



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

FIRST SECTION

CASE OF MARGUSHIN v. RUSSIA

(Application no. 11989/03)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

01/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Margushin 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 11989/03) 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 Viktor Vladimirovich Margushin (“the applicant”), on 28 April 2001.

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

3. The applicant alleged, in particular, that the judgment in his favour had not been enforced.

4. On 13 March 2006 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

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1930 and lives in Taganrog.

A. Proceedings concerning withdrawal of the applicant's deposit

6. On 27 April 1998 the applicant made a deposit in the amount of 7,218.00 United States dollars (USD) with a private bank, Bank Rossiyskiy Kredit (“the Bank”).

7. On 7 September 1998 the Bank repaid USD 1,200 to the applicant.

8. On 16 September 1998 the applicant tried unsuccessfully to recover the outstanding amount.

9. On an unspecified date the applicant brought an action against the Bank seeking the withdrawal of the deposit, payment of the interest and compensation for non-pecuniary damage.

10. On 21 September 1998 the Taganrog Town Court of the Rostov-on-Don Region granted the applicant's claims in part and ordered the Bank to pay the applicant USD 6,085.20. The court dismissed the claim for compensation for non-pecuniary damage.

11. On 30 September 1999 the Presidium of the Rostov Regional Court quashed the judgment of 21 September 1998 by way of supervisory review and remitted the matter to the Town Court for fresh consideration. It appears that on 14 March 2000 the Town Court dismissed the applicant's claims without consideration on the merits.

B. Transfer of the applicant's deposit to Sberbank

12. On 5 December 1998 the applicant accepted the Bank's offer to have the outstanding amount converted into Russian roubles (RUB) at the rate of RUB 9.33 to USD 1 and to have it transferred to his account with another bank. On 5 March 1999 the amount was transferred to his account in the Sberbank.

13. On 1 April 1999 the Sberbank paid the applicant RUB 54,148.54.

C. Friendly settlement agreement

14. On 19 October 1999 the management of the Bank was taken over by the Agency on Restructuring of Depositary Institutions (the “ARKO”), set up by the State in accordance with applicable legislation aimed at mitigating the consequences of the financial crisis of 1998.

15. On 15 May 2000 the association of the Bank's creditors adopted the terms and conditions of a friendly settlement agreement between the Bank's creditors, the Bank and the ARKO. The agreement substantially limited the Bank's liability before its creditors. The Bank had to repay its creditors only the amounts of the deposits. No interest or late payment fees were to be paid. On 15 August 2000 the Moscow Commercial Court approved the friendly settlement agreement.

D. Proceedings against the Bank for compensation for damage

16. On an unspecified date the applicant brought an action against the Bank seeking compensation for his pecuniary losses arising from the Bank's failure to repay the deposit promptly. He also sought payment of interest, late payment fee and non-pecuniary damage.

17. On 5 October 1999 the Taganrog Town Court of the Rostov Region dismissed the applicant's claims. The said judgment was quashed on appeal by the Rostov Regional Court on 7 June 2000.

18. On 13 September 2000 the Town Court dismissed the applicant's claims. On 6 December the Regional Court quashed the judgment of 13 September 2000 on appeal and remitted the matter for reconsideration.

19. On 28 March 2001 the Town Court considered the applicant's claims for the third time. The Bank's representative was present and made submissions to the court asking it to dismiss the claims in full as manifestly ill-founded. She asserted, *inter alia*, that the applicant had agreed for his monies to be transferred to another bank and accordingly had forfeited his right to claim the interest. No reference to the friendly settlement agreement was made. The Town Court granted the applicant's claims in part and awarded him RUB 23,535.04 (USD 819.19). The applicant appealed. On 22 August 2001 the Rostov Regional Court upheld the judgment on appeal.

E. Proceedings concerning the enforcement of the judgment of 28 March 2001 as upheld on 22 August 2001

20. On 24 October 2001 bailiffs instituted enforcement proceedings.

21. On an unspecified date the Bank requested the Taganrog Town Court to discontinue the enforcement proceedings in respect of the judgment of 28 March 2001 as upheld on 22 August 2001. The Bank indicated that according to the friendly settlement agreement of 15 May 2000 the Bank only had to repay to its creditors the sums deposited with the Bank and that no interest or fees had to be paid.

