



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

FIRST SECTION

DECISION

Application no. 41187/05
Nikolay Petrovich SVISTUNOV
against Russia

The European Court of Human Rights (First Section), sitting on 27 March 2012 as a Committee composed of:

Peer Lorenzen, *President*,

Elisabeth Steiner,

Julia Laffranque, *judges*,

and André Wampach, Deputy Section Registrar,

Having regard to the above application lodged on 11 October 2005,

Having regard to the decision to apply the pilot judgment procedure taken in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009 (extracts)),

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Nikolay Petrovich Svistunov, is a Russian national who was born in 1972 and lives in Voshchikovo, Yaroslavl Region. The Russian Government (“the Government”) are represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Criminal proceedings against the applicant

On 28 December 2001 the applicant was arrested and placed on remand on suspicion of a murder.

By a judgment of 18 October 2002 of the Poshekhonye District Court of the Yaroslavl Region the applicant was convicted of murder and sentenced to ten years' imprisonment. On 10 December 2002 the conviction was upheld on appeal by the Yaroslavl Regional Court.

2. Claim for compensation for poor conditions of detention on remand and ensuing enforcement proceedings

In 2004 the applicant sued the State for poor conditions of detention on remand. By a judgment of 16 August 2006 the Kirovskiy District Court of Yaroslavl ("the District Court") granted his claims in part and awarded him 2,000 Russian roubles (RUB) to be paid by the Ministry of Finance.

On 27 November 2006 the Yaroslavl Regional Court, considering the above judgment on appeal, increased the award to RUB 5,000.

Shortly thereafter the writ of enforcement for the judgment of 16 August 2006 was forwarded by the first-instance court to the Ministry of Finance.

On 28 May 2007 and 15 February 2008 the District Court advised the applicant to submit his bank account details to enable the debtor to pay the award. The applicant submitted his bank account details on 14 March 2008.

3. Claim for compensation for unlawful detention on remand

In 2005 the applicant sued the State for alleged unlawful detention on remand between 28 March and 18 October 2002.

By a judgment of 13 May 2005 the District Court rejected his claim. The applicant, who was serving his prison sentence at the material time, did not appear at the hearing, nor had he appointed a representative. He also did not appear at the hearing of the appeal court which upheld the above judgment on 18 July 2005.

4. Claim for compensation for belated access to criminal case-file

In 2005 the applicant sued the State for compensation following a delay in granting him access to the materials of his criminal case-file which allegedly led to his missing the time-limit for bringing some of his complaints to the Court.

By a decision of 19 July 2005 the District Court left his claim without consideration. The applicant did not challenge this decision on appeal.

5. Enforcement of the judgment of 16 August 2006 and ensuing claim for compensation for delayed enforcement

Following communication of the applicant's case to the Government, the regional State Treasury department applied to the District Court with a request to clarify the judgment of 16 August 2006 and to issue a duplicate of the relevant writ of enforcement.

On 3 March 2010 the applicant was paid RUB 5,000 due to him, before deduction of the bank fee amounting to 1 per cent of the sum.

In the meantime the applicant sued the State under the Compensation Act (see below) for unreasonable length of the proceedings concerning compensation for poor conditions of detention and excessive delay in the enforcement of the award.

On 29 September 2010 the Yaroslavl Regional Court granted the applicant's complaints, acknowledged that the enforcement delay had been unreasonable and awarded him RUB 16,000, a half of which (approximately 200 euros) was to cover non-pecuniary damage resulting from the delayed enforcement.

By a decision of 17 December 2010 the Supreme Court of Russia upheld the above judgment on appeal.

On 8 April 2011 the applicant received RUB 16,000 due to him under the judgment of 29 September 2010.

B. Relevant domestic law

Federal Law № 68-ФЗ "On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" of 30 April 2010 (in force as of 4 May 2010) provides that in case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, the Russian citizens are entitled to seek compensation of the non-pecuniary damage.

COMPLAINTS

The applicant complained under Article 5 § 1 of unlawful detention on remand between 28 March and 18 October 2002.

He also complained under Article 6 of assorted faults in the criminal proceedings against him.

He further complained that the delay in the enforcement of the judgment of 16 August 2006 had been in breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

He complained under Article 13 about lack of legal assistance in the proceedings for compensation for belated access to the case-file and resulting inability to challenge the first-instance decision on appeal.

He finally complained under Article 14 about the court's failure to ensure his personal presence at the hearings concerning the claim for compensation for unlawful detention.

THE LAW

1. The applicant complained under Article 6 § 1 and Article 1 of Protocol No. 1 that the delay in the enforcement of the judgment of 16 August 2006 had been in breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These provisions read in the relevant part as follows:

Article 6

“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.”

Referring to the payment of the court award in the applicant's favour and compensation awarded to him for unreasonable delay in the execution of the judgment, the Government argued that the applicant no longer held the victim status necessary to continue the proceedings.

The applicant submitted that the judgment of 16 August 2006 in his favour had not been enforced in full as he had had to pay a bank fee in the amount of one per cent of the award.

The Court reiterates that for an applicant to be able to claim to be the victim of a violation, within the meaning of Article 34 of the Convention, not only must he have the status of victim at the time the application is introduced, but such status must continue to obtain at all stages of the proceedings. A decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a “victim” unless the

national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

Firstly, the Court cannot agree with the applicant that withholding by a bank of the fee for crediting of the judgment debt to his account amounts to incomplete enforcement of the judgment, as the State does not bear responsibility for the business practices of private commercial institutions.

Secondly, the Court does not lose sight of the fact that the applicant submitted his bank account details, thus fully enabling enforcement of the judgment, only on 14 March 2008, i.e. one year and four months after the judgment entered into force. Considering that the requirement to submit the creditor's bank account details is neither unreasonable nor excessive (see, *mutatis mutandis*, *Kosmidis and Kosmidou v. Greece*, no. 32141/04, § 24, 8 November 2007, and *Burdov (no. 2)*, cited above, § 69), the Court is of the opinion that the overall delay in the enforcement should be calculated with deduction of the period during which the applicant was withholding the required information. Accordingly, this delay amounted approximately to one year and eleven months.

The Court observes that the applicant successfully used the new domestic remedy which was made available to him by the Compensation Act (see above). The domestic courts duly considered his case in line with the Convention criteria, found a violation of his right to enforcement of the judgment within a reasonable time and awarded compensation that exceeded considerably the amount of the judgment debt. The Court considers the amount of compensation to be reasonable in view of the applicant's partial responsibility for the delay and the nature of the original award. The domestic court's judgement should therefore be regarded as providing a satisfactory response to the *Burdov* pilot judgment.

The Court concludes that the authorities acknowledged the breach of the applicant's right under the Convention and granted him adequate and sufficient redress. Accordingly, he may no longer claim to be a victim of the violation.

It follows that this complaint must be declared manifestly ill-founded and rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Having examined the remainder of the applicant's complaints, the Court finds that 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 the application in this part is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Peer Lorenzen
President