



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

THIRD SECTION

CASE OF LIMASOVY v. RUSSIA

(Application no. 37354/03)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

This judgment may be subject to editorial revision.

In the case of Limasovy v. Russia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Anatoly Kovler,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 37354/03) 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 two Russian nationals, Mr Mikhail Anatolyevich Limasov and Ms Yelena Aleksandrovna Limasova (“the applicants”), on 29 October 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 15 November 2005 and 17 October 2006 the Court decided to communicate the complaints concerning non-enforcement and supervisory review 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 applicants are husband and wife. They were born in 1965 and live in Novokuznetsk.

5. In 1993 both applicants subscribed to a State savings scheme for buying cars. The State failed to provide the cars, and the applicants had to sue the Government.

6. On 1 April 2003 the Ust-Yansk District Court of Yakutia gave two judgments and awarded the first applicant 90,610.72 Russian roubles ("RUB"), and the second applicant RUB 108,654.15. These judgments became binding on 30 April 2003, but were not enforced immediately. On the Government's request, on 14 October 2004 the Presidium of the Supreme Court of Yakutia quashed the judgments and dismissed the applicants' claims on the ground that the district court had misinterpreted material laws.

7. In 2005 the first applicant again sued the Government for the undelivered car's price.

8. On 13 May 2005 the district court awarded the first applicant RUB 108,757.91. This judgment became binding on 24 May 2005. On the Government's request, on 18 May 2006 the presidium quashed the judgment and dismissed the first applicant's claims on the ground that the district court had misinterpreted material laws.

II. RELEVANT DOMESTIC LAW

9. 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.

10. The Code of Civil Procedure of 14 November 2002 defines the supervisory-review procedure as follows:

Article 376. Right to apply to a court exercising supervisory review

"1. Judicial decisions that have become legally binding, with the exception of judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by these judicial decisions.

2. Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding..."

Article 387. Grounds for quashing or altering judicial decisions by way of supervisory review

"Judicial decisions of lower courts may be quashed or altered by way of supervisory review on the grounds of substantial violations of substantive or procedural legal provisions."

Article 390. Competence of the supervisory-review court

"1. Having examined the case by way of supervisory review, the court may..."

(2) quash the judicial decision issued by a court of first, second or supervisory-review instance in whole or in part and remit the matter for a fresh examination...

(5) quash or alter the judicial decision issued by a court of first, second or supervisory-review instance and issue a new judicial decision, without remitting the matter for a fresh examination, if the substantive law has been erroneously applied or interpreted.”

THE LAW

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

11. The applicants complained about the non-enforcement and supervisory review of the judgments. The Court will examine these complaints 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 inadmissible. The complaint about the supervisory review of 14 October 2004 had been submitted outside the six-month time-limit laid down in Article 35 § 1 of the Convention, because the applicants had first mentioned this issue in their application form of 26 August 2005. Their earlier letter should not have been taken into consideration, because it had been unsigned. Besides, the

applicants had failed to exhaust domestic remedies, because they had not appealed against the bailiffs' negligence.

13. The applicants argued that this complaint was admissible. Their complaint about the supervisory review of 14 October 2004 had been made in time.

14. The Court finds that the complaint about the supervisory review of 14 October 2004 was submitted in time. It was included in the applicants' letter that reached the Court on 2 February 2005, and the Court does not doubt the letter's authenticity.

15. The Court also finds that a complaint against bailiffs would not have been an effective remedy (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005).

16. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

17. The Government argued that the judgments had not been enforced because they had been quashed on supervisory review. The supervisory review had been justified because it had been meant to correct a misinterpretation of material laws.

18. The applicants argued that the authorities had not intended to enforce the judgments, and that the supervisory review had upset the stability of the judgment.

19. The Court reiterates that Article 6 of the Convention includes the “right to a court” (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, § 36). To honour this right, the State must obey a binding judgment (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III) and avoid quashing it, save for correcting a judicial error or miscarriage of justice (see *Ryabykh v. Russia*, no. 52854/99, §§ 51–58, ECHR 2003-IX). Besides, an enforceable judgment constitutes a “possession” within the meaning of Article 1 of Protocol No. 1.

20. The Court considers that in the case at hand the State has breached the applicants' “right to a court” and prevented them from peacefully enjoying their possessions.

First, the State avoided paying the judgment debts for one year and five months, and for over eleven months, respectively. These periods cannot be considered reasonable.

Then the State quashed the judgments on supervisory review due to a misinterpretation of material laws. It is unavoidable that in civil proceedings the parties would have conflicting views on application of material laws.

The courts are called upon to examine their arguments in a fair and adversarial manner and make their assessment of the claim. Before the applications for supervisory review were lodged, the merits of the applicants' claims had been examined by the courts below. Nothing suggests that the courts had acted outside their competences or that there had been a fundamental defect in the proceedings before them. The fact that the Presidium disagreed with the assessment made by the courts below was not, in itself, a judicial error or miscarriage of justice warranting the quashing of binding and enforceable judgments and reopening of the proceedings (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

21. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The applicants also complained under Articles 13, 14, and 17 of the Convention, and Article 1 of Protocol No. 1 about the domestic courts' findings.

23. 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.

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

24. 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

25. In respect of pecuniary damage, the first applicant claimed RUB 108,757.91, the second applicant claimed RUB 108,654.15. In addition, the applicants jointly claimed 3,000 euros (“EUR”) as interest and an unspecified sum as inflationary loss.

26. The Government argued that this claim was unjustified and had no causal link with any violation the Court may find.

27. The Court considers that the violation found is best redressed by putting the applicants in the position they would have been if the Convention had been respected. It is therefore appropriate to award the applicants the equivalent in euros of the sums that they would have received if the judgments had not been quashed (see *Bolyukh v. Russia*, no. 19134/05, § 39, 31 July 2007). Under this head the Court awards each applicant EUR 3,200.

28. In respect of non-pecuniary damage, the applicants jointly claimed EUR 10,000.

29. The Government argued that this claim was excessive.

30. The Court considers that the applicants suffered distress and frustration because of the non-enforcement and supervisory review of the judgments. Making its assessment on an equitable basis, it awards the first applicant EUR 3,100 and the second applicant EUR 1,900.

B. Costs and expenses

31. The applicants also jointly claimed RUB 3,624.80 for the costs and expenses incurred before the domestic courts and the Court.

32. The Government noted that the costs and expenses should be awarded only if necessarily incurred and reasonable as to quantum.

33. 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 each applicant the sum of EUR 50 covering costs under all heads.

C. Default interest

34. 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 and supervisory review 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 to each 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 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 50 (fifty euros), plus any tax that may be chargeable to each applicant, in respect of costs and expenses;

(b) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,100 (three thousand one hundred 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;

(c) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,900 (one thousand nine hundred 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;

(d) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President