



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

FIRST SECTION

CASE OF KUZMINSKIY v. RUSSIA

(Application no. 40081/03)

JUDGMENT

STRASBOURG

14 November 2008

FINAL

14/02/2009

This judgment may be subject to editorial revision.

In the case of Kuzminskiy 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. 40081/03) 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 Vitaliy Vladimirovich Kuzminskiy (“the applicant”), on 8 December 2003.

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

3. On 17 September 2007 the President of the First Section decided to communicate the complaint concerning non-enforcement of judgments 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 Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Rostov-on-Don, a town in the Rostov Region.

5. In 2002–03 the applicant stood trial for bribery but was acquitted. The applicant spent this time in pretrial custody.

6. On 30 December 2003 the Rostov Regional Court awarded the applicant against the Ministry of Finance 48,245.12 Russian roubles (RUB) in respect of pecuniary damage inflicted by the trial. This judgment became binding on 11 March 2004 and was enforced on 29 April 2005.

7. On 28 April 2005 the Presidium of the Regional Court awarded the applicant against the Ministry of Finance RUB 10,000 in respect of non-pecuniary damage sustained in pretrial custody. This judgment became binding on 28 April 2005 and was enforced on 21 March 2006.

8. On 4 April 2004 the Sovetskiy District Court of Rostov-on-Don adjusted the award of 30 December 2003 for the cost of living and awarded a further RUB 7,034.68.

II. RELEVANT DOMESTIC LAW

9. 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 § 1 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgments of 30 December 2003 and 28 April 2005. 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. The applicant had failed to exhaust domestic remedies because he had not complained to courts about the Ministry of Finance's negligence. Besides, the damage caused by the delayed enforcement had been made good inside the State because the award had been adjusted for the cost of living. The judgments had been enforced within a reasonable time upon receipt from the applicant of due enforcement papers.

12. The applicant maintained this complaint. He had had no effective remedy to exhaust. He had retained his victim status, because the adjustment for the cost of living had included no acknowledgment of a violation of the Convention and had been insignificant. The judgments had been enforced too late. The applicant should not have had to initiate special procedure to obtain the awards.

13. With regard to domestic remedies, the Court reiterates that an appeal against the Ministry's negligence would yield a declaratory judgment that would reiterate what was in any event evident from the original judgment: the State was to honour its debt. This new judgment would not bring the applicant closer to his desired goal, that is the actual payment of the judicial award or, if appropriate, compensation for late payment (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005).

14. With regard to victim status, the Court reiterates that to deprive an applicant of this status, 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 redress afforded by the Government – the adjustment for the cost of living – was not adequate because it did not compensate non-pecuniary damage caused by the delayed enforcement.

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 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).

17. In the case at hand the enforcement of the judgments of 30 December 2003 and 28 April 2005 lasted one year and one month, and ten months respectively. To define these periods, the Court has taken the date of the judgments' entry into force as the starting date, because a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). This means that where a judgment is against the State, it is the State, not the creditor, who must take the initiative of enforcing it.

18. Of these two periods, the first one – one year and one month – cannot be considered as compatible with the requirements of the Convention. The judgment was easy to enforce because it required a simple bank transfer, and the applicant did not disrupt the enforcement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant also complained under Articles 3, 5, and 6 of the Convention about bad conditions in pretrial custody, about unlawfulness of his pretrial detention, and about not having been informed in time about the charges against him.

21. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contested this claim, and suggested that a finding of a violation would in itself be sufficient.

25. The Court accepts that the applicant must have been distressed by the delayed enforcement of the judgment of 30 December 2003. Making its assessment on an equitable basis the Court awards EUR 600 under this head.

B. Costs and expenses

26. The applicant made no claim for 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 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;
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 600 (six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage 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