22. The applicant contested the Bank's arguments. He asserted that he had not been included in the list of the Bank's creditors, and that he had not been invited to participate in the friendly settlement negotiations. Nor had he signed the friendly settlement agreement.

23. On 24 December 2001 the Taganrog Town Court granted the Bank's request and discontinued the enforcement proceedings in respect of the judgment of 28 March 2001 as upheld on 22 August 2001.

24. On 18 December 2002 the Rostov Regional Court upheld the judgment on appeal. The relevant part of the judgment read as follows:

“Due to the fact that the Association of the Bank's creditors had acted on behalf of all creditors, the [town] court correctly concluded that the friendly settlement was binding on the applicant, although he had not taken part in the creditors' meetings.

According to the submitted record, although the applicant had not been included in the list of the Bank's creditors, the court decision by which the friendly settlement had been approved had become final, and thus the [town] court correctly discontinued the enforcement proceedings because the friendly settlement had been approved. The complaints that the court judgment [of 28 March 2001] had to be enforced cannot be taken into account because after the friendly settlement had been adopted, the obligation to enforce the judgment was changed into new obligations according to the provisions of the friendly settlement. As follows from the ARKO's letter, when Mr Margushin presents a copy of the court judgment [of 28 March 2001], the necessary changes will be made to the list of the claims of the Bank's creditors and the debt will be repaid according to the established procedure."

25. On an unspecified date the applicant requested the Bank to pay him the judgment debt. On 12 May 2003 the chief accountant of the Bank informed the applicant that the Bank was under no obligation to repay him the requested amount, given that the applicant had recovered the original deposit through the Sberbank.

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 28 MARCH 2001 AS UPHELD ON 21 AUGUST 2001

26. The applicant complained that the judgment of 28 March 2001, as upheld on appeal on 22 August 2001, had not been enforced and the enforcement proceedings were discontinued in contravention of Article 6 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which 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..."

27. The Government considered that the applicant's complaints were incompatible *ratione personae*. In this respect they noted that the onus of the applicant's grievances concerned the Bank's refusal to enforce the

judgment in the applicant's favour. However, the State bore no responsibility for acts and omissions of a commercial bank. They further asserted that the applicant's complaint was, in any event, manifestly ill-founded. They conceded that pursuant to the judgment of 28 March 2001 the applicant was entitled to receive the interest and late payment fees from the Bank. However, the Bank was relieved from the obligation to repay the interest in respect of its creditors' deposits pursuant to the friendly settlement agreement entered into, *inter alia*, by the Bank and the creditors. The said friendly settlement agreement, as a matter of law, was binding on all creditors of the Bank, including the applicant.

28. The applicant maintained his complaint.

A. Admissibility

29. As to the Government's objection that the applicant's complaint is incompatible *ratione personae* with the Convention provisions, it being directed against a commercial bank which refused to honour the judgment debt, the Court cannot subscribe to such a narrow interpretation of the applicant's allegations. It notes that the applicant's grievances concern non-enforcement of the judgment in his favour, which covered not only the Bank's refusal to repay the judgment debt but also the discontinuation of the enforcement proceedings by domestic courts.

While it is true and not disputed by the applicant that the debtor under the said judgment was indeed a private legal entity, this fact alone is insufficient to absolve the State from responsibility with regard to the enforcement of the said judgment. The Court therefore considers that it has jurisdiction to examine whether the domestic authorities have complied with their positive obligation to enforce the judgment given against a private entity in the applicant's favour. It accordingly dismisses the Government's preliminary objection (see *Fuklev v. Ukraine*, no. 71186/01, §§ 67-68, 7 June 2005).

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. Article 6 § 1 of the Convention

31. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other

things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character, such as correction of fundamental defects or miscarriage of justice (see, among numerous authorities, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

32. While it may be accepted that Contracting States may, in exceptional circumstances and, by availing themselves of their margin of appreciation, intervene in proceedings for the enforcement of a judicial decision, the consequence of such an intervention should not be that execution is prevented, invalidated or unduly delayed or, still less, that the substance of the decision is undermined (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

33. Turning to the circumstances of the present case, the Court observes that on 28 March 2001 the applicant obtained a judgment by which the Bank, a private legal entity, was to pay him interest and fees in respect of his deposit at the Bank. The judgment became final and enforceable on 22 August 2001. On 24 October 2001 the bailiff opened enforcement proceedings. However, on 24 December 2001 the court discontinued the enforcement of the judgment in the applicant's favour noting, with the reference to the entering into force on 15 August 2000 of the friendly settlement agreement between the Bank and its creditors, that the Bank was relieved of its obligation to pay the interest and other fees on the deposits of all creditors, including the applicant.

