



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

FIRST SECTION

CASE OF SMELOV v. RUSSIA

(Application no. 33660/04)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

02/01/2009

This judgment may be subject to editorial revision.

In the case of Smelov 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 11 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 33660/04) 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 Nikitovich Smelov.

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

3. On 29 August 2006 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Obninsk, a town in the Kaluga Region.

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

6. On 22 July 2003 the Obninsk Town Court awarded the applicant arrears in respect of health damages and fixed a new amount of periodic payments with their subsequent adjustment for the cost of living. This

judgment became binding on 25 September 2003 but was not fully enforced. On the applicant's request, on 9 February 2006 the Town Court set aside the judgment due to newly-discovered circumstances.

7. On 1 August 2003 the Town Court fixed a new amount of periodic payments in respect of additional benefits with their subsequent adjustment for the cost of living. This judgment became binding on 25 September 2003 but was not fully enforced. On the applicant's request, on 14 February 2006 the Town Court set aside the judgment due to newly-discovered circumstances.

8. On 22 March 2004 the Town Court fixed a new amount of periodic payments in respect of health damages. This judgment became binding on 2 April 2004 but was not fully enforced. On the applicant's request, on 10 March 2006 the Town Court set aside the judgment due to newly-discovered circumstances.

9. On 14 April 2004 the Town Court fixed a new amount of periodic payments in respect of additional benefits with their subsequent adjustment for the cost of living. This judgment became binding on 26 April 2004 but was not fully enforced. On the applicant's request, on 28 March 2006 the Town Court set aside the judgment due to newly-discovered circumstances.

10. After a rehearing, on 16 May 2006 the Town Court regrouped the four above judgments, awarded the applicant arrears and fixed new amounts of the periodic payments with their subsequent adjustment for the cost of living. This judgment became binding on 21 August 2006.

II. RELEVANT DOMESTIC LAW

11. 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

12. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgments. 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

13. The Government argued that this complaint was inadmissible. There had indeed been delays in the enforcement of the four judgments caused by a lack of budgetary means. Nevertheless, the judgment of 16 May 2006 awarded the outstanding debts and thus redressed the applicant’s rights.

14. The applicant maintained his complaint. The judgment of 16 May 2006 had not been enforced, like the four earlier judgments.

15. The Court reiterates that to deprive an applicant of his status as a victim, the State must acknowledge a breach of his rights and afford adequate redress (see *Amuur v. France*, judgment of 25 June 1995, *Reports of Judgments and Decisions* 1996-III, § 36). In the present case, the judgment of 16 May 2006 awarded the applicant outstanding benefits. It did not, however, award him pecuniary or non-pecuniary damages for the delayed enforcement of the four earlier judgments. For this reason, the Court cannot accept this measure as an “adequate redress”. It follows that the application cannot be rejected as incompatible *ratione personae* with the provisions of the Convention.

16. The Court notes that the application 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

17. 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).

18. In the case at hand, the enforcement of the four judgments lasted from the dates when they became binding to the dates when they were set aside due to newly-discovered circumstances. It is true that in some similar cases the Court did not consider the date of the quashing as the end of the enforcement, given that the quashing breached the principle of legal certainty (see *Sukhobokov v. Russia*, no. 75470/01, §§ 25–27, 13 April 2006). The present case is, however, different in that the quashing had been requested by the applicant himself and cannot be imputed to the State.

19. The periods of enforcement referred to above are incompatible with the requirements of the Convention. The Government have explained the delays by a lack of budgetary means, but the Court cannot accept this justification (see *Burdov*, cited above, § 35).

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

II. 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 78,882 Russian roubles in respect of pecuniary damage. This sum represented his inflationary loss. The Government argued that this claim should have been rejected as it related also to judgments that had not been the subject of the present case.

23. Having regard to the information at its disposal, the Court estimates the applicant’s pecuniary damage at 700 euros (EUR). It accordingly awards this sum under this head.

24. The applicant also claimed EUR 10,000 in respect of non-pecuniary damage. The Government argued that this claim had been excessive and unreasonable.

25. The Court accepts that the applicant must have been distressed by the non-enforcement of the judgments. Making its assessment on an equitable basis, the Court awards EUR 1,900 under this head.

B. Costs and expenses

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

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*
 - (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 700 (seven hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 1,900 (one thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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 2 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President