



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

FIFTH SECTION

CASE OF SEROV v. RUSSIA

(Application no. 75894/01)

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 Serov v. Russia,

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

Peer Lorenzen, *President*,
Rait Maruste,
Karel Jungwiert,
Volodymyr Butkevych,
Anatoly Kovler,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 3 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 75894/01) 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 Evgeniy Georgevich Serov (“the applicant”), on 16 January 2001.

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

3. On 4 April 2005 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 1964 and lives in Saratov.

A. Proceedings against a municipal company and Social Security Committee

5. The applicant was employed by a municipal company (the “company”). After his dismissal, the company issued a certificate indicating the applicant’s average monthly salary (the “certificate”). On the basis of that certificate, the local Social Security Committee calculated his disability allowance (*пенсия по инвалидности*).

6. The applicant considered that this certificate had to be amended to take account of the pay he had received in 1998 as a juror. His company refused to amend the certificate.

7. In April 1999 the applicant sued the company and the local Social Security Committee. He sought amendment of the certificate, payment of the allowance arrears accrued in 1999 and compensation in the amount of an average monthly salary for a delayed return of his employment record (*трудова́я кни́жка*). It appears that he subsequently amended his claims and asked the court to order that the amended certificate should also mention amounts awarded to him under judgments dated 17 June 1999 and 19 January 2000. According to the applicant, he submitted a copy of the above judgments to the District Court on an unspecified date.

8. By judgment of 23 March 2000, the Oktyabrskiy District Court of Saratov ordered the company to provide the Social Security Committee with the amended certificate indicating the pay received by the applicant in 1998 as a juror. By the same judgment, the District Court ordered the Committee to re-calculate the applicant’s allowance. The District Court rejected the remainder of the applicant’s claims as follows:

“...the claim for compensation in respect of non-pecuniary damage should be rejected because no proof of such damage has been adduced...”

9. On the same date, the applicant asked the District Court to issue an additional judgment under Article 205 of the Code of Civil Procedure (see paragraph 27 below). He considered that the District Court had omitted to list in the amended certificate the amounts awarded to him under the above-mentioned judgments of 17 June 1999 and 19 January 2000. This request was not accompanied by a copy of those judgments. It appears that this request was lost by one of the District Court’s employees.

10. On 18 April 2000 the applicant also asked the District Court to rule on his earlier claim for compensation for the delayed return of his employment record.

11. In reply to the applicant’s complaint, by letter dated 13 November 2001 the President of the District Court informed the applicant that the case file contained no request for an additional judgment; no decision on such request had been taken.

12. On 27 November 2001 the District Court fixed a new time-limit for lodging an appeal against the judgment of 23 March 2000, having regard to

the fact that between March 2000 and September 2001 the applicant had been in a mental institution.

13. On 27 December 2001 the Saratov Regional Court amended the judgment of 23 March 2000 on appeal, indicating that the adjustment would be effective from 29 March 1999. As regards the applicant's claim for compensation, the Regional Court held as follows:

“...the court upholds the judgment as regards the claim ... [relating to] the retention of the employment record because there had been no proof that the Social Security Committee had unlawfully retained it or that any damage had been caused to the applicant...”

There is no proof that the administration of the municipal company unlawfully retained the applicant's employment record.”

14. The applicant instituted proceedings against the President of the Oktyabrskiy District Court and its registry in relation to the failure to examine his above requests for an additional judgment. On 14 June 2002 the Oktyabrskiy District Court confirmed that the request of 23 March 2000 had been received by the registry but had apparently been lost. The District Court discontinued the proceedings for lack of jurisdiction.

15. On 22 July 2004 the bailiffs' service initiated enforcement proceedings in respect of the judgment of 23 March 2000, as amended by the Regional Court on 27 December 2001.

16. According to the Government, on several occasions the bailiff invited the company's insolvency manager to enforce the judgment.

17. On 28 April 2005 the company issued the amended certificate. On 29 April 2005 the Pensions Department re-calculated the applicant's allowance.

18. It appears that on 24 May 2005 the applicant received 771.96 Russian roubles (RUB) in allowance arrears for the period from 29 March 1999 to 31 July 2001.

B. Proceedings against the Insurance Fund

19. In 2000 the applicant sued the Regional Social Insurance Fund in the Frunzenskiy District Court of Saratov. He sought to obtain from the Fund “compensation for suffering and disability which had been allegedly caused by the Fund's refusal to provide him with New Year gifts” and “a sample of urine”.

20. It appears that on 13 March 2001 the District Court sent a notification to the applicant that a hearing had been listed at 9.30 a.m. on 15 March 2001. The applicant received this notification on 15 March 2001. On that date the District Court refused to process the case because the applicant had not appeared or asked for a default judgment to be issued.

21. On 19 March 2001 the District Court found that the applicant had been apprised of the hearing date but chose not to attend it. Having heard the respondent, the District Court rejected the applicant's claims. On 26 March 2001 a copy of the judgment was sent to the applicant's address. The judgment became final on 30 March 2001.

