



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

FIRST SECTION

CASE OF MAGOMEDOV v. RUSSIA

(Application no. 20111/03)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Magomedov 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. 20111/03) 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 Abdulzhalil Magomedovich Magomedov (“the applicant”), on 30 May 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 26 November 2007 the President of the First Section 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 1945 and lives in Makhachkala, a city in Dagestan.

5. A retiree of the Ministry of the Interior, in 2002–04 the applicant contested in court a stoppage of his pension.

6. On 30 October 2002 the Sovetskiy District Court of Makhachkala ordered the Ministry to resume the pension in the amount of 3,004.41 Russian roubles (RUB) per month, to pay arrears in the amount of RUB 94,378.47, and to adjust the arrears for the cost of living by paying RUB

77,331.32. This judgment became binding on 22 January 2003 with the exception of the cost-of-living adjustment, this part of the award having been quashed on appeal.

7. On 11 March 2003 the District Court once again awarded the cost-of-living adjustment in the same amount. This judgment became binding on 22 March 2003.

8. On 28 March 2003 the applicant requested bailiffs to enforce the judgment of 30 October 2002. On the Ministry's request, from 14 May to 30 June 2003 the enforcement proceedings were stayed pending proceedings in the Constitutional Court. On 29 July 2003 the judgment was enforced in the part concerning the resumption of the periodic payments.

9. On 29 March 2004 the applicant requested the bailiffs to enforce the judgment of 11 March 2003.

10. On 19 April 2004 the applicant requested the bailiffs to enforce the judgment of 30 October 2002 in the part concerning the arrears.

11. Meanwhile, on 15 November 2003 the Ministry requested a supervisory review of the judgments, and on 8 June 2004 the Supreme Court of Dagestan stayed the enforcement. On 9 September 2004 the Presidium of the Supreme Court quashed the two judgments on supervisory review. The Presidium rejected the applicant's claim, having found that the court below had misinterpreted material laws concerning the applicant's entitlement to the pension.

The applicant was absent from this hearing, because he had allegedly not been properly notified of it.

II. RELEVANT DOMESTIC LAW

12. 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

13. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgments and their quashing on supervisory review. 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

14. The Government argued that this complaint was inadmissible as follows.

As to non-enforcement, the applicant had failed to exhaust domestic remedies. He could have applied to a court or a prosecutor about the negligent enforcement. He also could have claimed non-pecuniary damages.

Besides, the litigation had concerned a general interpretation of pension laws and hence had neither determined the applicant’s “civil rights and obligations” within the meaning of Article 6, nor yielded a judgment that could have been considered a “possession” within the meaning of Article 1 of Protocol No. 1.

The application had been abusive, because the applicant had applied to the Court only two months after the judgment of 11 March 2003, and without having instituted enforcement proceedings in accordance with national law.

The complaint was manifestly ill-founded. The enforcement of the judgment of 30 October 2002 in the part concerning the periodic payments lasted two months and a half. The enforcement of the other two awards had been delayed by the applicant’s late submission of the enforcement papers. Besides, the judgments had been quashed on supervisory review some four months after the institution of the enforcement proceedings. In addition, for a part of these periods the enforcement proceedings had been lawfully stayed. Prior to the quashing, the authorities had done all they could to enforce the judgments.

As to supervisory review, the applicant had not raised this issue in his application form, and hence the Court should not have examined it.

The supervisory review had been carried out in strict compliance with national law. It had been initiated by a party to the proceedings less than one

year after the judgment and had been meant to correct a misinterpretation of material law, i.e. a judicial error. The supervisory review had promoted legal certainty, because it had been meant to harmonise judicial practice: in many similar cases domestic courts had held against plaintiffs. Leaving the applicant's judgments in force would have created inequality. The supervisory review had not breached Article 1 of Protocol No. 1, because the State had not reclaimed the amounts that had been paid before the quashing.

15. The applicant argued that his complaint was admissible.

As to non-enforcement, the applicant did exhaust domestic remedies. He had complained to the Ministry of the Interior, the Ministry of Finance, and the bailiff's service, but to no avail. The remedies suggested by the Government would have been ineffective.

