



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

FIRST SECTION

CASE OF DOKOLIN v. RUSSIA

(Application no. 28488/04)

JUDGMENT

STRASBOURG

18 September 2008

FINAL

18/12/2008

This judgment may be subject to editorial revision.

In the case of Dokolin v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 August 2008,

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

PROCEDURE

1. The case originated in an application (no. 28488/04) 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 Aleksandr Lavrentyevich Dokolin (“the applicant”), on 19 July 2004.

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

3. On 30 September 2005 the Court decided to communicate the complaint concerning non-enforcement of a binding judgment to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

4. The applicant was born in 1939 and lives in Obninsk, a town in the Kaluga Region.

5. As a victim of Chernobyl, the applicant was entitled to benefits. Considering himself underpaid, he brought proceedings against the local welfare authority.

6. On 20 February 2004 the Obninsk Town Court held for the applicant, awarded arrears, fixed a new amount of periodic benefits with subsequent adjustment for the cost of living. This judgment became binding on 2 March 2004 and, according to the Government, was gradually enforced by January 2006.

7. Later, the applicant sued the welfare authority for its failure to enforce the judgment in time, but on 16 December 2004 the Kaluga Regional Court rejected this claim.

8. The applicant also believed that the judgment remained unenforced with regard to the adjustment for the cost of living. For this reason, he sued the welfare authority, but on 7 April 2005 the Town Court rejected this claim as unfounded.

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.

THE LAW

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

10. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment. In so 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

11. 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

12. The Government admitted that the judgment remained unenforced for almost two years, and that this delay breached the applicant’s rights.

13. In the circumstances of the present case the Court finds no reason to hold otherwise. Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

14. The applicant also complained under Article 6 of the Convention that his second litigation was unfair, under Article 14 of the Convention that he was discriminated against on the basis of his status as a victim of Chernobyl, and under Article 1 of Protocol No. 1 about the outcome of his second litigation.

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

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 23,214.92 Russian roubles in respect of pecuniary damage. This amount represented his estimate of allegedly underpaid adjustment for the cost of living.

17. The Government argued that this claim had been unfounded because it had been rejected by the Town Court on 7 April 2005.

18. The Court reiterates that domestic authorities are better placed to assess the calculation of the applicant's benefits, including the adjustment for the cost of living (see *Sirotin v. Russia* (dec.), no. 38712/03, 14 September 2006). Noting that the domestic court rejected the applicant's claim, the Court does likewise.

19. The applicant also claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government argued that EUR 3,000 would be adequate just satisfaction.

21. Making its assessment on an equitable basis, the Court awards EUR 1,600 under this head.

B. Costs and expenses

22. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

23. 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 the judgment admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and 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 in accordance with Article 44 § 2 of the Convention, EUR 1,600 (one thousand six 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;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President