



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

FIRST SECTION

CASE OF BELOTSERKOVETS v. RUSSIA

(Application no. 34679/03)

JUDGMENT

STRASBOURG

3 July 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 Belotserkovets 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 12 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 34679/03) 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 Sergey Ivanovich Belotserkovets (“the applicant”), on 25 September 2003.

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

3. On 21 November 2006 the Court decided to communicate the complaint concerning non-enforcement of binding 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 1953 and lives in Astrakhan.

5. As a victim of Chernobyl, the applicant is entitled to social benefits. As the authorities had failed to provide the benefits in full, the applicant brought four civil actions.

6. On 3 June 2003 the Kirovskiy District Court of Astrakhan awarded the applicant arrears, fixed a new amount of periodic payments, and ordered

that in future this amount should be adjusted for the cost of living. This judgment became binding on 1 August 2003, and was enforced in September–October 2003.

7. On 3 June 2004 the district court awarded the applicant arrears. This judgment became binding on 20 August 2004, and was enforced in January–July 2005.

8. On 30 August 2004 the district court ordered a local authority to provide the applicant with a decent flat. This judgment became binding on 28 September 2004. From November 2004 to May 2005 the enforcement proceedings were stayed pending supervisory-review proceedings requested by the local authority. In October 2005 the local authority offered the applicant a flat, but he refused it considering it too small to house his family. On a bailiff's request, on 7 February 2006 the district court specified that the flat was not meant for the applicant's family members. In July 2006 the local authority offered the applicant another flat, and on 28 September 2006 he accepted it.

9. On 24 October 2005 the district court awarded the applicant arrears and upgraded periodic payments. This judgment became binding on 7 November 2005, and was partly enforced in December 2005. In March–April 2006 the bailiff twice returned the writ of enforcement to the applicant, because the judgment had to be executed by the social authority directly. On the applicant's request, on 6 February 2007 the Presidium of the Astrakhan Regional Court quashed the judgment on supervisory review and ordered a rehearing.

II. RELEVANT DOMESTIC LAW

10. 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

11. The applicant complained about the lengthy non-enforcement of the judgments. The Court will examine 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 § 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

12. The Government argued that this complaint was manifestly ill-founded. The judgments had been enforced reasonably promptly, and the authorities had not idled. Any delays had been caused by the applicant’s failure to submit necessary papers, by his refusal from settlement offers, and by the intervention of the supervisory-review authorities.

13. The applicant argued that his complaint was well-founded. The authorities continued to underpay him. There had been no fault on his part for the long non-enforcement of the second judgment. The State should take the blame for the intervention of the supervisory-review authorities. The writ offered by the local authority had been unacceptable. The fourth judgment could have been enforced without the applicant presenting the writ of enforcement.

14. 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

15. 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 (*Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

16. The enforcement of the four judgments lasted respectively two months, ten months, two years, and one year and two months.

The first two periods are compatible with the requirements of the Convention (see, for example, *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004). There has, accordingly, been no violation of Article 6 § 1 or Article 1 of Protocol No. 1 in this regard.

17. On the other hand, the last two periods are *prima facie* incompatible with the Convention. It appears that the delay was to a significant extent caused by an intervention of the supervisory-review authorities and the uncertainty as to which authority was responsible for the enforcement. The Court considers that the applicant cannot be blamed for these circumstances (see *Timofeyev v. Russia*, no. 58263/00, § 42, 23 October 2003; *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

18. 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 in regard to these judgments.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The applicant also complained under Articles 3, 6, and 13 of the Convention, and Article 1 of Protocol No. 1 about the miscalculation of his benefits and about the domestic courts' findings and conduct of the proceedings.

20. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 32,030,442 Russian roubles in respect of pecuniary damage and 58,300 euros (EUR) in respect of non-pecuniary damage.

24. The Government argued that a mere finding of a violation would be sufficient just satisfaction.

25. 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, it awards the applicant on an equitable basis EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant also claimed EUR 2,100 for the costs and expenses incurred before the Court.

27. The Government rejected this claim.

28. 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 100 for the proceedings before the Court.

C. Default interest

29. 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 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 in respect of two judgments and no violation in respect of the remainder;
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 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred 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 3 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President