not establish any general principle that mere compensation for inflation losses is sufficient to afford redress required by the Convention for late enforcement of a judgment. In all aforementioned cases the Court reached its conclusions in the specific circumstances where the applicants' claims for compensation were limited to pecuniary losses resulting from the inflation or the applicants' position in the domestic proceedings was considered as an implicit waiver to claim compensation for further pecuniary or non-pecuniary damage.

27. The Court agrees in principle with the applicant that the mere upgrading of judicial awards pursuant to Section 208 of the Code of Civil Procedure does not suffice to satisfy the Convention requirement of effectiveness as it would only compensate for possible inflation losses and not for further damages, either pecuniary or non-pecuniary. This upgrading remedy, however accessible and effective in law and practice, is thus not capable in general of affording adequate and full redress for non-enforcement or late enforcement of a domestic judgment.

28. As regards the possibility to claim compensation for non-pecuniary damage under Chapter 59 of the Civil Code, the Court notes, as pointed out by the applicant, that Russian law does not specifically provide for compensation of non-pecuniary damage resulting from non-enforcement or late enforcement of domestic judgments. While accepting the Government's view that the possibility of such compensation is not, in principle, excluded under the existing general provisions of the Civil Code, the Court is not satisfied that this possibility is sufficiently certain in practice so as to offer the applicant reasonable prospects of success as required by the Convention.

29. With the exception of a limited number of cases listed in sections 1070 and 1100, compensation of non-pecuniary damage is subject to the establishment of the authorities' fault. The Court notes that this condition can hardly be systematically satisfied in non-enforcement cases in view of

the complexities of the enforcement proceedings and of possible objective circumstances preventing enforcement, such as the lack of funds on the debtor's account. The doubts about the effectiveness of this remedy are corroborated by the Government's failure to demonstrate before the Court the existence of sufficiently established and consistent case-law proving that this remedy is effective both in theory and in practice. The domestic judgment cited by the Government as awarding non-pecuniary damage on the basis of the existing provisions does not allow the Court to depart from its conclusion (see also *Wasserman v. Russia* (no. 2), no. 21071/05, 10 April 2008).

30. The Court accordingly rejects the Government argument about the non-exhaustion of domestic remedies.

2. *Six months*

31. With regard to the judgment of 5 December 2003, the Government also argued that the applicant had missed the six-month period laid down in Article 35 § 1 of the Convention. In particular, the date of introduction was three years and four months after the date of the judgment, and one year and five months after the date of the enforcement.

32. The applicant replied that it had been only on 24 October 2007 that Government officials preparing the memorandum to the Court had told him that the judgment had been enforced.

33. The Court finds for the Government.

34. Where there is no effective remedy, the six-month period runs from the date of the omission complained of, or from the date when the applicant learned about the omission (see *Hilton v. United Kingdom*, no. 12015/86, Commission decision of 6 July 1988, DR 57, p. 108). Applied to non-enforcement, this rule would mean that six months run from the date of enforcement (see *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 27, 17 March 2005).

35. The judgment of 5 December 2003 was enforced on 21 October 2005, that is more than six months before the date of introduction. On the one hand, the applicant asserts that he learned about the transfer only in 2007. But on the other hand, he can be reasonably expected to have learned about the transfer in 2005, because this operation was listed in his bank statement.

36. It follows that this part of the complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. *Other grounds*

37. With regard to the judgment of 21 September 2006, the Government argued that the complaint was manifestly ill-founded. The enforcement had

lasted a short time. The applicant had sent the writ of enforcement to the wrong authority. He had acted in bad faith, because instead of sending the writ to the correct authority, he had applied to the Court.

38. The applicant made no observations on this point.

39. The Court refers to its numerous findings of violations on account of lengthy enforcement of domestic judgments in Russia and notes 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

40. The enforcement of the judgment of 21 September 2006 lasted from 16 November 2006 to 15 August 2007, that is nine months. The Government submitted that this period was reasonable and that all authorities involved in the execution of this judgment had displayed the necessary diligence, thus avoiding unnecessary delays. The applicant maintained his complaint.

41. An unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (*Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

42. On the one hand, the judgment was easy to enforce, because it required only a transfer of a sum of money, and it was the State, not the applicant, who had to take the initiative of enforcing it (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

43. On the other hand, the overall time taken by the authorities to enforce the judgment does not appear *prima facie* unreasonable, and is in any event less than the time found to be excessive in the other similar cases concerning Russia where the Court found violations of the Convention on account of non-enforcement or late enforcement.

44. The Court further notes that the authorities had acted with the necessary diligence. The writ for enforcement was sent by the competent court to the bailiff service two months and seven days after the judgment had become final. On the same date the bailiff service returned the writ to the court as it lacked competence to enforce this judgment under the relevant provisions of the Budgetary Code. Two months later, i.e. on 27 March 2007, the applicant sent the relevant documents to the Federal Treasury and the judgment was complied with five months after that date. While noting that the Ministry of Finance did not comply with the three-month time-limit set by the Budgetary Code for execution of a judgment,

the Court does not consider that the lapse of time which occurred has breached the reasonable time requirement enshrined in the Convention.

45. In view of the above, and having regard to the fact that the award did not relate to the applicant's main source of income but constituted only a limited amount of damages for a past wrong, the Court finds that there has been no violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant complained under Article 13 of the Convention that he had no domestic remedy against the non-enforcement. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

47. The Court recalls that Article 13 has been consistently interpreted by the Court as requiring a remedy in domestic law only in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, for example, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, pp. 23-24, § 54). In the present case, it has not found violations of Article 6 and of Article 1 of Protocol No.1, but the Court considers, with reference to its own decision on the admissibility above that the applicant's claim under these Articles was arguable. The complaint under Article 13 must also be declared admissible and considered on the merits.

48. Having considered the Government's preliminary objection, the Court has found that the applicant had no remedy to exhaust as none of those invoked by Government conformed to the Convention requirement of effectiveness. Given various shortcomings of domestic remedies identified above (§§ 25–29), the Court must conclude that the applicant was deprived of an effective remedy in respect of his arguable claim for compensation for late enforcement of the domestic judgment in his favour. There has accordingly been a breach of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 3,507 euros (EUR) in respect of pecuniary and non-pecuniary damage.

51. The Government argued that this claim was unjustified and excessive.

52. The Court does not discern any causal link between the violation found and the damage alleged and therefore rejects this claim. The Court further considers that, having regard to the nature of the violation found, the finding of a violation constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed EUR 281 for the costs and expenses incurred.

54. The Government argued that this claim was unsubstantiated.

55. The Court finds that the applicant has not proven his expenses and therefore rejects this claim.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the non-enforcement of the judgment of 21 September 2006 and the lack of domestic remedies admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 of the Convention or Article 1 of Protocol No. 1;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the damage sustained by the applicant;

5. *Dismisses* the applicant's claim for further 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