22. It appears that the applicant appealed against the decision of 15 March 2001. The outcome of those proceedings remains unclear.

23. The applicant did not appeal against the judgment of 19 March 2001 and it became final on 30 March 2001.

C. Other proceedings

24. The applicant sued several judges who had allegedly issued wrong decisions in his civil cases or had failed to examine his complaints. On 1 November 2000 and 27 June 2001 the Saratov Regional Court took the final decisions dismissing his complaints on procedural grounds. On 19 April 2002 the Oktyabrskiy District Court rejected his further complaints as unfounded.

25. The applicant also sued the mental hospital of Saratov. On 8 October 2003 the Regional Court took the final decision rejecting his complaint on procedural grounds.

26. Finally, the applicant sued his former employer, a private company, for damages. On 12 January 2005 the District Court awarded the applicant RUB 1,000 against his former employer.

II. RELEVANT DOMESTIC LAW

27. Under the Code of Civil Procedure, the court which decided the case may issue an additional judgment if it had not ruled on one or several claims submitted to it by the parties (Article 205). The court's decision as to the necessity of an additional judgment may be appealed to a higher court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE DELAY IN ENFORCEMENT OF THE JUDGMENT OF 23 MARCH 2000

28. The applicant complained under Article 6 § 1 of the Convention that the judgment of 23 March 2000, as amended on 27 December 2001, had not

been enforced in good time. The relevant part of that provision reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

A. Admissibility

29. The Court observes that under the judgment of 23 March 2000, as amended on 27 December 2001, the defendant municipal company was to provide the Social Security Committee with a certificate relating to the applicant’s employment history. The Committee was then to re-calculate his disability allowance on the basis of that certificate.

30. The Court notes that the Government did not contest that the State was directly responsible for the enforcement of the above judgment (see *Gizatova v. Russia*, no. 5124/03, §§ 18-29, 13 January 2005; *Shlepin v. Russia*, no. 3046/03, § 24, 1 February 2007; *Grigoryev and Kakaurova v. Russia*, no. 13820/04, § 35, 12 April 2007). The Court has no reasons to reach a different conclusion.

31. 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

32. The Government submitted that the writ of execution in respect of the judgment of 23 March 2000 had been forwarded to the bailiffs’ service in July 2004. The Government submitted that the applicant’s disability allowance had been recalculated in April 2005. Thus, the judgment had been enforced in full. The applicant had also received the disability allowance arrears for the period from March 1999 to July 2001. The delay in enforcement had been due to the pending insolvency proceedings against the company. The Government concluded that there had been no violation of Article 6 § 1 of the Convention.

33. The applicant claimed that the proper enforcement of the judgment had also implied payment of the allowance arrears for the period from July 2001 to May 2005.

34. The Court observes that the judgment of 23 March 2000 became final on 27 December 2001 and called for re-calculation of the applicant’s disability allowance from 29 March 1999. That re-calculation was carried out on 29 April 2005. Having regard to the wording and the contents of the judgment, the Court finds that it did not expressly require payment of the arrears resulting from the recalculation of the applicant’s allowance.

35. Thus, the enforcement proceedings took more than three years and four months. The Government have not substantiated that the applicant was accountable for any delays.

36. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the ones in the present case (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III; *Gizzatova*, §§ 18-29; *Shlepin*, §§ 24-25, and *Grigoryev and Kakaurova*, §§ 32-40, all cited above; see also *Blanutsa v. Ukraine*, no. 35274/03, § 24 et seq., 20 September 2007; *Lisnyy v. Ukraine*, no. 4204/03, §§ 20-22, 25 October 2007).

37. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delay in enforcement of the judgment of 23 March 2000, as amended on 27 December 2001. Having regard to its case-law on the subject, the Court finds that by failing, for a long period of time, to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court.

38. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE NATIONAL COURT'S FAILURE TO EXAMINE ONE OF THE APPLICANT'S CLAIMS

39. The applicant complained under Article 6 § 1 of the Convention that in its judgment of 23 March 2000 the Oktyabrskiy District Court had omitted to examine his claim for inclusion of certain sums into the certificate; the District Court had not examined his request for an additional judgment in respect of that claim.

A. Admissibility

40. The Court notes 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

41. The Government submitted that the "Russian Federation courts" had examined the applicant's request for an additional judgment and rejected it. In any event, the applicant had not attached a copy of the judgments of 17 June 1999 and 19 January 2000 to his statement of claim or his request for an additional judgment.

42. The applicant contended that the District Court had not examined his request for an additional judgment in respect of his claim for inclusion into the certificate of the amounts awarded to him under the judgments of 17 June 1999 and 19 January 2000. He concluded that there had been no court decision determining that claim. He insisted that he had submitted a copy of the above judgments in the course of the proceedings before the District Court.

