



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

FIRST SECTION

CASE OF YELDASHEV v. RUSSIA

(Application no. 5730/03)

JUDGMENT

STRASBOURG

12 May 2010

FINAL

12/08/2010

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

In the case of Yeldashev 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 Hajiyev,

Dean Spielmann,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 5730/03) 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 Ruslan Achilovich Yeldashev (“the applicant”), on 16 January 2003.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, 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 three civil judgments given in his favour were not enforced in good time.

4. By a decision of 4 December 2008 the Court declared the application partly admissible.

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and lives in Noginsk, a town in the Moscow Region.

7. The applicant is a retired serviceman. He enlisted in 1980, and at the material time he was a captain of the Space Force, occupying on a contractual basis the post of a deputy director of social and political education.

8. On 24 July 1998 the Noginsk Town Court ordered the command to grant the applicant an early discharge because of the command's failure to fulfil their obligations under the contract. On 4 August 1998 this judgment became binding but was not enforced immediately, and the applicant resubmitted his claim.

9. On 21 June 2002 the 94th Garrison Military Court ordered the command to discharge the applicant for health reasons, to provide him with housing, and to pay 7,000 Russian roubles (RUB) in damages. On 24 July 2002 this judgment became binding in the part concerning the discharge and housing. The part concerning the damages was referred for a retrial.

10. On 3 September 2002 the 94th Garrison Military Court ordered the command to pay RUB 23,817.60 in pecuniary and non-pecuniary damage. On 9 October 2002 this judgment became binding.

11. On 9 June 2003 the applicant received the flat.

12. On 27 June 2003 the applicant was discharged from service.

13. On 26 April 2004 the applicant submitted enforcement papers in respect of the damages, and on 5 February 2005 he received the sum due.

II. RELEVANT DOMESTIC LAW

14. At the material time judgments delivered against the public authorities were executed in accordance with a special procedure established, *inter alia*, by Government's Decree No. 143 of 22 February 2001 and, subsequently, by Decree No. 666 of 22 September 2002, entrusting execution to the Ministry of Finance (see further details in *Pridatchenko and Others v. Russia*, nos. 2191/03, 3104/03, 16094/03 and 24486/03, §§ 33-39, 21 June 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF NON-ENFORCEMENT OF THE JUDGMENT OF 4 AUGUST 1998

15. The applicant complained that despite the judgment he had not been discharged on the ground of the command's failure to fulfil their obligations. Insofar as relevant, this Article reads as follows:

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

16. The Government argued that by operation of law this judgment could only be enforced after the applicant had been provided with housing. In this respect, they referred to the absence of flats outside Noginsk-9 at the command's disposal in 1998-2002 and to the applicant's refusal either to participate in “State housing certificates” programme or to obtain a flat in Noginsk-9.

17. 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).

18. In the case at hand, the judgment remained unenforced for more than four years: from 4 August 1998 till 27 June 2003, the day on which the applicant was discharged for another reason and the enforcement, thus, was overtaken by events. Such a long delay appears unreasonable. The Court is not convinced by the arguments put forward by the Government to justify this delay.

19. In particular, the Court has not at its disposal a domestic judicial decision or other authority that would confirm that under domestic law the applicant should necessarily have accepted the housing certificate or a flat in Noginsk-9, in order to have the judgment of 4 August 1998 properly enforced. Thus, the Court cannot conclude that the applicant obstructed the only possible mode of enforcement of the judgment (see, by contrast, *Filonenko v. Russia*, no. 22094/04, § 20, 31 July 2008). Besides, the scarcity of flats cannot be considered as a mitigating circumstance (see *Lotorevich v. Russia*, no. 16048/06, § 35, 22 January 2009). Lastly, 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): it does not transpire from the case-file that the authorities took timely action to comply with the judgment of 4 August 1998.

20. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 IN RESPECT OF ENFORCEMENT OF THE JUDGMENT OF 21 JUNE 2002

21. The applicant complained about delayed enforcement of the judgment of 21 June 2001. The Court will examine this complaint under Article 6 § 1 of the Convention, the relevant parts of which has been quoted

above, and Article 1 of Protocol No. 1, the relevant part of which reads as follows:

“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.”

22. The Government argued that the judgment of 21 June 2002 had been enforced within a reasonable time.

23. The Court notes that the enforcement of the judgment lasted from 24 July 2002, when the judgment became binding, to 27 June 2003, when the applicant was discharged from service. Hence, the enforcement period amounts to eleven months.

24. The Court considers that the overall time taken by the authorities to enforce this judgment does not appear unreasonable in the light of the established case-law, especially bearing in mind that enforcement of a judgment included allocation of a flat, which may admittedly take a longer time than payment of a sum of money (see *Zheleznyakovy v. Russia* (dec.), no. 3180/03, 15 March 2007).

25. There has, accordingly, been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 IN RESPECT OF ENFORCEMENT OF THE JUDGMENT OF 3 SEPTEMBER 2002

26. The applicant complained about non-enforcement of the judgment of 3 September 2002. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which have been quoted above.

27. The Government argued that the delay in the enforcement was largely attributable to the applicant: between October 2002 and April 2004 he had not submitted the writ of execution to the competent body, and in December 2004 he had provided wrong bank account details.

28. The Court observes that the enforcement of the judgment in question lasted from October 2002 to February 2005, i.e. two years and four months.

29. In so far as the Government suggested that the period of enforcement should run from the moment when the applicant submitted enforcement papers to a competent authority, the Court reiterates that where a judgment

is against the State, the State must take the initiative to enforce it (see the above cited *Akashev*, §§ 21–23).

30. The above period appears incompatible with the requirements of the Convention. The Government did not provide convincing evidence that appropriate action had been taken by the respondent authorities to comply with their obligations in this respect. The judgment was not difficult to enforce because it required only a bank transfer, and the applicant did not obstruct the enforcement.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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.”

33. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

34. On 11 December 2008, after the present application had been declared admissible, the Court invited the applicant to submit his claims for just satisfaction by 4 February 2009. The applicant did not submit any such claims.

35. In these circumstances, the Court makes no award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of enforcement of the judgment of 4 August 1998;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 in respect of enforcement of the judgment of 21 June 2002.
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of enforcement of the judgment of 3 September 2002.

Done in English, and notified in writing on 12 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President