



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

FIRST SECTION

CASE OF LARIONOV v. RUSSIA

(Application no. 42431/02)

JUDGMENT

STRASBOURG

14 November 2008

FINAL

14/02/2009

This judgment may be subject to editorial revision.

In the case of Larionov 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. 42431/02) 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 Mikhail Nikolayevich Larionov (“the applicant”), on 22 August 2001.

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

3. On 28 April 2005 the Court decided to give notice of the application 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 1960 and lives in Luga, the Leningrad Region.

5. He sued the military unit no. 29760 of the Leningrad Military Circuit for damages resulting from a traffic accident.

6. On 21 June 1999 the Luzhskiy Town Court of the Leningrad Region granted his action and awarded him 40,911.50 Russian Roubles (“RUB”) to

be paid by the military unit. The judgment was not appealed against and on 2 July 1999 entered into force.

7. On 2 August 1999 the Luzhskiy Town Court issued a writ of execution and on 9 August 1999 the bailiffs instituted enforcement proceedings in respect of the judgment of 21 June 1999.

8. On 13 August 1999 the bailiffs sent the writ of execution to a local department of the Central Bank of Russia no. 29708, so that the amount awarded could be recovered from the military unit's account. The unit did not comply with the judgment, since no budget funds had been allocated from the federal budget for these purposes.

9. As from 1 January 2002 the system of administration of the finances of the Leningrad Military Circuit has changed. The military units of the circuit, including military unit no. 29760, started receiving funds through the Federal Treasury system. The respondent unit's account at the local department of the Central Bank of Russia was accordingly closed. On an unspecified date the unexecuted writ was returned to the bailiffs' office.

10. On 16 January 2003 the bailiffs returned the writ and accompanying documents to the applicant. With reference to Decree No. 143 dated 22 February 2001 (see the relevant domestic law section below) they invited the applicant to submit the documents to a local department of the Ministry of Finance.

11. According to the Government, the applicant forwarded the writ of execution to the regional department of the Federal Treasury at some point in 2004. They did not submit any documents in this respect.

12. According to the applicant, on 16 January 2003 he sent the writ to a local department of the Federal Treasury. At some point the local department of the Federal Treasury returned the unexecuted writ to the applicant, referred to the impossibility to enforce the judgment due to the respondent unit's lack of funds and invited him to submit it to the Federal Treasury in Moscow. On 20 May 2003 the applicant forwarded the writ of execution and the accompanying documents to the Federal Treasury. The applicant did not furnish any documents evidencing those transfers of the writ. He further submitted that after his complaint to the Administration of the President of Russia dated 30 January 2004 he obtained enforcement of the judgment.

13. On 21 April 2004 the military unit complied with the judgment in full.

II. RELEVANT DOMESTIC LAW

14. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The

bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

15. Under section 13 of the Law, the enforcement proceedings should be completed within two months of the receipt of the writ of enforcement by the bailiff.

16. Under special rules governing at the relevant time enforcement of judgments against the recipients of allocations from the federal budget, adopted by the Federal Government on 22 February 2001 (Decree No. 143, as in force at the relevant time), a creditor was to apply to a relevant branch of the Federal Treasury holding debtor's accounts (sections 1 to 4).

17. Within the next five days the branch had to examine the application and to notify the debtor of the writ, compelling the latter to abide by the respective court decisions (sections 7 to 12). In case of the debtor's failure to comply within two months, the branch could temporarily freeze the debtor's accounts (section 13).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

18. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto that the judgment of 21 June 2001 had not been enforced in good time. The relevant parts of the invoked provisions read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time... 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...”

A. Admissibility

19. The Government argued that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention. Firstly, he could have asked a domestic court to index-link the judgment debt to the inflation rate. Secondly, he could have lodged a claim for compensation of non-pecuniary damage.

20. The applicant maintained his complaint. He argued, in particular, that he could not lodge a claim for upgrading of the judgment debt, since by 22 August 2001, the date of his application to the Court, the judgment in his favour had not been enforced yet. He could not foresee the further delay of enforcement and accordingly could not submit a detailed calculation of pecuniary losses incurred as a result of non-enforcement to a domestic court.

