



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

FIFTH SECTION

CASE OF SHAKIRZIANOV v. RUSSIA

(Application no. 39888/02)

JUDGMENT

STRASBOURG

20 November 2008

FINAL

20/02/2009

This judgment may be subject to editorial revision.

In the case of Shakirzyanov v. Russia,

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

Rait Maruste, *President*,
Karel Jungwiert,
Anatoly Kovler,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *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. 39888/02) 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 Rasim Renatovich Shakirzyanov (“the applicant”), on 26 September 2002.

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

3. On 14 March 2006 the Court decided to give notice of the application 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 1980 and lives in the village Shakhterskiy of the Tula Region.

5. The applicant is a former serviceman. Upon his dismissal certain pecuniary benefits were not paid to him. He instituted civil proceedings for their recovery against military unit no. 23132.

6. He had a military rank of junior sergeant in reserve at the material time.

7. On 6 August 2001 the Tula Garrison Military Court granted the applicant's claim. The court established that from 24 March 2000 to 4 November 2000 the applicant had performed military service in the North Caucasus Region and from 24 March 2000 to 1 May 2000 participated in the military operations in that region. The court found that the applicant was entitled to monetary compensation and the failure to pay it to him in good time constituted a violation of his rights. In its analysis the domestic court referred, *inter alia*, to the Law on the Status of Military Servicemen (see paragraph 19 below) which provides for entitlement of certain categories of military servicemen to additional monetary compensation, and to Decree of the Federal Government of 20 August 1999 no. 930-54 establishing the amounts of compensation due to military personnel of different ranks for their participation in the military operations on the territory of Dagestan. The court ordered the commander of the military unit concerned to pay the applicant remuneration for his participation in the military operations between 24 March and 1 May 2000 and pecuniary benefits for his service in the North Caucasus Region. An exact amount to be paid was not specified in the operative part of the judgment.

8. The judgment entered into force on 17 September 2001.

9. On 9 October 2001 and 5 April 2002 the Tula Garrison Military Court invited the commander of the military unit to report whether the judgment of 6 August 2001 had been executed and notified him of his responsibility for non-execution of the judgment. By letter of 5 April 2002 the court also advised the applicant of his right to ask for a writ of execution to be issued in respect of the judgment.

10. At some point the applicant complied with the instruction and asked for a writ. On 7 May 2002 the Tula Garrison Military Court issued the writ of execution, and the enforcement proceedings were opened in respect of the judgment.

11. Since the respondent military unit was based in Shali, Chechnya, on 19 June 2002 the Bailiffs' Office of the Chechen Republic forwarded the writ to the Chief Bailiff of the Shali District of Chechnya.

12. In their observations dated 14 July 2006 the Government submitted that the judgment of 6 August 2001 had not been enforced.

13. In their further observations of 25 May 2007 the Government informed the Court that the amounts of 25,110 Russian roubles (RUB) and RUB 74,520 of pecuniary benefits for the applicant's participation in the military operations in the North Caucasus Region were paid to the applicant by the command of the military unit no. 23132 on an unspecified date at his discharge from the military service. They did not submit any documents in this respect.

II. RELEVANT DOMESTIC LAW

A. Enforcement of judgments against budget-funded institutions

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 enforcement of execution writs 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 is 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 examines the application and notifies 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 may temporarily freeze the debtor's accounts (Section 13).

B. Entitlement to additional compensation for military personnel.

18. Articles 12 and 13 of the Federal Law on the Status of Military Servicemen (no. 76-FZ of 27 May 1998, as in force at the relevant time) provide for the entitlement of the military servicemen to additional payments. Article 13 of the Law stipulates that the amount of the compensation should be determined by the Federal Government.

19. The Decree of the Federal Government of 20 August 1999 no. 930-54 (as in force at the relevant time), established, with reference to Article 13 of the Law on the Status of Military Servicemen, the amounts of compensation the military personnel was entitled to on account of their participation in the military operations in the Republic of Dagestan, to be paid as from 1 August 1999. In particular, military personnel performing contractual military service in the rank of soldiers, were entitled to additional monetary compensation in the amount of RUB 810 per day of participation in the military activities, sergeants were entitled to RUB 830 per day, etc.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

20. The applicant complained under Article 1 of Protocol No. 1 that the judgment of 6 August 2001 had not been enforced in good time. The relevant part of the invoked provision reads as follows:

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

21. The Government argued that the judgment of 6 August 2001 could not be enforced since it did not specify the exact amount due to the applicant. They contended that the applicant should have asked a domestic court for clarification of the judgment, but he had failed to do so. Furthermore, the application was manifestly ill-founded, since the applicant had not submitted a writ of execution together with a copy of the judgment and his bank account information either to a bank or directly to the military unit, as required by the Decree no. 143 of on 22 February 2001 (see Relevant Domestic Law, § 16 above). The applicant maintained his claim.

22. As regards the argument that the domestic judgment did not contain an exact sum to be paid, and insofar as the Government may be understood as raising a *ratione materiae* objection, the Court reiterates that to constitute an “asset” or “possessions” within the meaning of Article 1 of Protocol No. 1 and, consequently, to attract the guarantees of this provision, a claim, for example, a judgment debt, should be sufficiently established to be enforceable (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35 et seq., ECHR 2004-IX; and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

