



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

FIRST SECTION

CASE OF VORONIN v. RUSSIA

(Application no. 40543/04)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Voronin 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 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 40543/04) 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 Pavel Ivanovich Voronin (“the applicant”), on 11 October 2004.

2. The applicant was represented by Mr A. Kazmin, an advocate practising in Voronezh. 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 22 November 2007 the President of the First Section decided to give notice of the application 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 1954 and lives in Novovoronezh, a town in the Voronezh Region.

5. As a victim of Chernobyl, the applicant was entitled to benefits. Considering himself underpaid, he brought two actions against a local welfare authority.

6. On 6 May 2004 the Novovoronezh Town Court awarded the applicant 92,648.54 Russian roubles (RUB) in arrears. This judgment became binding on 17 May 2004 and was enforced on 11 November 2005.

7. On 10 May 2006 the Town Court awarded the applicant RUB 1,080,629.27 in arrears and fixed a new amount of periodic payments. This judgment became binding on 18 July 2006. The welfare authority considered that the award contained an error to the extent that it had not taken into account a past payment. For this reason, on 27 November 2006 the Town Court clarified the judgment and reduced the award to RUB 987,980.73. The judgment was enforced by 29 November 2007.

II. RELEVANT DOMESTIC LAW

8. 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

9. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the delayed 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

10. The Government argued that this complaint was inadmissible.

The complaint was incompatible with the Convention *ratione materiae*. The litigation had concerned the general application of welfare legislation, and hence was not “civil” within the meaning of Article 6. Likewise, the fruit of the litigation had not been a “possession” within the meaning of Article 1 of Protocol No. 1.

The applicant had failed to exhaust domestic remedies. He could have brought a negligence action against the authority responsible for the enforcement, brought an action for non-pecuniary damages, and requested the awards’ adjustment for the cost of living.

With regard to the judgment of 6 May 2004, the complaint had been abusive, because the applicant had failed to inform the Court of its enforcement. The authorities had been prepared to offer the applicant compensation for the delay, but he had refused.

With regard to the judgment of 10 May 2006, the complaint was manifestly ill-founded, because this judgment had been enforced within a reasonable time after its clarification. The clarification had been necessary, because the judgment had contained an error, and its implicit enforcement would have unduly enriched the applicant.

11. The applicant maintained his complaint, incidentally challenging the domestic courts’ findings as to the amount of his benefits.

12. The Court finds that the applicant’s dispute with the welfare authority concerned his individual benefits and hence fell within the ambit of Article 6 of the Convention and Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Bulgakova v. Russia*, no. 69524/01, § 28–31, 18 January 2007). It follows that this complaint cannot be rejected as incompatible *ratione materiae* with the provisions of the Convention.

13. With regard to non-exhaustion, the Court finds that the applicant had no remedies satisfying the requirements of Article 35 § 1 of the Convention. A complaint about the authorities’ negligence would have been ineffective (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikov 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. An adjustment for the cost of living was equally inadequate because it did not compensate non-pecuniary damage. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies.

14. As to the alleged abuse, the Court does not detect any wilful misrepresentation of facts on the applicant’s part.

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. In the case at hand, the enforcement of the two judgments lasted one year and five months, and one year and four months, respectively. The Government insist that the second period should run from the date of the judgment's clarification, but the Court rejects this argument: the clarification was requested by the welfare authority not because the judgment had been ambiguous, but because the authority had disagreed with the amount of the award. This disagreement cannot be considered as an objective obstacle to the enforcement.

18. In view of the above, the Court considers that there has 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

19. 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

20. The applicant claimed RUB 1,597,604.80 in respect of pecuniary damage. This amount represented his estimate of allegedly underpaid benefits and his inflationary loss for the delayed enforcement of the judgment of 10 May 2006.

21. The Government contested this claim as unfounded. Russian courts had been better placed to determine the applicant's inflationary loss, and it had remained open to the applicant to apply there.

22. The Court discerns a causal link between the violation found and the alleged inflationary loss only. Making its estimate on the basis of

information at its disposal, the Court awards 4,500 euros (EUR) under this head.

23. The applicant also claimed EUR 200,000 in respect of non-pecuniary damage.

24. The Government contested this claim as excessive.

25. 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 1,200 under this head.

B. Costs and expenses

26. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

27. 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*
 - (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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 1,200 (one thousand two 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 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President