



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

FIFTH SECTION

CASE OF PETUKHOV v. RUSSIA

(Application no. 40322/02)

JUDGMENT

STRASBOURG

26 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 Petukhov v. Russia,

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

Peer Lorenzen, *President*,

Rait Maruste,

Volodymyr Butkevych,

Anatoly Kovler,

Renate Jaeger,

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. 40322/02) 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 Anatoliy Aleksandrovich Petukhov (“the applicant”), on 2 October 2002.

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 27 February 2006 the Court decided to communicate the complaint concerning the non-enforcement of domestic judgments 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 1949 and lives in Kirov.

5. In August 1997 the applicant was mistreated by the police. He brought two civil actions against them.

6. On 29 March 2000 and 9 January 2001 the Oktyabrskiy District Court of Kirov held for the applicant and awarded him compensation. It appears that both judgments became binding ten days after their pronouncement.

The judgment of 29 March 2000 was not enforced, because the Ministry of Finance had lost the writ of enforcement. The judgment of 9 January 2001 was enforced on 5 June 2006.

II. RELEVANT DOMESTIC LAW

7. 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

8. The applicant complained that about the lengthy non-enforcement of the judgments. 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

9. 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

10. The Government admitted that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

11. There has, accordingly, been a violation of these Articles.

2. ALLEGED VIOLATION OF ARTICLES 1, 3, AND 5 OF THE CONVENTION

12. The applicant complained under Articles 1, 3, and 5 of the Convention about the mistreatment by the police and the lack of an effective investigation.

13. The Court notes that the facts complained about predate 5 May 1998, when the Convention entered into force in respect of the Russian Federation.

14. It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4 (see *Voroshilov v. Russia* (dec.), no. 21501/02, 8 December 2005).

3. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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

16. The applicant claimed 51,100 euros (EUR) in respect of pecuniary damage and EUR 300,000 in respect of non-pecuniary damage.

17. The Government argued that the claim in respect of pecuniary damage was unsubstantiated and that the claim in respect of non-pecuniary damage was excessive.

18. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, making its assessment on an equitable basis, it awards the applicant EUR 3,900 in respect of non-pecuniary damage.

B. Costs and expenses

19. The applicant also claimed 456.50 Russian roubles for the costs and expenses incurred before the Court.

20. The Government argued that this claim was unsubstantiated.

21. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10 for the proceedings before the Court.

C. Default interest

22. 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 non-enforcement of domestic judgments 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 according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,900 (three thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 10 (ten euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;

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.

Claudia Westerdiek
Registrar

Peer Lorenzen
President