21. The Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible and capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). As regards the possibility of lodging a claim for inflation losses, the Court notes that the Government omitted to comment on the effectiveness of the remedy suggested. In any event, the Court observes that the main reason of non-enforcement of the judgment of 21 June 1999 cited by the Government was the lack of funds allocated from the federal budget. In these circumstances, a claim for inflation losses arising out of protracted enforcement of the judgment would only have produced repetitive results, namely a writ of execution which would not be enforceable because of insufficient funding (see *Pogulyayev v. Russia*, no. 34150/04, § 13, 3 April 2008). Thus, it appears that such an action would not bring the applicant closer to the liquidation of his debt. As regards the possibility to lodge a claim for non-pecuniary damage, the Government did not advance any arguments to demonstrate that the remedy suggested would be an effective one, as well as available in theory and in practice, and their argument was confined to a mere assertion that the remedy was effective. The Court accordingly rejects the Government's argument about the non-exhaustion of domestic remedies.

22. 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

23. The Court observes that on 21 June 1999 the applicant obtained a judgment by which the military unit was to pay him a substantial amount of money. The judgment, which acquired legal force ten days later, was enforced in full on 21 April 2004. Thus, it has remained unenforced for over four years and nine months.

24. The Government acknowledged that the judgment of 21 June 1999 was not enforced in good time and conceded that the applicant's property rights were violated as a result of the delayed enforcement of the final judgment. At the same time, they argued that the applicant had failed to send the writ of execution to the local department of the Federal Treasury in good time. They pointed out that the bailiffs had returned the writ to him on 16 January 2003. However, the applicant had not sent it to the Federal Treasury until an unspecified date in 2004. Accordingly, an approximately one-year delay in the enforcement of the judgment had been attributable to the applicant.

25. The applicant disagreed. He submitted that since 16 January 2003 he had followed the authorities' instructions and had taken necessary measures to obtain execution of the judgment, namely forwarded the writ to the Federal Treasury and its local branch (see paragraph 12 above). He maintained his claims.

26. The Court notes at the outset that neither the Government nor the applicant provided the Court with any documents in support of their respective statements. However, there is no need for the Court to establish the accuracy of these allegations, since the Government's argument should in any event be rejected for the following reasons. The Court recalls its established case-law that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and, *mutatis mutandis*, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). As soon as the judgment in the applicant's favour becomes enforceable, it is incumbent on the State to comply with it (see *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005). The Court accepts that a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt (see *Shvedov v. Russia*, no. 69306/01, § 29–37, 20 October 2005). However, the requirement of the creditor's cooperation must not go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the Convention to take timely and *ex officio* action, on the basis of the information available to them, with a view to honouring the judgment against the State. 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 execution or enforcement of the judgment. In this respect the Court further recalls that it is incumbent on the State to organise its legal system in such a way that ensures co-ordination between various enforcement agencies and secures honouring of the State's judgment debts in good time, irrespective of changes in the domestic law (see *Reynbakh*, cited above, §§ 23-24).

27. Turning to the facts of the present case, the Court notes that the State authorities were duly notified of the applicant's claims as early as in 1999, and accordingly they were in a position to ensure compliance with their obligations under the judgment. The award had nonetheless remained unenforced for more than four years. Furthermore, in the Court's view, the authorities failed to ensure a requisite co-ordination between the State agencies involved in the enforcement of the judgment. The Court notes, in particular, that the system of administration of finance of the responsible military unit changed as early as on 1 January 2002 (see paragraph 9 above). However, it was not until 16 January 2003 that the writ of execution was returned to the applicant. It appears accordingly that for more than a year the writ had remained either with a local department of the Central Bank or with the bailiffs' office unexecuted. It does not appear that during the said period the authorities took any initiative to comply with the judgment or informed the applicant of the relevant change of the procedure.

28. In the Court's view, in the absence of such an initiative and of clear instructions as to the enforcement procedure to be followed, the applicant cannot be blamed for an alleged delay in submitting the writ of execution to the competent agency (see, *mutatis mutandis*, *Fitsov v. Russia*, no. 41842/04, § 28, 8 November 2007). The Court reiterates that it would impose an excessive burden on the applicant if he were to follow every change in the procedure and forward the writ of execution from one competent State agency to another (compare with *Reynbakh*, cited above, §§ 23-24). The Court accordingly concludes that the applicant's behaviour in the present case does not relieve the authorities from their responsibility under the Convention to ensure timely execution of the judgment against the State.

29. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 30 et seq., 17 March 2005; *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

30. Having examined the material submitted to it, the Court sees no reason for reaching a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for four years and nine months to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court

and prevented him from receiving the money he had reasonably expected to receive.

31. There has accordingly 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

32. 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.”

33. After the communication of the application to the respondent Government, the applicant was invited to submit his claims for just satisfaction under Article 41 of the Convention. However, he did not present an itemised claim for just satisfaction as required by Rule 60 of the Rules of Court. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

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