34. In this respect the Court notes that the validation of the friendly settlement agreement preceded by approximately a year the adoption of the judgment in the applicant's favour. Accordingly, had the Bank considered the agreement relevant in respect of the applicant's claims, it could have raised this issue before the domestic courts considering the dispute between the applicant and the Bank. The Bank did not do so. It remained silent as to the consequences the friendly settlement agreement could have had for the applicant's claims when the case was considered at the first level of jurisdiction. Nor did it raise that issue on appeal.

35. The Court further notes that the Government did not point to any exceptional circumstances that would have prevented the Bank from raising the issue of the friendly settlement agreement either at first or appeal instance. In such circumstances, the Bank's application for discontinuation of the enforcement proceedings was nothing but an attempt on the Bank's part to re-argue the case on the points which it had had the opportunity, but had failed, to raise in the civil proceedings. Accordingly, the Court cannot but view the proceedings concerning discontinuation of the enforcement of

the judgment in the applicant's favour as “an appeal in disguise” which could not justify the departure from the principle of legal certainty.

36. Having regard to the above, the Court finds that by discontinuing the enforcement proceedings in respect of the final judgment in the applicant's favour the domestic authorities infringed the principle of legal certainty.

37. There has therefore been a violation of Article 6 § 1 of the Convention on account of discontinuation of the enforcement of the judgment of 28 March 2001 as upheld on 22 August 2001.

2. Article 1 of Protocol No. 1

38. The Court reiterates that by virtue of Article 1 of the Convention, each Contracting State “shall secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention”. The obligation to secure the effective exercise of the rights defined in that instrument may result in positive obligations for the State (see, among most recent authorities, *Wilkowicz v. Poland*, no. 74168/01, § 27, 4 November 2008). As regards the right guaranteed by Article 1 of Protocol No. 1, those positive obligations may entail certain measures necessary to protect the right to property even in cases involving litigation between private individuals or companies (see *Fuklev*, cited above, § 91).

39. In this connection, the Court observes that the applicant obtained a final judgment in his favour against the Bank, a private legal entity. He duly applied to the bailiff's service for its enforcement. Accordingly, the State was under an obligation to ensure, through the adequate functioning of the bailiff's service, that the applicant received the judgment debt. Instead, the domestic courts discontinued the enforcement of the judgment. As a result, the applicant has been unable to receive the payment of the debt owed to him for many years.

40. Having regard to the above and to its findings under Article 6 § 1 of the Convention that the domestic courts have discontinued the enforcement of the judgment in the applicant's favour in contravention of the principle of legal certainty, the Court considers that such failure on the part of the State to provide the mechanism for the enforcement of the judgment in the applicant's favour was incompatible with its positive obligation in so far as the protection of the applicant's property rights were concerned. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. Lastly, the applicant complained under Article 6 of the Convention and under Article 1 of Protocol No. 1 that the judgment of 21 September 1998 remained unenforced for a long time, that the civil proceedings were long, that by the judgment of 28 March 2001 his claims had not been granted in full, and that he was tricked into signing the agreement with the

Bank in 1998 according to which his deposit was transferred into the Sberbank.

42. However, having regard to all the material in its possession, the Court finds that the events complained of 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 must be rejected as being manifestly ill-founded pursuant to Articles 35 § 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed USD 4,593.54 in respect of pecuniary damage. He noted that that amount covered the losses he had incurred after his deposit had been transferred to the Sberbank due to an unrealistic exchange rate applied, interest on the deposit and a late payment fee. He further claimed RUB 100,000 in respect of non-pecuniary damage.

45. The Government considered that the applicant's claims for just satisfaction should be rejected in full. In their opinion, it remained open to the applicant to ask the bank to repay the pecuniary damage sought. As regards the applicant's claim in respect of non-pecuniary damage, they opined that he incurred no damage through the fault of the State. In any event, they considered the applicant's claims excessive and unreasonable.

