



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

FIRST SECTION

CASE OF ZUBAREV v. RUSSIA

(Application no. 38845/04)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

02/01/2009

This judgment may be subject to editorial revision.

In the case of Zubarev 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 11 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 38845/04) 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 Vladislav Afanasyevich Zubarev (“the applicant”), on 9 September 2004.

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 President of the First Section decided to give notice of the application to the Government. He 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 1937 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 sued the local welfare authority.

6. On 19 March 2004 the Obninsk Town Court awarded the applicant arrears and fixed new amounts of periodic payments. This judgment became binding on 30 March 2004 but was not fully enforced.

7. On the applicant's request, on 9 March 2006 the Town Court set the judgment aside due to newly-discovered circumstances.

8. On 17 April 2006 the Town Court awarded the applicant arrears (including sums outstanding after the judgment of 19 March 2004) and fixed new amounts of periodic benefits.

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 of 19 March 2004. 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

11. The Government argued that this complaint was inadmissible. They acknowledged delays in the enforcement of the judgment of 19 March 2004.

But since the judgment of 17 April 2006 awarded any outstanding amounts, they considered that the applicant's rights had been restored.

12. The applicant maintained his complaint. He submitted that the judgment of 17 April 2006 had not been enforced in time either.

13. 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 17 April 2006 awarded the applicant outstanding benefits. It did not, however, award him pecuniary or non-pecuniary damages for the delayed enforcement of the earlier judgment. 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.

14. 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

15. 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).

16. In the case at hand the enforcement of the judgment of 19 March 2004 lasted one year and eleven months: from the date when it became binding to the date when it was set aside on the applicant's request.

17. This period is *prima facie* incompatible with the requirements of the Convention, and the Government have not provided any plausible justification for the delay.

18. 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

19. 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

20. In respect of pecuniary damage, the applicant claimed 10,112.53 Russian roubles (RUB). This sum represented his inflationary loss. The Government considered this claim unsubstantiated.

21. Having regard to the information at its disposal, the Court estimates the applicant’s pecuniary damage at 300 euros (EUR). It accordingly awards this sum under this head.

22. In respect of non-pecuniary damage, the applicant claimed EUR 4,100. The Government considered this claim excessive and suggested that any possible award should be equal to the one in the case of *Burdov v. Russia*.

23. The Court accepts that the applicant might have been distressed by the non-enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 1,600 under this head.

B. Costs and expenses

24. The applicant also claimed RUB 1,034.10 for the costs and expenses incurred before the Court. The Government considered this claim reasonable and substantiated.

25. 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 30 for the proceedings before the Court.

C. Default interest

26. 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 300 (three hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 30 (thirty 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 amount[s] 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