



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

FIRST SECTION

CASE OF SEMOCHKIN v. RUSSIA

(Application no. 3885/04)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Semochkin 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 3885/04) 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 Anatoliy Frolovich Semochkin (“the applicant”), on 5 January 2004.

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 19 June 2007 the Court decided to communicate the complaint concerning non-enforcement of judgments 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 1941 and lives in Salavat. In 1998–2004 he obtained two judgments against the authorities.

5. On 2 February 1998 the Leninskiy District Court of Ufa awarded the applicant 9,019.88 Russian roubles (“RUB”) in pension arrears against the Ministry of the Interior of Bashkortostan. This judgment became binding on 12 February 1998, but was not enforced immediately. In 2000–2002, the bailiff’s service’s servicing bank had its licence suspended pending

insolvency proceedings. On 31 July 2002 the bailiffs made a bank transfer to the applicant, but the transfer failed because of a clerical mistake.

6. As the applicant believed that the bailiffs had caused the delay, on 15 August 2001 he sued them for the judgment debt and non-pecuniary damages. After two first-instance hearings, one appeal hearing, and two supervisory-review hearings, on 18 November 2004 the Kirovskiy District Court partly held for the applicant. It confirmed the bailiffs' fault, awarded RUB 45,509.20 that included the original judgment debt adjusted for inflation and costs, but rejected the claim for non-pecuniary damages.

7. Both the applicant and the bailiffs appealed against this judgment, but the applicant's appeal was not accepted because he had missed the time-limit. On 10 February 2005 the Supreme Court of Bashkortostan upheld the judgment of 18 November 2004. The applicant and the bailiffs were absent from this hearing. Earlier the applicant had asked the courts to examine the case in his absence.

8. On 5 September 2005 the bailiffs enforced the judgment of 2 February 1998.

9. On 29 March 2006 the Ministry of Finance enforced the judgment of 18 November 2004.

II. RELEVANT DOMESTIC LAW

10. 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

11. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the lengthy 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

12. The Government argued that these complaints were inadmissible.

With regard to the judgment of 2 February 1998, they argued that the applicant had lost his status as a victim, because the authorities had recognised a breach and provided redress (the award of 18 November 2004 had been five times the initial award; the applicant had received the initial award twice: first directly, then indirectly as part of the award of 18 November 2004). The period of the enforcement had partly been outside the Court’s competence *ratione temporis*. The period of enforcement had been from 15 August 2001 (because before that date the applicant had not complained about the delay) to 18 November 2004 (because on that date the second judgment had superseded the first one). The delay had been caused by the bank crisis of 1998, the suspension of the servicing bank’s licence, and the bailiffs’ mistake.

With regard to the judgment of 18 November 2004, the Government argued that the complaint was manifestly ill-founded. The judgment had been enforced only several months after the applicant had submitted the writ of enforcement.

13. The applicant reiterated his complaint. The case had moved from a standstill only after the Court had communicated the application to the Government.

14. With regard to the judgment of 2 February 1998, the Court rejects the Government’s argument that the applicant has lost his status as a victim. To deprive an applicant of this status, the State must acknowledge the breach and provide sufficient redress (see *Holzinger v. Austria (no. 1)*, no. 23459/94, § 21, ECHR 2001-I). It is true that on 18 November 2004 the district court admitted the authorities’ responsibility and the applicant received five times the original award. It is also true that in addition the applicant received the original award. However, the district court rejected the claim for non-pecuniary damage, and the enforcement of the judgment of 18 November 2004, the one meant to remedy the non-enforcement of the

judgment of 2 February 1998, did not happen immediately. The Court finds that this redress was insufficient.

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. The enforcement of the judgment of 2 February 1998 lasted seven years and four months: from 5 May 1998 (the date when the Convention entered into force in respect of Russia) to 5 September 2005 (the date of the payment). The enforcement of the judgment of 18 November 2004 lasted one year and one month: from 10 February 2005 (the date when the judgment became binding) to 29 March 2006 (the date of the payment).

In so far as the Government suggested that the period of enforcement should run from the moment when the applicant submitted enforcement papers to a competent authority, the Court reiterates that where a judgment is against the State, the State must take the initiative to enforce it (see *Akashev v. Russia*, no. 30616/05, § 21–23, 12 June 2008).

18. The above periods are incompatible with the requirements of the Convention. The judgments were not difficult to enforce because they required only a bank transfer, and the applicant did not obstruct the enforcement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant also complained that the proceedings against the bailiffs lasted too long, that their outcome was unfair, that his appeal was not accepted, and that the courts failed to call him to the appeal hearing.

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.

22. 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

23. 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

24. The applicant claimed RUB 6,000 in respect of pecuniary damage. He asserted that the defendant had failed to appear in court six times, and that each time had cost him RUB 1,000. The applicant also claimed 7,000 euros (“EUR”) in respect of non-pecuniary damage.

25. The Government argued that these claims were excessive, unsubstantiated, and unrelated to the alleged violation.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant must have been distressed by the delayed enforcement of the judgments. Making its assessment on an equitable basis, the Court awards EUR 3,900 under this head.

B. Costs and expenses

27. The applicant also claimed RUB 1,798 for the costs and expenses incurred before the domestic courts and the Court.

28. The Government argued that this claim was unsubstantiated.

29. 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 rejects the claim.

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 the non-enforcement of the judgments admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of 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 according to Article 44 § 2 of the Convention, EUR 3,900 (three thousand nine 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 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President