23. Turning to the facts of the present case, the Court observes that, although the judgment of 6 August 2001 did not specify the amount of the

claim or the modalities of payment of any sum due, it clearly indicated the number of days the applicant had served in Dagestan and also contained an unambiguous reference to the Government Decree of 20 August 1999 no. 930-54 establishing the rate of daily compensation for military servicemen of different ranks, including the applicant's military rank. Accordingly, in the Court's view, the judgment contained all information necessary to calculate the amount due to the applicant, and it has not been shown that the respondent authority had any discretion in this respect (see, *mutatis mutandis*, *Bulgakova v. Russia*, no. 69524/01, § 29, 18 January 2007). Furthermore, the enforcement proceedings were initiated, and as follows from the writ of execution, the bailiffs invited the respondent military unit to pay money to the applicant. Therefore, even if the indication of the precise amount was missing from the judgment, the proceedings at issue established a particular pecuniary obligation of the State vis-à-vis the applicant. The Court concludes that the judgment was sufficiently clear and specific to be enforceable (see, *mutatis mutandis*, *Bulgakova v. Russia*, cited above, §§ 29-31). Accordingly, from the date of the judgment of 6 August 2001 the applicant had an established "legitimate expectation" to acquire a pecuniary asset. The Court is therefore satisfied that the applicant's claim for unpaid wages and benefits was sufficiently established to constitute a "possession" falling within the ambit of Article 1 of Protocol No. 1 (see, insofar as relevant, *Malinovskiy v. Russia*, no. 41302/02, §§ 45-46, ECHR 2005 VII (extracts)). The Court concludes that the applicant's complaint cannot be rejected as incompatible *ratione materiae*.

24. Insofar as the Government may be understood as claiming non-exhaustion in that the applicant had failed to ask for clarification of the judgment, the Court reiterates that in the absence of clear instructions as to the enforcement procedure to be followed, the applicant cannot be blamed for the delay in submitting the writ of execution to the competent agency (see *Fitisov v. Russia*, no. 41842/04, § 28, 8 November 2007). There is nothing in the present case to suggest that the applicant was at any time informed by the authorities that they had been unable to enforce the judgment for the reason that it had not contained an exact sum of the award. In the Court's view, in these circumstances the applicant could not be expected to ask for clarifications on his own motion. The Government's argument should accordingly be dismissed.

25. Similarly, as regards the objection concerning the applicant's alleged failure to submit the enforcement documents to a due authority, the Court reiterates that as soon as the judgment in the applicant's favour became enforceable, it was incumbent on the State to comply with it (see insofar as relevant, *Reynbakh v. Russia*, no. 23405/03, § 23, 29 September 2005). Furthermore, 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 (see *Reynbakh*

v. Russia, cited above). In the present case, it is not disputed that the respondent military unit was aware of the contents of the judgment in 2001 (see §§ 7-9 above). Accordingly, it has been under an obligation to execute the award. In addition, the Court notes that there is nothing in the present case to suggest that the applicant at any point received any instructions as regards the necessity to forward the writ of execution directly to the respondent military unit. Indeed, it follows from the case file that in 2002 he was advised of a possibility to lodge a request for a writ of execution with the Tula Garrison Military Court. The applicant complied with this instruction and duly asked for the writ. The latter was subsequently transferred to the bailiffs' office, a competent state agency, which proceeded with the enforcement. There is nothing in the case to suggest that the writ was subsequently returned to the applicant, or that he was in any way notified of a change in the enforcement procedure. Accordingly, the Government's objection should be dismissed.

26. The Court concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The Court observes that on 6 August 2001 the applicant obtained a judgment in his favour by which he was to receive monetary compensation of unpaid wages and social benefits against the military unit. The judgment became enforceable on 17 September 2001.

28. As regards the date of enforcement of the judgment, in their observations dated 14 July 2006 the Government submitted that the judgment of 6 August 2001 had not been executed. However, in their further observations dated 25 May 2007 the Government asserted that two lump sums in respect of compensation for the applicant's participation in the military operations in the North Caucasus Region had been paid to him on an unspecified date at his dismissal from the military service.

29. The Court notes that the Government's submissions as to whether the judgment had been enforced are self-contradictory. In any event, as regards the allegation that a certain payment was made to the applicant pursuant to the judgment, the Government failed to submit any documents evidencing either the very fact of such payment or any link between the payment and the judgment of 6 August 2001. They did not specify the dates of either the alleged transfer of the amount due to the applicant's bank account or the applicant's dismissal from the military service. Finally, the Court does not lose sight of the Government's earlier submissions that the judgment of 6 August 2001 had not been enforced. In the absence of any evidence to the contrary, the Court assumes that the judgment of 6 August 2001 has not been executed to date. Accordingly, the award in the

applicant's favour has remained without enforcement for six years and nine months.

30. The Court has frequently found violation of Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among others, *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing, for six years and nine months, to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving the money he could reasonably have expected to receive.

31. There has accordingly been a violation of 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."

A. Damage

33. The applicant contended that he had suffered non-pecuniary damage as a result of non-enforcement of the judgment in his favour. The Government submitted that finding a violation would in itself constitute a sufficient just satisfaction.

34. The Court notes that the applicant did not submit any claim in respect of pecuniary damage. However, the Court observes that the Government has provided no evidence that it had complied with its obligation to execute the judicial decision at issue. The Court reiterates that the violation found is best redressed by putting the applicant in the position he would have been if the Convention had been respected. The Government shall therefore secure, by appropriate means, the enforcement of the domestic court's award (see, among others, *Dorozhko v. Russia*, no. 5761/03, § 19, 26 June 2008 and *Denisov v. Russia*, no. 21823/03, § 29, 25 January 2007).

35. The Court further considers that the applicant must have suffered distress and frustration resulting from the authorities' failure to enforce in good time the judgment in his favour. Taking into account the length of the enforcement proceedings, and making its assessment on an equitable basis,

the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses.

36. The applicant did not make any claim in respect of the costs and expenses incurred before the domestic courts and before the Court within the time-limits set by the Court. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

37. 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 1 of Protocol No.1 of the Convention;
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 award made by the domestic court on 6 August 2001, and in addition pay the applicant EUR 3,000 (three thousand euros) 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 20 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President