



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

FIRST SECTION

CASE OF ROMAN PONOMAREV v. RUSSIA

(Application no. 31105/05)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Roman Ponomarev 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. 31105/05) 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 Roman Vladimirovich Ponomarev (“the applicant”), on 7 August 2005

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 17 September 2007 the President of the First Section decided to communicate the complaint concerning non-enforcement of a binding judgment 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 Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in Volgograd, a town in the Volgograd Region.

5. The applicant sued the State for non-pecuniary damage inflicted by a groundless criminal prosecution. On 15 September 2004 the Tsentralnyi District Court of Volgograd awarded the applicant 5,000 Russian roubles

against the Ministry of Finance. This judgment became binding on 14 February 2005.

6. In 2005–06 the applicant made unsuccessful attempts to obtain enforcement papers from the court. First, the papers mailed by the court failed to reach him. Once they did reach him, they proved to have a formal defect, a missing maturity date. Proper enforcement papers reached the Ministry of Finance on 3 July 2007, and on 18 October 2007 the judgment was enforced.

7. In separate proceedings the applicant sought a reinstatement in his post in the police. On 21 April 2004 his action was partially granted. Later, the applicant unsuccessfully sought a reopening of these proceedings.

II. RELEVANT DOMESTIC LAW

8. 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 judgment. 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 applicant had failed to exhaust such domestic remedies as a request for the award's adjustment for the cost of living and a claim for non-pecuniary damages. The enforcement had been delayed because the applicant had indicated a wrong postal address, and hence the enforcement papers had been unable to reach him. Besides, the papers had had a formal defect and had had to be rectified. The judgment had been enforced promptly after the enforcement papers had reached the Ministry of Finance.

11. The applicant maintained his complaint.

12. With regard to domestic remedies, the Court considers that an adjustment for the cost of living would be inadequate because it would not compensate non-pecuniary damage. 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.

13. 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

14. 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).

15. In the case at hand the enforcement lasted two years and eight months. This period is incompatible with the requirements of the Convention. The Government blame the applicant for not submitting the enforcement papers in time, 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). The Government also justify the delay with a formal defect of the enforcement papers; however the applicant cannot be blamed for errors in the papers issued by a court.

16. The above considerations permit the conclusion that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The applicant also complained under Article 6 of the Convention about the outcome of his action for reinstatement and the courts' refusal to reopen it.

18. 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.

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

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 asked the Court to award him just satisfaction without specifying his claim.

21. The Government stated that the finding of a violation would suffice.

22. The Court accepts that the applicant must have been distressed by the delayed enforcement of the judgment. Making its assessment on an equitable basis, the Court awards 400 euros (EUR) under this head.

B. Costs and expenses

23. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award.

C. Default interest

24. 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 non-enforcement of the judgment admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 400 (four 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.

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