



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

FIRST SECTION

CASE OF KRASEV v. RUSSIA

(Application no. 731/04)

JUDGMENT

STRASBOURG

26 June 2008

FINAL

26/09/2008

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 Krasev v. Russia,

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

Nina Vajić, *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 5 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 731/04) 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 Aleksandr Mikhailovich Krasev (“the applicant”), on 7 November 2003.

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 29 May 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Sochi. Before his discharge from service in 1999, the applicant used to serve at the North-Caucasian Military Academy of Internal Troops. In 2001–03 he several times sued his command for outstanding emoluments.

5. On 18 May 2001, 10 October 2001, 19 November 2002, and 4 April 2003 the Military Court of the Vladikavkaz Garrison held for the applicant.

Each judgment became binding ten days after its delivery, but was not enforced immediately.

6. The judgment of 18 May 2001 was enforced on 26 December 2001.

7. According to the Government, the authorities tried to enforce the other three judgments on 16 July 2007. The money was sent to the applicant by mail order, but the applicant failed to collect the money in time, and it returned to the sender. According to the applicant, he did not receive the mail order. Later, on 25 December 2007 the authorities credited the money to the applicant's bank account.

II. RELEVANT DOMESTIC LAW

8. 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 ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

9. The applicant complained about the non-enforcement of the judgments. The Court examined this complaint under 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. *The Government*

10. The Government argued that this complaint was inadmissible for several reasons.

11. First, the applicant had missed the six-month time-limit laid down in Article 35 § 1 of the Convention, because the final domestic decision had been taken on 4 April 2003, while the applicant had applied to the Court only on 7 November 2003.

12. Second, the civil head of Article 6 did not apply to the litigation because it concerned military service.

13. Third, the applicant had failed to exhaust domestic remedies, because he had not applied to the authorities responsible for the enforcement of judgments, and failed to claim compensation for the delay in the courts.

14. Fourth, the complaint was manifestly ill-founded. All the judgments had been enforced. The applicant was himself responsible for the delay. He had failed to ask the court to send the writs of enforcement to a competent authority, and had failed to collect the writs for sending them himself. Even though in 2001–03 the authorities had explained to the applicant the correct enforcement procedure, he failed to pursue it.

2. *The applicant*

15. The applicant insisted that his complaint was admissible.

16. First, the judgment of 18 May 2001 had been enforced only partly.

17. Second, he had applied to the authorities competent to speed up the enforcement.

3. *The Court*

18. With regard to the judgment of 18 May 2001, the Court reiterates that in cases about non-enforcement the six-month time-limit begins on the date of enforcement (see *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 27, 17 March 2005). Even though the applicant stated that this judgment has been enforced only partly, he has not substantiated this claim. The Court therefore considers, as pointed out by the Government, that this judgment was enforced on 26 December 2001. The Court notes that the application was introduced on 7 November 2003. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

19. With regard to the other three judgments, the Court finds that the six-month rule did not apply, because on the date of introduction these

judgments were outstanding (see *Nazarchuk v. Ukraine*, no. 9670/02, § 20, 19 April 2005).

20. With regard to the applicability of Article 6, the Court reiterates that this Article does not apply only to cases where domestic law expressly excludes access to a court for the category of staff in question, and where this exclusion is justified by the State's objective interest (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...) In the case at hand, however, the applicant did have access to a court under domestic law. He used this right and sued his former employer. The Military Court examined and granted the applicant's claim. Nothing suggests that domestic law barred the applicant's access to a court. Accordingly, Article 6 is applicable (compare with *Dovguchits v. Russia*, no. 2999/03, § 24, 7 June 2007), and the Government's objection must be dismissed.

21. Lastly, as regards the Government's objection to the exhaustion of domestic remedies (see § 13 above), the Government have not shown that the suggested domestic remedies would be effective.

22. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

23. The Court will first determine how long the enforcement lasted. The enforcement of the judgment of 10 October 2001 lasted five years and eight months. The enforcement of the judgment of 19 November 2002 lasted four years and seven months. The enforcement of the judgment of 4 April 2003 lasted four years and three months.

24. To calculate these periods the Court took 16 July 2007 as the date of the enforcement, because it was on that date that the authorities first transferred the money to the applicant.

25. The Court reiterates that 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 (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

26. The judgments were not particularly difficult to enforce, because they required only a transfer of money.

27. As to the parties' behaviour, the Court notes that the Government accused the applicant of not pursuing the correct enforcement procedure. However, 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). This means that where a judgment is against the State, it is the State, not the creditor, who must take the initiative of enforcing it. In 2007 the State did manage to pay the money to the applicant despite his alleged failure to follow the correct procedure. There is no indication as to why this payment could not have been made years earlier, when the judgments became binding.

28. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

II. 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.”

A. Damage

30. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government argued that this amount was excessive, and that the finding of a violation would be sufficient.

32. The Court finds that the applicant suffered distress as a result of the violation at issue and therefore awards him EUR 3,000 in respect of non-pecuniary damage.

B. Default interest

33. 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 non-enforcement of the judgments of 10 October 2001, 19 November 2002, and 4 April 2003 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. *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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President