The litigation did determine the applicant's "civil rights and obligations" because his own pension had been at stake. The awards had constituted "possessions" within the meaning of Article 1 of Protocol No. 1.

The application was not abusive. Before applying to the Court the applicant had submitted the enforcement papers directly to the defendant. As senior officials of the Ministry of the Interior told him that the judgments would not be honoured, he decided to save time and to apply to the Court straight away.

The complaint was well-founded. The applicant delayed applying to the bailiffs, because he wished to let the defendant comply with the judgment without coercion. The enforcement had lasted too long.

As to supervisory review, the relevant complaint had been included in the applicant's letters to the Court of 28 September 2004 and 24 February 2005. The supervisory review had prejudiced the applicant's rights.

16. The Court finds, with regard to non-enforcement, that the applicant did not have remedies satisfying the requirements of Article 35 § 1 of the Convention. A complaint about the bailiffs' negligence would have been ineffective (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005). A claim for non-pecuniary damages has not been shown to be sufficiently certain in practice so as to offer the applicant reasonable prospects of success as required by the Convention. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies.

The Court also finds that the applicant's dispute with the Ministry of the Interior concerned his individual pension and hence fell within the ambit of Article 6 of the Convention and Article 1 of Protocol No. 1. It follows that this complaint cannot be rejected as incompatible *ratione materiae* with the provisions of the Convention.

As to the alleged abuse, the Court notes that even if the applicant applied to the Court too early to be considered a victim, nothing suggests that he

misrepresented facts. It follows that this complaint cannot be rejected as abusive.

17. The Court finds, with regard to supervisory review, that even though the applicant did not raise this issue in his application form, he did so in his letter of 24 February 2005. The Court considers this letter an integral part of the application and dismisses the Government's objection.

18. 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

19. 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 be respected (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.

20. 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.

21. First, the State avoided enforcing the two judgments for one year and seven months, and one year and five 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.

Furthermore, the period of the enforcement of the judgment of 30 October 2002 should include the time when the enforcement was adjourned on a State authority's initiative (see, *mutatis mutandis*, *OOO PTK "Merkuriy" v. Russia*, no. 3790/05, § 26, 14 June 2007).

These periods of enforcement are too long to be compatible with the requirements of the Convention.

22. Second, the State quashed the judgments because they 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).

23. 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 6 OF THE CONVENTION

24. The applicant also complained that the hearing of 9 September 2004 had been unfair because he had not been duly invited to it and as a result had been unable to plead his case. The Court will examine this complaint under Article 6 § 1 of the Convention.

A. Admissibility

25. The Government argued that this complaint was inadmissible. The applicant did know about the hearing in advance, because the court had invited him seven days beforehand. He had received a copy of the Ministry's supervisory-review application but had failed to file his observations.

26. The applicant maintained his complaint. He had received the summons one hour after the hearing had begun, and by the moment he had come to the court, the hearing had already ended.

27. 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

28. Nevertheless, given the above finding of a violation by the very use of supervisory review, the Court considers it unnecessary to examine this complaint (see *Ryabykh v. Russia*, no. 52854/99, § 59, ECHR 2003-IX).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed RUB 171,709.79 in respect of pecuniary damage. This amount represented the awards that he had failed to receive due to non-enforcement and supervisory review.

31. The Government contested this claim, because the domestic courts had in the end revoked the awards.

32. The Court considers that the violation found is best redressed by putting the applicant in the position he would have been if the Convention had been respected. It is therefore appropriate to award the applicant the equivalent in euros of the sums that he would have received if the judgments had not been quashed (see *Bolyukh v. Russia*, no. 19134/05, § 39, 31 July 2007). Accordingly, the Court awards EUR 4,641 in this respect.

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

34. The Government contested this claim as groundless. They argued that in any event a finding of a violation would be sufficient just satisfaction.

35. 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 3,000 under this head.

B. Costs and expenses

36. The applicant estimated his costs and expenses incurred before the domestic courts in the range of RUB 3,000–3,500.

37. The Government contested this claim as unsupported by evidence.

38. 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 this claim.

C. Default interest

39. 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 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds* that there is no need to examine the complaint about the unfair trial;
4. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 4,641 (four thousand six hundred forty-one euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand 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;
5. *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