



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

FIRST SECTION

CASE OF VERETENNIKOV v. RUSSIA

(Application no. 8363/03)

JUDGMENT

STRASBOURG

12 March 2009

FINAL

12/06/2009

This judgment may be subject to editorial revision.

In the case of Veretennikov 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 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 8363/03) 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 Vasiliy Andreyevich Veretennikov (“the applicant”), on 27 January 2003.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 24 January 2006 the President of the First Section decided to communicate the complaints concerning non-enforcement of a final judgment in the applicant’s favour and excessive length of the proceedings 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 1953 and lives in the town of Novaya Usman, Voronezh Region.

A. First round of the case examination

5. On 17 or 20 March 1998 the applicant brought an action against his former employer, a municipal enterprise, claiming his reinstatement in the

post and damages. On 3 June 1998 the applicant amended his claims and sought to obtain certain documents from the respondent company.

6. On 8 February 2000 the Chaunskiy District Court of the Chukotka Region dismissed the applicant's action. On 6 April 2000 the Chukotka Regional Court set aside the judgment and remitted the case for a fresh examination.

B. Second round of the proceedings

7. In May and July 2000 and January 2001 the applicant amended his claims, reiterated his claim for documents from the respondent and asked the court to call witnesses. On 1 February 2001 the District Court granted the applicant's claims in part. On 24 May 2001 the Regional Court quashed the judgment and remitted the case for a re-trial.

C. Third round of the proceedings

8. In July 2001 and February 2002 the applicant amended his claims. On 22 February 2002 the District Court found for the applicant. The court reinstated him and awarded him 67,960 Russian roubles (RUB) on account of leave payment, RUB 39,766.09 for salary arrears and inflation losses, and RUB 10,000 in respect of non-pecuniary damage. On 16 May 2002 the Regional Court remitted the case for a new examination in the part of leave payment and upheld the remainder of the judgment.

9. On 30 November 2002 the applicant received RUB 39,766.09 as awarded by the court and another payment of RUB 17,397.14.

D. Fourth round of the court proceedings and enforcement proceedings

10. On 9 January 2003 the District Court awarded the applicant RUB 48,247 in leave payment. The judgment was not appealed against and became final on 20 January 2003.

11. On 24 January 2003 the bailiffs' office opened enforcement proceedings. On 21 March 2003 the District Court instructed the bailiffs' office to collect RUB 30,849.86 from the respondent company because due to a mistake the applicant had already received RUB 17,397.14.

12. On 5 May 2003 the bailiffs' office closed the enforcement proceedings. They held that the judgment could not be enforced because the respondent had no property or funds; on 2 July 2002 the enterprise had been restructured so that its assets had been transferred to the municipality.

13. The judgment of 9 January 2003 was enforced in full on 14 April 2006.

II. RELEVANT DOMESTIC LAW

14. The Civil Code defines State and municipal unitary enterprises as a special form of legal entities that do not exercise the right of ownership in respect of the property allocated to them by the property owner (Article 113 § 1). The State or municipal authority retains ownership of the property but the enterprise may exercise in respect of that property the right of economic control or operative management (Article 113 § 2).

15. The manager of a unitary enterprise is appointed by, and reports to, the owner (Article 113 § 4). The owner has the right to restructure or liquidate the enterprise. The owner's consent is required for any transaction that may lead to encumbrance or alienation of the property.

16. The owner of an enterprise having the right of economic control is not liable for the enterprise's debts unless the owner has caused insolvency of the enterprise or violated the procedure for its liquidation (Article 114 § 7). Such enterprise may be declared insolvent in accordance with the insolvency procedure applicable to private companies.

17. The owner of an enterprise having the right of operative management is liable for the enterprise's debts in case of insufficiency of their funds (Article 115). Such enterprise may not be declared insolvent (Article 65).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENT OF 9 JANUARY 2003

18. The applicant complained that the judgment of 9 January 2003 was not enforced in good time. The Court considers that this complaint should be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). The relevant parts of these provisions read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time... 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...”

A. Admissibility

19. The Government argued that in Russian law the State was liable for unpaid debts of a municipal unitary enterprise only where the owner had caused the enterprise’s insolvency, which had not happened in the present case.

20. The applicant maintained his complaint.

21. The Court notes that under Russian law the owner of a unitary enterprise retains ownership of the property of that enterprise, approves all transactions with that property, controls the management of the enterprise and decides whether the enterprise should continue its activity or be liquidated (see paragraphs 14 - 17 above). The Government have not demonstrated that the enterprise in the present case enjoyed sufficient institutional and operational independence from the State to absolve the latter from responsibility under the Convention for its acts and omissions (see *Aleksandrova v. Russia*, no. 28965/02, § 17, 6 December 2007, with further references). Thus, the Court considers that the State is liable for the proper enforcement of the judgment in the applicant’s favour.

