



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

FIRST SECTION

CASE OF SUKHORUKOV v. RUSSIA

(Application no. 23596/04)

JUDGMENT

STRASBOURG

31 July 2008

FINAL

31/10/2008

This judgment may be subject to editorial revision.

In the case of Sukhorukov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 23596/04) 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 Valeriy Lukyanovich Sukhorukov (“the applicant”), on 4 June 2004.

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 23 May 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The Government objected to the application of Article 29 § 3, but the Court dismissed this objection.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1953 and lives in Ust-Labinsk, a town in the Krasnodar Region.

5. On 31 March 1999 the Ust-Labinskiy District Court awarded the applicant 2,000 Russian roubles against a local welfare authority for a delayed payment of social benefits. This judgment became binding on 6 May 1999, but has not been enforced to date.

6. On 1 June 1999 the applicant submitted enforcement papers to bailiffs, and on 29 June 1999 the bailiffs passed the papers to the Treasury. In December 2001 the Treasury returned the papers to the applicant, because in the meantime the procedure of enforcement had changed.

7. To vindicate his right to a timely enforcement of the judgment, the applicant sued bailiffs for pecuniary and non-pecuniary damages. On 16 August 2002 the District Court rejected this claim, having found that the bailiffs had done everything they should have done to enforce the judgment.

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 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

9. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment. Insofar 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

10. The Government argued that this complaint was inadmissible. The applicant had failed to exhaust domestic remedies, because he could have complained to a prosecutor's office. Besides, the authorities had not been significantly responsible for the delayed enforcement. The delay had been mainly caused by the adoption of new rules of enforcement, the applicant's failure to follow them, and the applicant's generally disinterested attitude.

11. The applicant insisted on his complaint. He had not delayed the enforcement. He had many times complained to authorities, but without result.

12. With regard to domestic remedies, the Court reiterates that it is the Government who bear the burden of proof of the remedies' existence. The Government must show that the remedy was effective, accessible, capable of providing redress, and that it offered reasonable prospects of success (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). In the present case, the Government have not shown how complaints to prosecutors would have met these requirements (compare with, for example, *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, §§ 39–46, 16 October 2007). It follows that this part of the complaint cannot be rejected for non-exhaustion of domestic remedies.

13. 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

14. 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).

15. In the present case, the non-enforcement of the judgment has lasted for over nine years. The Government attributed most of this delay to the applicant's failure to follow the changing procedure of enforcement. However, the Court reiterates that, where a judgment is against the State, a person may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). By taking no initiative to comply with the judgment for such a considerable time, the authorities have breached the applicant's rights.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

17. The applicant complained under Article 13 of the Convention that he had no effective domestic remedy against the non-enforcement. Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

18. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

19. Having regard to the finding relating to the exhaustion of domestic remedies (see § 12 above), the Court considers that the Government have not shown that the applicant had at his disposal effective domestic remedies (see *Lositskiy v. Russia*, no. 24395/02, §§ 30, 14 December 2006).

20. There has, accordingly, been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 340 euros (EUR) in respect of pecuniary damage representing default interest for the non-payment of the judgment debt. He also claimed EUR 3,000 in respect of non-pecuniary damage.

23. The Government noted that these claims were unjustified. The applicant could have applied for interest in Russia, and there had been no causal link between the alleged violation and non-pecuniary damage.

24. As to pecuniary damage, the Court reiterates that violations of Article 6 are best redressed by putting an applicant in the position he would have been if Article 6 had been respected. The Government shall therefore secure, by appropriate means, the enforcement of the domestic courts' award (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). In addition, the Court awards the applicant EUR 135 as estimated interest for the non-payment of the judgment debt.

25. As to non-pecuniary damage, the Court considers that in the circumstance of the case a mere finding of a violation constitutes sufficient just satisfaction.

B. Costs and expenses

26. The applicant has made no claim under this head. Hence the Court makes no award.

C. Default interest

27. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that:
 - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court, and in addition pay the applicant EUR 135 (one hundred thirty-five euros), plus any tax that may be chargeable, in respect of 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President