



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

FIFTH SECTION

CASE OF LOSITSKIY v. RUSSIA

(Application no. 24395/02)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

*This judgment will become final in the circumstances set out in
Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Lositskiy v. Russia,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. KOVLER,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 24395/02) 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 Anatoliy Afanasyevich Lositskiy, on 4 April 2002.

2. The applicant was represented before the Court by Mr M. Rachkovskiy, a lawyer with the International Protection Centre in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 10 November 2005 the Court decided to communicate the complaint concerning length of enforcement proceedings and lack of an effective remedy for continued non-enforcement of the judgment in the applicant's favour to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1946 and lives in Obninsk.

A. Judgment in the applicant's favour

5. The applicant brought a civil action, seeking an increase of the monthly rate of the disability compensation he was entitled to receive.

6. On 6 March 2000 the Obninsk District Court of the Kaluga Region awarded the applicant 244,745.52 Russian roubles (RUR) in arrears for the period from 1 December 1998 to 1 April 2000 and increased the monthly payments to RUR 18,211.72 effective from 1 April 2000. On 1 June 2000 the Kaluga Regional Court upheld the judgment.

B. Execution of the judgment in the applicant's favour

7. On 4 August 2000 the bailiffs' office opened the enforcement proceedings.

8. On 25 September 2000 the bailiffs' office forwarded the writs of execution to the Obninsk Division of the Federal Treasury and closed the enforcement proceedings.

9. On 7 December 2001 the Obninsk Town Court clarified that the judgment in the applicant's favour was to be executed by the Obninsk Division of the Federal Treasury.

10. In June 2002 the applicant received the entire amount of the arrears due under the judgment of 6 March 2000, that is RUR 244,745.52.

11. On 1 November 2002 the applicant received RUR 159,697.62 in arrears resulting from the State's failure to pay, in 2000, the disability compensation in the amount determined by the judgment of 6 March 2000.

12. On 2 April 2003 the applicant received RUR 211,820.64 in arrears resulting from the State's failure to pay, in 2001, the disability compensation in the amount determined by the judgment of 6 March 2000.

13. On 9 April 2003 the applicant received RUR 211,820.64 in arrears resulting from the State's failure to pay, in 2002, the disability compensation in the amount determined by the judgment of 6 March 2000.

14. In October 2003 the applicant started to receive the monthly disability payments in the amount determined by the judgment of 6 March 2000.

THE LAW

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

15. The applicant complained that the judgment of 6 March 2000 as upheld on 1 June 2000 was not enforced in good time. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). The relevant parts of these provisions 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...”

A. Admissibility

16. 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

17. The Government did not contest the applicant's claims. They referred to insufficient funding of the social-security authorities as the reason for the failure to comply with the judgment of 6 March 2000. They admitted that the delayed enforcement of the judgment in the applicant's favour constituted a violation of his rights under Article 6 of the Convention and Article 1 of Protocol No. 1.

18. The applicant maintained his claims.

19. The Court observes that on 6 March 2000 the applicant obtained a judgment in his favour which became enforceable on 1 June 2000. The applicant was awarded RUR 244,745.52 in respect of the previous period

and RUR 18,211.72 in respect of future monthly payments. The arrears were paid in June 2002. The payment of the full compensation, as determined in the judgment, only started in October 2003. Accordingly, the judgment was enforced in full approximately three years and five months after it became enforceable.

20. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, for example, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III).

21. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

22. Having regard to its case-law, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he had legitimately expected to receive.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicant further complained about the lack of an effective remedy for the lengthy non-enforcement of the judgment in his favour. The Court considers that this complaint falls to be examined under Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

25. 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

26. The Government did not address the issue in their observations.

27. The applicant submitted that the Russian legislation did not provide bailiffs with the appropriate means to recover a judgment debt from the State.

28. The Court reiterates that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 that the proceedings do not exceed a “reasonable time” (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI) and that the execution of a judgment is an integral part of the “trial” for the purposes of Article 6 § 1 of the Convention (see, for example, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40).

29. The Court has previously ruled in the cases where the bailiffs did not have power to compel the State to repay the judgment debt that the applicants did not have an effective remedy that could have expedited the enforcement of the judgment against a State authority (see, for example, *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004, §§ 30-31 and 46-48).

30. Turning to the facts of the present case, the Court observes that the Government did not indicate any remedy that could have provided the applicant with an adequate redress for continued non-enforcement of the judgment in his favour. Nor does the Court discern any basis in the evidence submitted by the parties to conclude otherwise.

31. Accordingly, the Court considers that there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained redress for a violation of his right to have the judgment enforced within a “reasonable time”, as required by Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. Lastly, having regard to all the material in its possession, the Court finds that the remainder of the applicant's complaints concerning the alleged authorities' failure to adjust the amount of the award in his favour did 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 in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. As regards pecuniary damage, the applicant claimed that his losses resulting from inflation amounted to RUR 295,766.60. He further alleged that he had sustained pecuniary damage caused by the authorities' failure to calculate and adjust properly his monthly compensation. He claimed RUR 1,476,617.40 in this respect. As regards non-pecuniary damage, the applicant claimed 10,000 euros (EUR).

35. The Government considered that no pecuniary damage should be awarded to the applicant. They further admitted that the applicant had sustained non-pecuniary damage resulting from continued non-enforcement of the judgment in his favour. In their view, EUR 4,000 would constitute a reasonable amount under this head.

36. The Court notes that the applicant has failed to substantiate his claim for pecuniary damage. It therefore rejects this claim. On the other hand, the Court considers that the applicant must have suffered certain distress and frustration resulting from the State authorities' failure to enforce a judgment in his favour and to provide a remedy whereby he could have obtained redress for the delayed enforcement. 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 4,100 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

C. Default interest

38. 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 complaints concerning the non-enforcement of the judgment and the lack of effective remedy for continued non-enforcement of the judgment, 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;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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, EUR 4,100 (four thousand and one hundred euros), to be converted into Russian roubles, in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President