



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

FIRST SECTION

CASE OF RODICHEV v. RUSSIA

(Application no. 3784/04)

JUDGMENT

STRASBOURG

23 October 2008

FINAL

23/01/2009

This judgment may be subject to editorial revision.

In the case of Rodichev v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 3784/04) 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 Vladimir Pavlovich Rodichev (“the applicant”), on 1 December 2003.

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

3. On 27 June 2005 the Court decided to communicate the complaint concerning non-enforcement of a judgment to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1946 and lives in Balakhna, a town in the Nizhniy Novgorod Region.

5. On 29 July 2003 the Polyarnozorinskiy District Court of the Murmansk Region relied on the Law on State Pensions and ordered a pension authority to recalculate the applicant’s pension and to pay arrears. This judgment became binding on 27 August 2003, but was not enforced.

6. On 23 October 2003 a bailiff attached the authority's accounts. The authority applied for a judicial review of the attachment order. On 28 October 2003 the bailiff stayed the enforcement proceedings for ten days pending the judicial review. Later, the bailiff stayed the proceedings four more times: on 11, 20, and 30 November, and 10 December 2003. On 18 December 2003 the District Court approved the attachment order, but since the authority had appealed against this decision, the enforcement was stayed pending the appeal, i.e. until 10 March 2004.

7. The applicant was absent from the hearing of 18 December 2003. According to the court, the applicant had asked for the hearing to be held in his absence. According to the applicant, he had never been invited.

8. In separate proceedings, on 29 January 2004 the Constitutional Court gave its own interpretation of the Law on State Pensions.

9. The pension authority considered that this interpretation superseded the interpretation given by the District Court, and on this ground asked it to reconsider the case due to newly-discovered circumstances. On 17 November 2004 the District Court granted this request, rejected the applicant's claim against the pension authority, and terminated the enforcement proceedings.

II. RELEVANT DOMESTIC LAW

10. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months.

11. Under section 19 of this Law, if there are interfering circumstances, a bailiff may on his own initiative or on the initiative of the debtor stay enforcement proceedings for a period of up to ten days. In this case he shall issue a decision in this regard and notify it to the parties, to the court, or any other body that has issued the writ of enforcement. This bailiff's decision may be appealed against in a relevant court within ten days.

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 about the non-enforcement of the judgment. The Court will consider this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. 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 manifestly ill-founded. The bailiff had not idled. The enforcement proceedings had several times been lawfully stayed.

14. The applicant reiterated his complaint. He condemned the domestic authorities’ alleged lawlessness and accused the district court of connivance.

15. 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

16. The Court reiterates that the non-enforcement or a 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 in the latter situation whether 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).

17. First, despite the Government’s argument that for some time the enforcement was lawfully stayed, the Court notes that the initiative of this stay had come from the pension authority and thus cannot be considered a mitigating circumstance (see, *mutatis mutandis*, *OOO PTK “Merkuriy” v. Russia*, no. 3790/05, § 26, 14 June 2007).

18. Second, the Court notes that the judgment has never been enforced since it was eventually set aside, because the District Court considered the

Constitutional Court's post-litigation interpretation of the Law on State Pensions as a newly-discovered circumstance. However, the Court has earlier found that such a quashing breaches the principle of legal certainty and the right to court (see *Smirnitskaya and Others v. Russia*, no. 852/02, §§ 41–46, 5 July 2007). In the present case the Court finds no reason to hold otherwise. It follows that the quashing cannot be accepted as dispensing the State from its obligation to enforce the judgment (see *Sukhobokov v. Russia*, no. 75470/01, §§ 25–26, 13 April 2006).

19. The foregoing considerations are sufficient to enable the Court to conclude that the non-enforcement of the binding judgment in the applicant's favour amounted to a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicant also complained under Article 6 of the Convention that he had not been called to the hearing of 18 December 2003.

21. The Court notes that the applicant's allegation contradicts the district court's statement that the applicant had declined to participate in the hearing. Be that as it may, the applicant has not appealed against the decision of 18 December 2003.

22. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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.”

24. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning non-enforcement 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;

Done in English, and notified in writing on 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President