



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

FIRST SECTION

CASE OF CHISTYAKOV v. RUSSIA

(Application no. 41395/04)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Chistyakov 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. 41395/04) 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 Gennadiy Ivanovich Chistyakov (“the applicant”), on 6 October 2004. On 31 October 2004 the applicant died, and his widow Mrs Antonina Yakovlevna Chistyakova adopted the application.

2. The applicant was represented by Ms L. Stakhiyeva, a lawyer practising in Lipetsk. 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 1943 and lived in Lipetsk, a town in the Lipetsk Region.

5. In the 1990s the applicant subscribed to a State savings scheme for buying a car. The State failed to fulfil its obligation, and the applicant sued the Ministry of Finance.

6. On 5 March 2003 the Mirninskiy District Court of Yakutia awarded the applicant 108,644.39 Russian roubles (RUB). This judgment became binding on 9 April 2003 but was not enforced.

7. On the Ministry's request, on 15 July 2004 the Supreme Court of Yakutia quashed the judgment on supervisory review and rejected the applicant's claim. The Presidium found that the courts below had ignored a crucial material law.

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 Articles 6 and 13 of the Convention, and Article 1 of Protocol No. 1 about the non-enforcement and supervisory review of the judgment. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. 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.

As to non-enforcement, the applicant had submitted enforcement papers to bailiffs instead of the Ministry of Finance.

As to supervisory review, it had not breached the principle of legal certainty: it had been preceded by an ordinary appeal, only one supervisory-review instance had been engaged, the request for the quashing had been lodged within six months, it had been initiated by a party to the proceedings, it had been meant to correct a misapplication of material law. The applicant’s rights under Article 1 of Protocol No. 1 had not been prejudiced, because he had received compensation for the car before the litigation.

11. The applicant maintained the complaint. The authorities had needlessly delayed the enforcement. It had been the Town Court who had submitted the enforcement papers to the bailiffs. The supervisory review had breached the principle of legal certainty.

12. 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

13. 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 not be breached (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.

14. 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.

15. First, the State avoided paying the judgment debt for one year and three months. The Government put the blame for this delay on the applicant’s failure to submit the enforcement papers, but 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).

16. Second, the State quashed the judgment because it 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).

17. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed 7,274 euros (EUR) in respect of pecuniary damage. This amount included the domestic award, an adjustment for the cost of living, and interest for the funds’ retention.

20. The Government contested this claim as unfounded.

21. The Court reiterates that the best redress of a violation of Article 6 is to put the applicant as far as possible in the position he would have been if Article 6 had been respected (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, § 12). Applied to the case at hand, this principle would mean that the State must pay to the applicant the equivalent in euros of the sum that he should have received under the domestic judgment. In addition, the Court awards the applicant the inflationary loss caused by the non-enforcement of the judgment. Making its estimate on the information at its disposal, the Court awards EUR 5,300 under this head.

22. The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

23. The Government contested this claim as unreasonable and unfounded.

24. The Court accepts that the applicant must have been distressed by the non-enforcement and supervisory review of the judgment. Making its assessment on an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

25. The applicant also claimed EUR 357.14 for the costs and expenses incurred before the Court.

26. The Government argued that these expenses have not been shown to have been actually incurred.

27. 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 considers it reasonable to award the sum of EUR 357.14 for the proceedings before the Court.

C. Default interest

28. 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's widow, 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 5,300 (five thousand three hundred 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;
 - (iii) EUR 357.14 (three hundred fifty-seven euros and fourteen cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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