



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

FIRST SECTION

CASE OF ARULEPP v. RUSSIA

(Application no. 35774/04)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/02/2009

This judgment may be subject to editorial revision.

In the case of Arulepp v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 16 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 35774/04) 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 Leontin Nikolayevich Arulepp (“the applicant”), on 6 September 2004.

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

3. On 14 November 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 1951 and lives in Panikovichi, a village in the Pskov Region.

5. As a victim of Chernobyl, the applicant is entitled to benefits. Considering himself underpaid, he sued the local welfare authority.

6. On 20 November 2002 the Pechorskiy District Court of the Pskov Region awarded the applicant arrears and fixed a new amount of periodic

benefits with their subsequent adjustment for the cost of living. This judgment became binding on 24 December 2002.

7. According to the Government, the judgment was gradually enforced by 7 June 2005. According to the applicant, the judgment was never fully enforced because of improper adjustment for the cost of living. On 27 February 2006 the Pskov Town Court recognised that the applicant's benefits had not been properly adjusted.

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 under Article 6 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgment. 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

10. 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

11. The Government admitted that the delayed enforcement of the judgment had breached the applicant's rights.

12. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

13. The applicant complained under Article 13 of the Convention that he had no effective domestic remedy against the delayed enforcement of the judgment.

14. The Court notes that this complaint is linked to the one examined above and must therefore be also declared admissible.

15. Nevertheless, having regard to the finding relating to Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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

17. The applicant claimed 36,739.81 Russian roubles (RUB) in respect of pecuniary damage. This amount represented his estimate of the underpaid adjustment for the cost of living.

18. The Government rejected this claim as unfounded.

19. The Court notes that the Pskov Town Court recognised that the judgment had not been fully enforced. 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 full enforcement of the judgment of 20 November 2002 award (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005).

20. The applicant also claimed 4,750 euros (EUR) in respect of non-pecuniary damage.

21. The Government found this claim reasonable.

22. 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 4,750 under this head.

B. Costs and expenses

23. The applicant also claimed RUB 174 for the costs and expenses incurred before the Court.

24. The Government found this claim reasonable and justified.

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 awards EUR 5 under this head.

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* that there is no need to examine the complaint under Article 13 of the Convention;
4. *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 applicant the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 4,750 (four thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 5 (five 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President