



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

FIRST SECTION

CASE OF RUSSIKH v. RUSSIA

(Application no. 44595/05)

JUDGMENT

STRASBOURG

10 April 2012

FINAL

10/07/2012

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

In the case of *Russkikh v. Russia*,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 44595/05) 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 Fedor Vasilyevich Russkikh (“the applicant”), on 11 November 2005.

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

3. On 14 January 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. In accordance with the pilot judgment *Burdov v. Russia* (no. 2) (no. 33509/04, ECHR 2009), the application was adjourned pending its resolution at the domestic level.

5. The Government later informed the Court that enforcement of the domestic judgment in the applicant’s favour was impossible as the applicant had failed to submit the documents to the correct enforcement authority and requested the Court to consider the application on the merits. The Court therefore decided to resume examination of the present case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lives in Izhevsk, Republic of Udmurtiya.

7. On 17 June 2002 the applicant brought proceedings in court challenging the authorities' refusal to issue him with a new passport.

8. On 20 September 2002 the Presidium of the Supreme Court of the Republic of Udmurtiya, considering the case at the supervisory instance, found for the applicant.

9. The applicant subsequently sued the authorities for damages resulting from their unlawful refusal to issue him with a passport.

10. On 11 August 2004 the Oktyabrskiy District Court of Izhevsk granted the applicant's claims in part and awarded him 4,000 Russian roubles (RUB) as non-pecuniary damage, to be paid by the Russian Ministry of Finance.

11. On 30 September 2004 the Supreme Court of the Republic of Udmurtiya upheld the judgment on appeal.

12. According to the Government, shortly after the judgment of 11 August 2004 became binding and enforceable, the trial court forwarded the writ of execution to the relevant department of the bailiff service. However, on 21 January 2005 the writ was returned to the applicant by the bailiff service with an explanation that the document should be submitted to the Ministry of Finance.

13. The applicant did not re-submit the document to any authorities, and the judgment remains unenforced to date.

II. RELEVANT DOMESTIC MATERIAL

A. Law on Enforcement Proceedings

14. Article 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 (no. 119- Φ 3) as in force at the material time provided that a bailiff was to set a time-limit up to five days for the defendant's voluntary compliance with a writ of execution. The bailiff was also to warn the defendant that coercive action would follow should the defendant fail to comply with the time-limit. Under Article 13 of the Law, the enforcement proceedings had to be completed within two months of the receipt of the writ of execution by the bailiff.

B. Special execution procedure for the judgments delivered against the State and its entities

15. In 2001-2005 the judgments delivered against the public authorities were executed in accordance with a special procedure established, *inter alia*, by the 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. By a ruling of 14 July 2005 (no. 8-*II*), the Constitutional Court of Russia considered certain provisions governing the special execution procedure to be incompatible with the Constitution. Following that ruling, the Law of 27 December 2005 (no. 197- Φ 3) introduced a new chapter in the Budget Code modifying this special procedure. The Law notably empowered the Federal Treasury to execute judgments against legal entities funded by the federal budget and the Ministry of Finance to execute judgments against the State. Under Article 242.2.6 of the Budget Code, the judgments must be executed within three months after receipt of the necessary documents.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

16. The applicant complained that the authorities had failed to enforce the judgment of 11 August 2004 in his favour. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1, which in the relevant part 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

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The Government argued that by failing to submit the enforcement documents to the Ministry of Finance, as he had been advised by the bailiff, the applicant had failed to comply with the minimal requirements necessary to obtain the award. They referred to the case of *Akashev v. Russia* (no. 30616/05, 12 June 2008) to emphasize that the requirement to submit the enforcement documents to the enforcing authority was not unreasonable or difficult to comply with and fell within the category of “certain procedural steps” to be followed by the creditor; in this respect the applicant’s case allegedly differed from the many previous Russian cases where the applicants had had to send their documents to various bodies several times. The Government concluded that they did not have any possibility to enforce the judgment in the absence of the enforcement documents lodged with the proper executing authority.

19. The applicant maintained his complaint.

20. 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, it will look at how complex the enforcement proceedings were, how the applicants and the authorities behaved, and what was the nature of the award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

21. The Court further 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). Where a judgment is against the State, the defendant State authority must be duly notified thereof 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 (see *Akashev*, cited above, § 21). The complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time (see *Burdov* (no. 2), cited above, § 70). Where the creditor’s cooperation is required, it must not go beyond what is strictly necessary and in any case does not relieve the authorities of their obligation under the Convention to

take timely and *ex officio* action, on the basis of the information available to them, with a view to honouring the judgment against the State (see *Akashev*, cited above, § 22).

22. The Court observes that in the instant case the judgment of 11 August 2004 has been pending enforcement for over seven years. It notes that the enforcement proceedings were not particularly complex given the nature of the award and that no significant delays can be attributed to the applicant. Indeed, once the judgment became final, the trial court forwarded the pertinent writ of enforcement to the authority it considered relevant at the time, namely the bailiff service. The fact that the enforcement proceedings at the material time were so complex that even the domestic court could not determine correctly which State body was the due recipient of the writ of enforcement does not relieve the State of its obligation to act in accordance with the principles cited above. In particular, once the authorities were in possession of the writ of enforcement, it was open to them to adopt a more practical approach and to forward the document to the responsible body. Consequently, despite the applicant's failure to submit the documents to the Ministry of Finance after their return by the bailiff service, the full responsibility for enforcement of the court judgment rests with the State.

23. In view of the above, the Court considers that the authorities failed to comply with their obligation under the Convention and that there has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant also complained about the length of the two sets of proceedings to which he had been a party.

25. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the above complaint does 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 3,000 euros (EUR) on top of the judgment debt due to him, which amounted approximately to EUR 100, in respect of pecuniary damage, and EUR 3,000 in respect of non-pecuniary damage. He did not submit any supporting documents as regards his claim for pecuniary damage, nor did he provide any details of the calculation method he used.

28. The Government retorted that in the case of finding a violation by the Court, that finding would provide sufficient just satisfaction for the applicant in respect of non-pecuniary damage. They further argued that his claim for pecuniary damage was unsubstantiated.

29. As to the claim for pecuniary damage, the Court notes the Government’s submission that they could not enforce the judgment in the applicant’s favour (see paragraph 5 above). It therefore awards the applicant EUR 100 for pecuniary damage.

30. As to the rest of the claim, it reiterates 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 Court may reject the claim in whole or in part. The Court notes that in the present case the applicant failed to provide any details of his calculations. The Court therefore rejects the remainder of the claim.

31. At the same time, the Court accepts that the applicant suffered distress and frustration following the State’s failure for over seven years to honour its debt. Deciding on an equitable basis and with regard to all relevant factors, including the amount of the original debt (see *Burdov (no. 2)*, cited above, §§ 154-157), the Court awards the applicant EUR 1,250 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed 1,567 Russian roubles (RUB) (approximately EUR 40) for the costs and expenses incurred before the Court.

33. The Government admitted that the claim was substantiated but argued that it should not be awarded.

34. Regard being had to the documents in its possession and the above criteria, the Court accepts the claim and awards the applicant EUR 40 under this head.

C. Default interest

35. The Court considers it appropriate that the default interest rate 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 court judgment in the applicant's favour 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 non-enforcement;
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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 100 (one hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 1,250 (one thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 40 (forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President