



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

FIRST SECTION

CASE OF SHAFRANOV v. RUSSIA

(Application no. 24766/04)

JUDGMENT

STRASBOURG

25 September 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Shafranov 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 24766/04) 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 Taras Nikolayevich Shafranov (“the applicant”), on 24 June 2004.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. On 12 June 2007 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 1973 and lives in Krasnoyarsk, a city in the Krasnoyarsk Region.

5. In 2001 the applicant sued his employer, a State unitary enterprise FGUP “Yeniseirechsvyaz”, for salary arrears. On 26 February 2002 the Justice of the Peace of District 91 of the Tsentralniy District of Krasnoyarsk awarded the applicant 100,000 Russian roubles (RUB). This judgment became binding on 9 March 2002, but was not enforced.

6. In July 2002 insolvency proceedings were initiated against the enterprise. In 2003–2004 the applicant received RUB 22,438. On 25 October 2004 the enterprise was liquidated.

7. In two separate proceedings in 2003–04 the applicant attempted to sue the State for the debt of the enterprise, but courts refused to proceed because the applicant had failed to name the exact defendant and to specify his claims.

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 about the non-enforcement of the judgment. The Court will examine this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1, which insofar as relevant 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 insolvency of the enterprise had made a full enforcement impossible. The State had not been responsible for the enterprise's debts, because it had been a separate economic entity. The insolvency of the enterprise had been caused by the enterprise itself, and not by the State.

11. The applicant maintained his complaint.

12. The Court considers that the State has not shown that FGUP "Yeniseirechsvyaz" enjoyed such institutional and operational independence from the State that it would absolve the latter from responsibility under the Convention for its acts and omissions (see, for example, *Grigoryev and Kakaurova v. Russia*, no. 13820/04, §§ 35–36, 12 April 2007). It follows that this complaint cannot be rejected as incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3.

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

15. In the case at hand, the judgment has not yet been fully enforced. The period of non-enforcement has accordingly been over six years and three months.

16. This period is *prima facie* incompatible with the requirements of the Convention. The Government justify the delay mainly with the liquidation of the defendant, but the Court has earlier rejected this excuse in similar circumstances (see *Shlepin v. Russia*, no. 3046/03, § 25, 1 February 2007).

17. 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 Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

18. The applicant also complains about the domestic courts' refusal to deal with his actions directed against the State.

19. 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.

20. 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

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 7,716 euros (EUR) in respect of pecuniary damage. This claim included the outstanding judgment debt, an allegedly underpaid salary, and the earnings the applicant had allegedly lost by spending time on litigation.

23. The Government argued that this claim could not be entertained, given that the enterprise had been liquidated.

24. 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).

25. The applicant also claimed EUR 833,973 in respect of non-pecuniary damage.

26. The Government argued that this claim had been excessive and unreasonable.

27. The Court accepts that the applicant must have been distressed by the non-enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

28. The applicant also claimed RUB 3,870 for the costs and expenses incurred before the Court.

29. The Government argued that this claim had been unsubstantiated, given that the applicant’s Convention rights had not been breached.

30. 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

31. 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, 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 following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand 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 25 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President