



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

FIRST SECTION

CASE OF ZHURAVLEV v. RUSSIA

(Application no. 5249/06)

JUDGMENT

STRASBOURG

15 January 2009

FINAL

15/04/2009

This judgment may be subject to editorial revision.

In the case of Zhuravlev 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,

Dean Spielmann,

Sverre Erik Jebens,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 5249/06) 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 Vladimir Nikolayevich Zhuravlev (“the applicant”), on 13 December 2005.

2. The applicant was represented by Mr K. Koroteyev, a research associate from Paris. 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 2 May 2007 the President of the First Section decided to communicate the complaint concerning non-enforcement of a 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1946 and lives in Ilovaysk, a town in the Donetsk Region of the Ukraine.

5. In 1985 the applicant was convicted of abuse of authority and forgery. In July 1988 and March 1998 supervisory-review authorities found that the applicant had had no case to answer, and the Ministry of Finance was obliged to pay compensation.

6. The applicant sued the Ministry of Finance over delayed payment of compensation. On 4 December 2002 the Vilyuysk Ulus Court of Yakutia awarded the applicant 55,533 Russian roubles (RUB) in interest. This judgment became binding on 14 December 2002 and was enforced on 15 December 2005.

7. On 12 May 2006 the Ulus Court adjusted the award for the cost of living and awarded the applicant RUB 22,424. The applicant received this sum on 2 April 2007.

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 § 1 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgment of 4 December 2002. 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 missed the six-month time-limit laid down in Article 35 § 1 of the Convention, because he had complained to the Court on 21 November 2006 (the date of the application form), whereas the judgment had been enforced on 15 December 2005. The applicant had abused his right of petition, because he had failed to inform the Court of the enforcement of earlier judgments. The applicant had lost his victim status. The delay of the enforcement had breached the Convention, but the domestic court had acknowledged this and awarded compensation.

11. The applicant maintained his complaint. He had complied with the six-month rule, because his first application to the Court had been dated 13 December 2005. He had not abused his right of petition, because the facts concerning the earlier judgments had been outside the scope of his application, and hence could have been safely omitted. He had retained his victim status, because the adjustment for the cost of living had not included an acknowledgement of a violation, had been insufficient, and had not compensated non-pecuniary damage. The Government had admitted that the delay of enforcement had breached the Convention.

12. With regard to six months, the Court notes that the application was introduced on two forms: the complaint about the non-enforcement was included in the form of 13 December 2005, and the other complaints were included in the form of 21 November 2006. Since at the time of the introduction of the complaint about the non-enforcement, the judgment was outstanding, it is impossible to apply the six-month rule (see *Nazarchuk v. Ukraine*, no. 9670/02, § 20, 19 April 2005).

With regard to the abuse of petition, the Court reiterates that an application may be rejected as abusive if, among other things, it was knowingly based on falsities (see *Varbanov v Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). However, in the circumstances of the present case, the Court cannot discern any deceit on the applicant's part.

With regard to the victim status, the Court reiterates that an adjustment for the cost of living was inadequate because it did not compensate non-pecuniary damage.

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 Government have admitted that the period of enforcement of the judgment of 4 December 2002 had been incompatible with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

15. In the circumstances of the present case the Court finds no reason to hold otherwise. There has, accordingly, been a violation of these Articles.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

16. The applicant also complained under Articles 5 § 5, 6 § 3 (c), and 7 of the Convention, Article 1 of Protocol No. 1, and Articles 2 and 3 of Protocol No. 7, that his conviction was unjust and that compensation for it was too small.

17. Insofar as these complaints relate to the applicant's conviction and imprisonment, the Court notes that these events took place in 1985, i.e. long before the entry of the Convention into force in respect of Russia on 5 May 1998. It follows that these complaints are incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 (see *Panchenko v. Russia* (dec.), no. 45100/98, 10 October 2000).

18. Insofar as these complaints relate to the amount of compensation, the Court notes that the conviction was quashed in July 1988 and March 1998, i.e. before the entry of Protocol No. 7 into force in respect of Russia on 1 August 1998. It follows that these complaints are also incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 (see, *a contrario*, *Matveyev v. Russia*, no. 26601/02, § 38, 3 July 2008).

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 claimed non-pecuniary damages in the amount to be determined by the Court.

21. The Government argued that no damages should have been awarded, since the applicant's rights had been redressed inside Russia.

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 1,800 euros under this head.

B. Costs and expenses

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

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 a binding judgment admissible and the remainder of the application inadmissible;
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 in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight 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 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President