46. The Court reiterates that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the enforcement of the judicial decision in the applicant's favour was discontinued. The Court notes that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12). The Court finds that in the present case this principle applies as well, having regard to the violations found (compare *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005, and *Sukhobokov v. Russia*, no. 75470/01, §34, 13 April 2006). The applicant was prevented from receiving money he had legitimately expected to receive under the judgment of 28 March 2001 as

upheld on 22 August 2001. The Court, accordingly, considers that the Government shall secure, by appropriate means, the enforcement of the said judgment (see, among other authorities, *Lesnova v. Russia*, no. 37645/04, § 25, 24 January 2008).

47. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in his favour. Making its assessment on an equitable basis, the Court awards the applicant EUR 645 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

48. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum of that account.

C. Default interest

49. 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

1. *Declares* by a majority the complaint concerning non-enforcement of the judgment of 28 March 2001 as upheld on 22 August 2001 admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of discontinuation of the enforcement of the judgment of 28 March 2001 as upheld on 22 August 2001;
3. *Holds* by six votes to one
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the judgment of 28 March 2001 as upheld on 22 August 2001;
 - (b) 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, the following amounts to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 645 (six hundred and forty-five euros) in respect of non-pecuniary damage;
 - (ii) any tax that may be chargeable on the above amount;
 - (c) 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Kovler is annexed to this judgment.

C.L.R.
A.M.W.

DISSENTING OPINION OF JUDGE KOVLER

I cannot share the conclusion of the majority that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the discontinuation of the enforcement of the judgment in favour of the applicant against a private bank.

The first reason for my disagreement is that, generally speaking, a State, according to the Court's case-law, is not responsible for savings deposited in private banks (see *X v. Germany* (dec.), no. 8724/79, Commission decision of 6 March 1980, Decisions and Reports 20; *Rudzińska v. Poland* (dec.), no. 45223/99, ECHR 1999-VI; *Gayduk and Others v. Ukraine* (dec.), nos. 45526/99 et al., ECHR 2002-VI; and *Appolonov v. Russia* (dec.), no. 67598/01, 29 August 2002).

The second reason is that the Court's case-law is rather clear: the State's responsibility for enforcement of a judgment against a private company extends no further than the involvement of State bodies in the enforcement procedures. Once the enforcement procedures have been closed by a court in accordance with the national legislation, the responsibility of the State ends (see, among other authorities, *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

The Court has repeatedly stated that where a judgment is given against the State, the latter must take the initiative in enforcing it fully and in due time (see, among other authorities, *Akashev v. Russia*, no. 30616/05, §§ 21-23, 12 June 2008, and *Burdov v. Russia*, no. 59498/00, §§ 32-42, ECHR 2002-III). When the debtor is a private individual or company, the position is different, since the State is not, as a general rule, directly liable for debts of private individuals or companies and its obligations under the Convention are limited to providing the necessary assistance to the creditor in the enforcement of the relevant court awards, for example through a bailiffs' service or insolvency proceedings (see *Kesyan v. Russia*, no. 36496/02, 19 October 2006, and *Fociac v. Romania*, no. 2577/02, §§ 69-70, 3 February 2005). The Court has also found that the principle that judgments must be executed cannot be interpreted as compelling the State to take the place of a private defendant in the event of the latter's insolvency (see *Reynbakh v. Russia*, no. 23405/03 § 18, 29 September 2005, and *Bobrova v. Russia*, no. 24654/03, § 16, 17 November 2005).

Finally, in the particular circumstances of the present case the applicant accepted the bank's offer to have the outstanding amount in United States dollars converted into Russian roubles and the amount was transferred to his account in another bank (see paragraph 12 of the judgment). Having considered the applicant's claim for the third time, on 28 March 2001 the Town Court took into account the Bank's representative's statement that the applicant had agreed for his monies to be transferred to another bank and accordingly had forfeited his rights to claim the interest, but granted the

applicant's claim in part (see paragraph 19 of the judgment). It seems that the main problem is the value of the award, but on many occasions the Court has stated that a national judge is better placed than an international judge to decide on such matters.

Thus, I am not convinced that the application for discontinuation of the enforcement of the judgment in the applicant's favour was “an appeal in disguise” as the Court stated (see paragraph 35).