



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

FIRST SECTION

CASE OF SMETANKO v. RUSSIA

(Application no. 6239/04)

JUDGMENT

STRASBOURG

29 April 2010

FINAL

04/10/2010

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

In the case of Smetanko v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 6239/04) 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 Ivan Yakovlevich Smetanko (“the applicant”), on 28 January 2004.

2. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the civil proceedings to which he had been a respondent party had been unreasonably long and that there had been a delay in the enforcement of a judgment in his favour.

4. On 7 January 2008 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

5. The applicant was born in 1939 and lives in Solyanoye in the Krasnodar Region.

A. Division of property

6. On 25 March 1993 Ms N., the applicant's former partner, brought an action against him seeking recognition of her rights in respect of the house registered in the applicant's name. The applicant brought a counter-action seeking division of her property.

7. On 16 February 1995 the Dinskiy District Court of the Krasnodar Region granted N.'s claims in part and dismissed the applicant's claims. On 16 April 1996 the Krasnodar Regional Court quashed the judgment of 16 February 1995 on appeal and sent the matter for fresh consideration.

8. On 10 June 1996 the Prikubanskiy District Court of the Krasnodar Region approved a friendly settlement agreement entered into by the applicant and N. and discontinued the proceedings. The applicant appealed. On 18 July 1996 the Regional Court quashed the decision of 10 June 1996 and remitted the matter for fresh consideration.

9. On 15 August 1997 the Prikubanskiy District Court granted N.'s claims in part and dismissed the applicant's claims. On 18 September 1997 the Regional Court quashed the judgment of 15 August 1997 on appeal and again remitted the matter for fresh consideration.

10. On 27 March 1998 the Dinskiy District Court dismissed all the claims and counterclaims in full. On 21 May 1998 the Regional Court quashed the judgment of 27 March 1998 and remitted the matter for fresh consideration.

11. On 21 June 2001, the Dinskiy District Court granted N.'s claims in part. On 6 September 2001 the Regional Court quashed the judgment of 21 June 2001 and remitted the matter for fresh consideration.

12. On 4 March 2002 the Dinskiy District Court ordered the applicant to pay N. 103,960 Russian roubles (RUB) in reimbursement for her expenses incurred during the construction of his house. The applicant's counterclaims were dismissed. On 2 April 2002 the Regional Court upheld the judgment of 4 March 2002 on appeal.

B. Execution of the judgment of 4 March 2002

13. On 10 April 2002 the bailiff instituted enforcement proceedings in respect of the judgment of 4 March 2002.

14. On 5 July 2002 the bailiff seized the applicant's house and car. On an unspecified date, at the applicant's request, the courts lifted the seizure order in respect of the car.

15. On 24 October 2002 the applicant paid the judgment debt owed to N. and the bailiff closed the enforcement proceedings.

16. It appears that on an unspecified date the seizure order was lifted in respect of the house and the applicant sold it.

C. Supervisory review of the judgment of 4 March 2002 and fresh consideration of N.'s claims

17. On 23 January 2003 the Presidium of the Krasnodar Regional Court quashed the judgments of 4 March 2002 and 2 April 2002 by way of a supervisory review and remitted the matter for fresh consideration.

18. On 17 April 2003 the Dinskiy District Court dismissed N.'s claims.

19. On 23 December 2003 the Regional Court gave a final judgment ordering N. to repay the applicant the monies awarded to her by the judgment of 4 March 2002. It appears that that decision was enforced shortly thereafter.

D. Proceedings against the bailiff and execution of the judgment of 17 June 2005

20. On 14 September 2004 the Regional Court gave a final judgment dismissing the applicant's complaint about the allegedly unlawful seizure of his house by the bailiff as time-barred.

21. On 17 June 2005 the Pervomaiskiy District Court of Krasnodar dismissed the applicant's action against the bailiff for compensation in respect of non-pecuniary damage. The court, however, ordered that the applicant be repaid the enforcement fee of RUB 7,278.

22. On an unspecified date, the applicant submitted a writ of execution to the Treasury. On 15 July 2005 the Treasury returned the writ of execution to the applicant advising him to resubmit it to the Ministry of Justice.

23. On 3 August 2005 the applicant asked the Pervomaiskiy District Court to clarify the part of the judgment of 17 June 2005 concerning its enforcement. On 24 August 2005 the Pervomaiskiy District Court held that the award was to be paid by the Ministry of Finance.

