



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

FIRST SECTION

**CASE OF AZARYEV v. RUSSIA**

*(Application no. 18338/05)*

JUDGMENT

STRASBOURG

14 November 2008

**FINAL**

*14/02/2009*

*This judgment may be subject to editorial revision.*



**In the case of** Azaryev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *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. 18338/05) 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 Vadim Vadimovich Azaryev (“the applicant”), on 12 April 2005.

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 3 September 2007 the President of the First Section decided to communicate the complaints concerning non-enforcement and supervisory review of binding 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 FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Pskov, a town in the Pskov Region.

5. The applicant sued his employer, a regional department of the Federal Debt Recovery Centre, for salary arrears.

6. On 18 May 2004 the Pskov Town Court awarded him against the Government 342,578 Russian roubles (RUB) in respect of the arrears and

RUB 20,000 in respect of non-pecuniary damages. This judgment became binding on 7 June 2004.

In July and December 2004 the applicant sent enforcement papers to the Ministry of Finance, but in September 2005 the Ministry returned the papers, because they did not indicate the Ministry as the defendant and did not specify the financial source to be charged. The applicant asked the Town Court to clarify the judgment, but on 23 November 2005 the court refused this request, because the judgment was clear as it stood. The judgment has not been enforced to date.

7. In the meantime, on the Government's request, on 12 November 2004 the Presidium of the Pskov Regional Court quashed the judgment in the part concerning the damages, and rejected this claim. The Presidium found that the courts below had misinterpreted material law.

8. On 17 April 2006 the Town Court gave two other judgments in the applicant's favour. In the first judgment it adjusted the outstanding award of 18 May 2004 for the cost of living and awarded RUB 87,357. This judgment became binding on 28 April 2006. In the second judgment the court awarded the applicant RUB 206,672 in respect of salary arrears. This judgment became binding on 3 May 2006.

In May 2006 the applicant sent enforcement papers to the Ministry of Finance, but later the same month the Ministry returned the papers, because they did not specify the financial source to be charged. The applicant sent the enforcement papers to the bailiff's service, but in December 2006 the service returned the papers, because it was not authorised to enforce debts against the treasury.

## 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 Articles 6 and 13 of the Convention, and Article 1 of Protocol No. 1 about the delayed enforcement and supervisory review of the judgments. The Court will examine 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**

11. The Government argued that this complaint was inadmissible. The applicant had failed to exhaust domestic remedies, because he could have sued the Ministry of Finance for negligence.

As to the non-enforcement of the judgment of 18 May 2004, the judgment could not have been enforced because the judgment had been unclear, and because the applicant had retained the enforcement papers since September 2005. The judgments of 17 April 2006 could not have been enforced because they were unclear, and because the applicant had retained the enforcement papers since December 2006.

The supervisory review of the judgment of 18 May 2004 had not breached the Convention. It had been initiated by a party to the proceedings within two months of the judgment’s entry into force and had been meant to correct a misapplication of material law. Civil procedure of other countries, for example Germany, had also allowed for the annulment of binding judgments. Besides, the Council of Europe had been satisfied with reforms of the supervisory-review procedure.

12. The applicant maintained his complaint. He did exhaust domestic remedies. The Ministry of Finance had delayed the enforcement for no valid reason. The Town Court had confirmed that the judgment of 18 May 2004 had been clear and could have been enforced. He had not retained the enforcement papers without need.

13. The Court considers that a claim for negligence would be ineffective, because it would yield a declaratory judgment reiterating what was in any event evident from the original judgments: the State was to

honour its debt. This new judgment would not bring the applicant closer to his desired goal, that is the actual enforcement (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikov v. Russia*, no. 43883/02, § 16, 24 February 2005).

14. 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**

15. The Court reiterates that Article 6 of the Convention includes the “right to a court” (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, § 36). To honour this right, the State must obey a binding judgment (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III) and avoid quashing it, save in circumstances where the principle of legal certainty would not be breached (see *Protsenko v. Russia*, no. 13151/04, §§ 25–34, 31 July 2008). Besides, an enforceable judgment constitutes a “possession” within the meaning of Article 1 of Protocol No. 1.

16. The Court considers that in the case at hand the State has breached the applicant’s “right to a court” and prevented him from peacefully enjoying his possessions in two ways.

17. First, the State avoided paying the three judgment debts for over four and two years. The Government justify this delay by the applicant’s failure to follow the correct enforcement procedure, but the Court reiterates that where a judgment is against the State, the State must take the initiative to enforce it. This especially applies where, in view of the complexities and possible overlapping of the execution and enforcement procedures, an applicant may have reasonable doubts about which authority is responsible for the enforcement (see *Akashev v. Russia*, no. 30616/05, § 21–23, 12 June 2008). The Government further justify the delay with the vagueness of the judgments, but as the domestic court has found on 23 November 2005, the award needed no clarification.

18. Second, the State quashed in part the judgment of 18 May 2004 because it had been based on an alleged misinterpretation of material law. However, this ground does not justify supervisory review (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

19. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

20. The applicant complained under Article 4 that his unpaid work amounted to forced or compulsory labour.

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. In respect of pecuniary damage the applicant claimed 17,722 euros (EUR) and EUR 400 per month since March 2006. These sums represented respectively his estimate of the unpaid judgment debts and his monthly salary.

24. The Government argued that this claim should have been rejected, because the applicant had been himself responsible for the non-enforcement, and because the non-pecuniary damages awarded by the judgment of 18 May 2004 had been quashed.

25. 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 enforcement of the domestic court's awards (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). In addition, the Government shall pay the applicant EUR 570 which represents the equivalent of RUB 20,000 that was taken away from the applicant as a result of the supervisory review.

26. In respect of non-pecuniary damage the applicant claimed EUR 15,000.

27. The Government argued that this claim was unfounded and excessive.

28. The Court accepts that the applicant must have been distressed by the non-enforcement and supervisory review of the judgments. Making its

assessment on an equitable basis, the Court awards EUR 4,100 under this head.

### **B. Costs and expenses**

29. The applicant made no claim in respect of costs and expenses. Accordingly, the Court makes no award.

### **C. Default interest**

30. 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 and supervisory review 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, 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 awards made by the domestic court, and in addition pay the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
    - (i) EUR 570 (five hundred seventy euros), plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 4,100 (four thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (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;
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