43. The Court observes that the applicant complained in essence about the District Court's failure to rule on one of his claims and its further omission to remedy that shortcoming by way of an additional judgment.

44. The Court reiterates that the procedural guarantees laid down in Article 6 § 1 of the Convention secure to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36). However, the institution of proceedings does not, in itself, satisfy all the requirements of Article 6 § 1. The Convention is intended to guarantee not rights which are theoretical or illusory but those which are practical and effective. Thus, the right of access to a court includes not only the right to institute proceedings but also the right to obtain a "determination" of the dispute by a court.

45. Furthermore, the Court reiterates that, according to its established case-law, reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (see, among others, *Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003; *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29). A further function of a reasoned decision is to demonstrate to the parties that they have been heard, to afford them the possibility to appeal against that decision and the possibility of having the decision reviewed by an appellate body (see *Suominen*, cited above, § 37).

46. The Court observes, and it is not in dispute between the parties, that the applicant did raise a claim for inclusion of certain amounts in the certificate in the course of the proceedings which resulted in the judgment of 23 March 2000, and that such claim was not determined in the above judgment. It remains to be ascertained whether that claim was subsequently examined by the District Court or the court of appeal.

47. The Court notes first that the Government did not submit a copy of any court decision or other proof in support of their argument that the applicant's request for an additional judgment had been dealt with. On the contrary, in June 2002 the District Court confirmed that this request had been received by the registry but had apparently been lost (see paragraph 14

above). Second, nothing in the file suggests that the above claim was examined by the Regional Court on appeal against the judgment of 23 March 2000.

48. Thus, the Court concludes that the applicant's claim for inclusion of certain amounts in the employment certificate was not examined by the national courts. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

49. The applicant further complained under Article 6 § 1 of the Convention that in its judgment of 23 March 2000 the Oktyabrskiy District Court had omitted to examine his claim for compensation for the retention of his employment record. He also complained that the Frunzenskiy District Court had not examined his complaint against the Social Insurance Fund.

A. As regards the claim for compensation for the retention of the employment record

50. The Government argued that the District Court had examined and rejected as unfounded the applicant's claim for compensation. That claim was also examined on appeal by the Regional Court which upheld the judgment of the District Court.

51. The applicant contended that the District Court had not even mentioned his claim for compensation; the Regional Court had no competence to rule on that claim in the first instance.

52. Having regard to the material in its possession and the contents of the judgment of 27 December 2001 (see paragraph 13 above), the Court finds that even though the first-instance court had apparently neglected to make specific findings on that claim, that omission was remedied by the court of appeal (see, *mutatis mutandis*, *Bryan v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-A, §§ 40-48).

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

B. Proceedings against the Insurance Fund

54. The Government submitted that the applicant's complaint had been examined by that court on 19 March 2001. That judgment had been notified to the applicant on 26 March 2001.

55. The applicant replied that he had not been apprised of the hearing on 19 March 2001 and had not attended it. He had become aware of the

judgment of 19 March 2001 in 2005, after it had been mentioned in the Government's observations.

56. The Court reiterates that the applicability of Article 6 of the Convention under its civil head depends on whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question which must be civil in nature (see *Zander v. Sweden*, judgment of 25 November 1993, Series A no. 279-B, p. 38, § 22). Considering the nature of the applicant's claims (see paragraph 19 above), the Court finds that the dispute in question was not of a genuine or serious nature, nor did it concern any right recognised under the domestic law. Accordingly, Article 6 § 1 is not applicable in the instant case.

57. Hence, the applicant's complaint should be rejected as incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. The applicant complained that the national courts had failed to examine his complaints against several judges and had wrongly decided his cases against the mental hospital and one of his former employers. The Court has examined the remainder of the applicant's complaints as submitted by him. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 63,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government considered that no award should be made or that a finding of a violation would constitute adequate just satisfaction.

62. The Court notes that it found a violation of Article 6 § 1 of the Convention on account of the delay in enforcement of the judgment of 23 March 2000 and the courts' failure to examine one of the applicant's claims, and declared inadmissible the remainder of the applicant's complaints. Taking into account the violations found and making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

63. The applicant claimed EUR 55 in respect of the expenses incurred in relation to the proceedings before the Court.

64. The Government submitted that the applicant's claims were unreasonable.

65. Having regard to the materials in its possessions, the Court awards the applicant EUR 55 under this head.

C. Default interest

66. 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 applicant's complaints about the delay in enforcement of the judgment of 23 March 2000, as amended on 27 December 2001, and the courts' failure to examine his claim for inclusion of certain amounts into a certificate admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the delay in enforcement of the judgment of 23 March 2000, as amended on 27 December 2001;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the courts' failure to examine the applicant's claim for inclusion of certain amounts into a certificate;

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 1,000 (one thousand euros) in respect of non-pecuniary damage, and EUR 55 (fifty-five euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amounts to the applicant;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 26 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President