



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

FIRST SECTION

CASE OF KABANOV v. RUSSIA

(Application no. 37758/03)

JUDGMENT

STRASBOURG

14 November 2008

FINAL

14/02/2009

This judgment may be subject to editorial revision.

In the case of Kabanov 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 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 37758/03) 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 Grigoryevich Kabanov (“the applicant”), on 10 November 2003.

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 1 March 2006 the President of the First Section decided to give notice of the application to the Government. It was 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 1947 and lives in Vladikavkaz, a town in North Ossetia.

5. On 28 February 2002 the Leninskiy District Court of Vladikavkaz granted the applicant’s claim against the Regional Department of the Interior and awarded him RUB 690,393.80 in wage arrears. This judgment became binding on 11 March 2002 and was enforced on 27 October 2004.

6. Because the enforcement of the judgment had been delayed, on 27 December 2004 the District Court adjusted the award for the cost of living and awarded the applicant RUB 221,319.22. This judgment became binding on 11 January 2005 and was enforced on 28 October 2005.

II. RELEVANT DOMESTIC LAW

7. 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

8. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-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

9. The Government argued that this complaint was inadmissible. They agreed that the length of the enforcement of the judgment of 28 February 2004 had been incompatible with the Convention. Nevertheless, the

applicant's pecuniary damage caused by the delay had been made good by the judgment of 27 December 2004, and the authorities had been considering ways to make good non-pecuniary damage.

10. The applicant maintained his complaint. He argued that the enforcement of the second judgment had also lasted too long.

11. With regard to the Government's argument that the applicant's damage has been made good, 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 case at hand, the Government have acknowledged the breach, but the redress they afforded – the adjustment for the cost of living – was not adequate because it did not compensate non-pecuniary damage. It follows that the applicant retains his status as a victim, and that the application is compatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and cannot be rejected in accordance with Article 35 § 4.

12. 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

13. 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).

14. In the present case the enforcement of the judgments of 28 February 2002 and 27 December 2004 lasted two years and seven months, and nine months respectively. Whilst the second period cannot be considered unreasonable, the first one can. The Government have admitted this too.

15. In these circumstances, the Court holds that there has 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

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 RUB 18,812.13 in respect of pecuniary damage. This sum represented his inflationary loss caused by the delayed enforcement of the judgment of 27 December 2004.

18. The Government contested this claim because the enforcement period had been reasonable, and because it remained open to the applicant to receive compensation of his inflationary loss inside Russia.

19. The Court does not discern any causal link between the violation found and the pecuniary damage alleged, because the period of enforcement of the judgment of 27 December 2004 was reasonable. The Court therefore rejects this claim.

20. The applicant made no claim in respect of non-pecuniary damage. Accordingly, the Court makes no award under this head.

B. Costs and expenses

21. The applicant also claimed RUB 3,374.30 for the costs and expenses incurred before the domestic courts.

22. The Government argued that these expenses had no relation to the case.

23. 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 costs and expenses in the domestic proceedings.

C. Default interest

24. 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 in accordance with Article 44 § 2 of the Convention, EUR 100 (one hundred euros), plus any tax that may be chargeable, in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 14 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President