24. On 4 October 2005 the applicant resubmitted the writ to the Treasury. On 10 October 2005 the Treasury returned the writ to the applicant advising him to lodge it with the bailiff.

25. On 9 December 2005 the applicant submitted the writ of execution to the Ministry of Finance. On 9 March 2006 the Ministry of Finance returned the writ of execution advising the applicant that the District Court had erred in its indication of who was liable for the judgment debt. In the Ministry's view, the District Court should have specified that it was the Treasury and not the Ministry.

26. On 10 May 2006 the applicant resubmitted the writ of execution and accompanying documents. On 9 November 2006 the Ministry of Finance asked him for his bank details.

27. On 28 December 2006 the judgment in the applicant's favour was enforced.

E. Action for compensation for the excessive length of proceedings

28. On 19 March 2008 the applicant brought an action against the Ministry of Finance and the Treasury seeking compensation for damage resulting from the excessive length of the proceedings concerning the property dispute with his former partner. The applicant asked the court to award him RUB 200,000 in respect of pecuniary damage and RUB 2,000,000 in respect of non-pecuniary damage.

29. On 12 May 2008 the Pervomaiskiy District Court of Krasnodar granted the applicant's claims in full in respect of pecuniary damage and in part in respect of non-pecuniary damage and awarded him RUB 100,000 under that head. The court indicated that it had made the assessment of the non-pecuniary damage on an equitable basis and took into account the applicant's "advanced age, health condition and disability". The applicant appealed, asking the court to increase the amount of compensation awarded for both pecuniary and non-pecuniary damage.

30. On 28 August 2008 the Krasnodar Regional Court upheld the judgment of 12 May 2008 on appeal. As regards the pecuniary damage, the court noted that the District Court had granted the applicant's claims in full and there was no reason to increase that amount. Had the applicant considered it necessary to increase his claims in this respect, he should have done so before the court at the first level of jurisdiction.

31. On 17 September 2008 the applicant received the monies.

II. RELEVANT DOMESTIC LAW

32. For a summary of domestic law provisions on civil-law remedies in respect of the delayed enforcement of judgments against the State, see the case of *Burdov v. Russia* (no. 2) (*Burdov v. Russia* (no. 2), no. 33509/04, §§ 26-29, ECHR 2009-...).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE CIVIL PROCEEDINGS

33. The applicant complained that the civil proceedings which ended with the judgment of 23 December 2003 had been unreasonably long in contravention of Article 6 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

Admissibility

1. The parties' submissions

34. The Government submitted that the Russian authorities had taken measures to remedy the violation of the applicant's rights set out in Article 6 § 1 at the domestic level and that the applicant had lost his victim status. In particular, on 12 May 2008 the Pervomaiskiy District Court of Krasnodar had granted the applicant's claims and awarded him compensation in respect of pecuniary and non-pecuniary damage caused by the excessive length of the civil proceedings in question. They considered that the amount awarded to the applicant had constituted an adequate redress and was comparable with and even exceeded the amounts the Court normally awarded in similar Russian cases.

35. The applicant contended that the amounts awarded had been too low to constitute an adequate redress for the damage incurred. He also considered that the enforcement of the judgment of 12 May 2008 had been excessively delayed, not having been enforced until 17 September 2008.

2. The Court's assessment

36. The Court reiterates that an applicant is deprived of his or her victim status if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-93, ECHR 2006-V).

(a) Whether the domestic authorities acknowledged the violation of the applicant's right

37. As regards the first condition, the Court notes and the parties do not dispute that on 12 May 2008 the District Court found that the length of the civil proceedings in the applicant's case had been excessive and awarded him compensation in respect of pecuniary and non-pecuniary damage. The judgment of 12 May 2008 was upheld on appeal by the Regional Court and became final on 28 August 2008. Accordingly, the Court accepts the Government's argument that the Russian authorities acknowledged a violation of the applicant's right to have his case decided within "a reasonable time".

(b) Whether the redress afforded was appropriate and sufficient

38. As regards the second condition, namely, appropriate and sufficient redress, the Court notes from the outset that the applicant did not complain that the remedy to which he had resorted had not been effective within the meaning of Article 13 of the Convention. His grievances concerned only the amount of the compensation awarded and the delays in its payment. The Court will examine them accordingly.