22. 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

23. The Government asserted that the judgment of 9 January 2003 had not been enforced because the municipal enterprise had been restructured and lacked funds to comply with the judicial award.

24. The applicant submitted that the delay in the enforcement of the award had been unreasonably long.

25. The Court observes that the sum under judgment of 9 January 2003 was paid to the applicant on 14 April 2006, that is, with a delay of nearly three years and three months. The Court reiterates that it is not open to a State authority to cite the lack of funds as an excuse for not honouring a court award.

26. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to

the ones in the present case (see *Aleksandrova*, cited above, §§ 20-26; *Gizatova v. Russia*, no. 5124/03, §§ 18-29, 13 January 2005; and *Yavorivskaya v. Russia*, no. 34687/02, §§ 24-29, 21 July 2005).

27. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. It finds that by failing, for years, to comply with the final judgment in the applicant's favour the domestic authorities impaired the essence of his "right to a court" and prevented him from receiving the money he had legitimately expected to receive.

28. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

29. The applicant complained that his case against the former employer had not been examined within a reasonable time contrary to Article 6 § 1 of the Convention.

A. Admissibility

30. 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

1. Period to be taken into account

31. Although the parties disagreed as to the exact date when the action was lodged in March 1998, the Court does not have to determine this matter because the Convention entered into force in respect of Russia only on 5 May 1998. That being so, in assessing the reasonableness of the duration of the proceedings after that date, account may be taken of the state of proceedings at the time. The Court considers that the period of enforcement does not fall within the period to be taken into account in respect of the complaint concerning the length of the proceedings because the applicant has made a separate complaint about the non-enforcement proper (see *Malama v. Greece*, no. 43622/98, § 34 ECHR 2001-II, and *Alekseyev v. Russia* (dec.), no. 5836/05, 13 November 2008). Accordingly, the Court finds that the period to be taken into consideration ended on 20 January

2003, when the judgment of 9 January 2003 became final. Therefore, the relevant period amounts to over 4 years and 8 months.

2. Reasonableness of the length of proceedings

32. The Government argued that certain delays were attributable to the applicant because on several occasions he had amended his claims, sought to obtain documents and to call witnesses. At the same time the Government acknowledged that the courts had not respected national procedural time-limits for the examination of civil cases and that the applicant's right under Article 6 § 1 had been violated.

33. The applicant maintained his complaint.

34. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

35. The Court observes that the proceedings concerned claims for reinstatement in the post and payment of damages; they were not particularly complex. In any event, the complexity of a case could not, in itself, justify the overall duration of the proceedings of nearly five years.

36. As to the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be held responsible for amending his claims and seeking to obtain documentary and witness evidence. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see, as a recent authority, *Ignatyeva v. Russia*, no. 10277/05, § 38, 3 April 2008). There is nothing to indicate that the applicant's requests were vexatious or led to any substantial delays in the examination of his case.

37. The Court also notes that the length of the proceedings was mainly due to the fact that the case was re-examined several times. Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that, since the remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Yurtayev v. Ukraine*, no. 11336/02, § 41, 31 January 2006; *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006; and *Maruseva v. Russia*, no. 28602/02, § 32, 29 May 2008). It is incumbent on respondent States to organise their legal systems in such a way that their courts can meet the requirements of Article 6 of the Convention, including the obligation to hear cases within a

reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006).

38. Lastly, the Court recalls that the employment disputes generally require particular diligence on the part of the domestic courts (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D). Having regard to the overall length of the proceedings and what was at stake for the applicant, the Court concludes that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant also complained about his employment conditions and the alleged unfairness of the proceedings. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, 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 should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 1,470,589 euros (EUR) in respect of non-pecuniary damage.

42. The Government contested this claim.

43. The Court considers that the applicant must have suffered distress and frustration resulting from the authorities’ failure to determine his claim within a reasonable time and to enforce the judgment of 9 January 2003 in good time. However, the amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

44. The applicant also claimed EUR 120 in respect of costs and expenses incurred before the Court.

45. The Government regarded these costs and expenses as substantiated.

46. Regard being had to the information in its possession and the above criteria, the Court awards the sum claimed.

C. Default interest

47. 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 complaints concerning the delay in the enforcement of the judgment of 9 January 2003 and the length of the civil proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the delayed enforcement of the judgment of 9 January 2003;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
4. *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 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 120 (one hundred and twenty euros) in respect of costs and expenses, both sums 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 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 12 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President