(i) Amount awarded

39. The Court reiterates that the amount awarded on account of a violation of the reasonable-time requirement is one of the characteristics of sufficient redress which may remove a litigant's victim status (see *Scordino*, cited above, § 202 *in fine*). It has held in other length-of-proceedings cases that in assessing the amount of compensation awarded by domestic courts, it considers, on the basis of the material in its possession, what it would have done in the same position for the period taken into account by the domestic court (*ibid.*, § 211).

40. Turning to the circumstances of the present case, the Court observes that the applicant claimed RUB 200,000 in respect of pecuniary damage when lodging his application for compensation before the court at the first level of jurisdiction. The District Court granted his claim in full. The applicant later changed his mind and asked the Regional Court to increase the amount awarded on appeal. The Regional Court refused to do so noting that the applicant's new claim was unsubstantiated and belated. In this respect the Court reiterates that the domestic courts are clearly in a better position to determine the existence and quantum of pecuniary damage caused (see *Scordino*, cited above, § 203). The Court discerns nothing in the applicant's submissions for it to question the domestic courts' findings concerning the compensation awarded for pecuniary damage.

41. The Court further observes that the compensation awarded to the applicant for non-pecuniary damage amounted to RUB 100,000, which constitutes approximately EUR 2,754. When determining the amount of the

award, the domestic courts took into account the applicant's "advanced age, health condition and disability". Even though the relevant judgments remain silent as to the method of calculation, the Court notes that the amount awarded is comparable to what it generally awards in similar Russian cases. It considers accordingly that the amount of compensation for non-pecuniary damage awarded to the applicant was not unreasonable.

(ii) Actual payment of the award to the applicant

42. The Court observes that the judgment awarding the applicant compensation on account of the excessive length of proceedings in his case came into force on 28 August 2008. The authorities paid the judgment debt in full to the applicant twenty days after that date, that is, on 17 September 2008. Having regard to its established case-law, that the period of enforcement in respect of a compensatory remedy designed to redress the consequences of excessively lengthy proceedings should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable (see *Scordino*, cited above, § 198 *in fine*), the Court considers that the domestic authorities duly complied with the respective obligation.

(iii) Conclusion

43. Having regard to the above, the Court is satisfied that the compensation awarded and paid to the applicant in respect of the excessive length of the civil proceedings in his case constituted an appropriate and sufficient redress. The applicant may not, therefore, still claim to be a victim within the meaning of Article 34 of the Convention. It follows that this complaint must be rejected pursuant to Articles 34 and 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION
AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE
DELAYED ENFORCEMENT OF THE JUDGMENT OF 17 JUNE
2005

44. The applicant complained that the enforcement of the judgment of 17 June 2005 had been unduly delayed. The Court considers that the complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, 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

45. The Government contended that the applicant had failed to exhaust domestic remedies in respect of his complaint. In their view, the applicant should have complained to a court about the alleged failure by the Ministry of Finance to enforce the judgment in his favour in good time as provided for in Chapter 25 of the Russian Code of Civil Procedure. Alternatively, he could have brought an action for compensation in respect of non-pecuniary damage resulting from the non-enforcement of the said judgment pursuant to Chapter 59 of the Russian Civil Code or asked a court to adjust the amount awarded in accordance with Article 208 of the Russian Code of Civil Procedure. In support of their argument they cited two examples of domestic case-law. In particular, on 13 July 2007 the Leninskiy District Court of Cheboksary found the inaction on the part of the Regional Department of the Federal Treasury to be in contravention of the law and compelled the latter to transfer the monies to the plaintiff within one working day. On 23 October 2006 the Novo-Savinovskiy District Court of Kazan granted the plaintiffs' claim for compensation in respect of non-pecuniary damage resulting from the lengthy non-enforcement of the judgment in their favour. Lastly, they referred to certain decisions of the Court (notably *Nemakina v. Russia* (dec.), no. 14217/04, 10 July 2007; *Derkach v. Russia* (dec.), no. 3352/05, 3 May 2007; and *Yakimenko v. Russia* (dec.), no. 23500/04, 15 May 2007), where the Court found that the applicants' successful application for adjustment of the sum of the judgment debt deprived them of their victim status.

46. The applicant considered his complaint admissible.

47. The Court notes that the Government have already raised the same argument in a number of Russian cases concerning continued non-enforcement of the judgments in the applicants' favour. The Court has examined and dismissed them finding the said remedies ineffective (see, among others, *Burdov v. Russia* (no. 2), no. 33509/04, §§ 103 and 106-116, 15 January 2009, and *Moroko v. Russia*, no. 20937/07, §§ 25-30, 12 June 2008). The Court discerns nothing in the Government's submissions which

would persuade it to depart from its earlier finding. It follows that the applicant was not required to exhaust the domestic remedies, as indicated by the Government, and the Government's objection must be dismissed.

48. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

49. The Government submitted that the judgment of 17 June 2005 had been enforced in good time. They considered that the period under consideration had not started to run until 9 December 2005 when the applicant had submitted the writ of execution to the Ministry of Finance. It had ended on 25 December 2005 when the monies were transferred. Furthermore, the applicant had failed to submit his bank details to the Ministry of Finance, which had had to ask him to do so on 9 November 2006. The applicant's response had reached the Ministry on 19 December 2006 and the latter had paid the monies to the applicant six days later.

50. The applicant maintained his complaint.

51. The Court observes that the judgment of 17 June 2005 was not appealed against and became enforceable ten days later, that is, on 27 June 2005. The applicant received the monies on 28 December 2006. Accordingly, it took the domestic authorities one and a half years to enforce the judgment in the applicant's favour. The Court's task is, therefore, to ascertain whether such a period of enforcement was reasonable in the circumstances of the present case (see, among other authorities, *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004).

52. In this respect the Court reiterates that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The respondent State authority must be duly notified of the judgment against the State and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance. This especially applies where, in view of the complexities and possible overlapping of the execution and enforcement procedures, an applicant may have reasonable doubts about which authority is responsible for the execution or enforcement of the judgment (see *Akashev v. Russia*, no. 30616/05, § 21, 12 June 2008).

53. Turning to the circumstances of the present case, the Court considers that all the delays in the enforcement of the judgment in the applicant's favour are attributable to the authorities. Admittedly, from 27 June until 9 December 2005 the applicant failed to submit the writ of execution to the Ministry of Finance. Nevertheless, even assuming that the applicant could have been more diligent when contacting various state bodies, the Court

cannot but notice that the state bodies themselves were not in agreement as to the way in which the judgment was to be enforced and advised the applicant in a contradictory manner on the issue. Furthermore, the judgment and the writ of execution contained certain defects which had to be corrected. Lastly, the Court notes that, when reapplying to the Ministry of Finance on 10 May 2006, the applicant indeed failed to provide his bank details. However, it took the Ministry of Finance another six months to advise him of that omission on his part. The relevant letter to the applicant was not sent until 9 November 2006. It appears that the applicant promptly responded submitting the information requested and the judgment debt was paid on 28 December 2006.

54. Having regard to the above, the Court considers that the domestic authorities have failed to take the initiative in enforcing the judgment of 17 June 2005 in the applicant's favour in good time. There has been, therefore, a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. Lastly, the applicant complained that the judge who had decided his case in 1996-1997 was biased, that the domestic courts had erred in granting N.'s action, that the bailiffs had wrongfully seized his house and that his action against them had been to no avail. He referred to Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1.

56. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione temporis*, 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 manifestly ill-founded pursuant to Articles 35 § 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed RUB 1,500,000 in respect of pecuniary damage. He alleged that he had lost that amount when selling his house at a

low price to comply with the judgment of 4 March 2002 which had been subsequently quashed. He further claimed EUR 30,000 in respect of non-pecuniary damage.

59. The Government considered the applicant's claims excessive and unsubstantiated. They further submitted that the applicant's claim in respect of pecuniary damage concerned his complaint about the length of the proceedings in his case. This had been subject to consideration by domestic courts which had recognised the violation of his rights and awarded him just satisfaction on that account.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant suffered frustration on account of the lengthy non-enforcement of the judgment in his favour. However, the particular amount claimed appears excessive. The Court takes into account the relevant elements, such as the nature of the award at stake in the present case and the length of the enforcement proceedings. Making its assessment on an equitable basis, it awards the applicant EUR 200 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

61. The applicant also claimed EUR 5,000 for costs and expenses incurred before the domestic courts and the Court. He submitted receipts for RUB 44.1 in respect of his postal expenses in relation to the enforcement proceedings and RUB 713.8 in respect of his postal expenses in relation to the proceedings before the Court.

62. The Government considered that only the applicant's expenses incurred before the Court should be reimbursed.

63. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 20 covering costs under all heads.

C. Default interest

64. 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 the delayed enforcement of the judgment of 17 June 2005 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 on account of the delayed enforcement of the judgment of 17 June 2005 in the applicant's favour;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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 on the date of settlement:
 - (i) EUR 200 (two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 20 (twenty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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 29 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President