



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

FIRST SECTION

CASE OF SILCHENKO v. RUSSIA

(Application no. 32786/03)

JUDGMENT

STRASBOURG

28 September 2006

FINAL

28/12/2006

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 Silchenko v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 7 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 32786/03) 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 Anatoliy Pavlovich Silchenko (“the applicant”), on 5 September 2003.

2. The applicant was represented by Ms M. Voskobitova, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 February 2005 the Court decided to communicate the application 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 1936 and lives in the village of Mendeleyevo of the Moscow Region. In 1986 he took part in the emergency operation at the site of the Chernobyl nuclear plant disaster.

A. Action against the Fund and subsequent enforcement proceedings

5. On 23 December 1999 the Solnechnogorsk Town Court accepted the applicant's action against the Solnechnogorsk town branch of the Pension Fund of the Russian Federation (*пенсионный отдел по городу Солнечногорску Пенсионного Фонда Российской Федерации*) (hereafter – the Fund) and awarded him 217,941.58 Russian roubles (RUR, approximately 8,073 euros) in arrears of monthly pension for the period between 29 July 1996 and 31 December 1999. The court held that from 1 December 1999 the Fund should pay the applicant RUR 9,236.05 as his monthly pension and should subsequently adjust that amount to take account of increases in the minimum monthly wage.

6. The judgment of 23 December 1999 was upheld on appeal on 24 April 2000 by the Moscow Regional Court.

7. Enforcement proceedings were opened, but on 29 May 2001 the Moscow Regional bailiffs' service returned a writ of execution to the applicant, noting that under the new procedure effective from 22 February 2001 the applicant had to submit the writ to the local treasury.

8. On 16 November 2001 the applicant submitted the writ of execution to the bailiffs' service. The writ was returned to the applicant and he was advised again to submit it to the local treasury.

9. According to the Government, the Social Security Committee of the Solnechnogorsk Town Council asked the applicant to provide it with the writ of execution with the view to enforcing the judgment of 23 December 1999. The applicant responded that he did not have the writ and asked to enforce the judgment.

10. On 20 September 2004 the Social Security Committee asked the Solnechnogorsk Town Court to issue it with a writ of execution in respect of the judgment of 23 December 1999. The writ was issued on 26 October 2004.

11. On 23 May 2005 the applicant was paid RUR 217,941.58.

B. Proceedings concerning monthly pension payments

12. The applicant alleged that the Fund had failed to enforce the judgment of 23 December 1999 in the part concerning monthly pension payments and had reduced those payments to RUR 467.54. On 27 February 2000 the applicant had complained to a court about the Fund's actions.

13. On 28 December 2000 the Solnechnogorsk Town Court held that the Fund's actions had been unlawful and confirmed the operative part of the judgment of 23 December 1999. The judgment of 28 December 2000 became final on 22 March 2001.

14. The Fund, however, continued to underpay the applicant.

C. Proceedings concerning adjustment of the monthly pension awarded by the judgment of 23 December 1999

15. The applicant sued the Fund seeking an adjustment of the monthly pension awarded by the judgment of 23 December 1999, to take account of increases in the minimum monthly wage.

16. On 12 March 2001 the Solnechnogorsk Town Court held that the Fund should adjust the applicant's monthly pension to take account of increases in the minimum monthly wage. No specific amount of increase was determined.

17. The judgment of 12 March 2001 became final on 14 June 2001 when the Moscow Regional Court upheld it on appeal.

18. According to the applicant, the Fund continued to pay him non-adjusted pension.

D. Proceedings concerning indexation of the awards under the judgment of 23 December 1999

19. The applicant lodged an action seeking an increase of his monthly pension and payment of arrears which the Fund had not paid him in breach of the judgment of 23 December 1999. In the meantime, in June 2002 the Fund began to pay the applicant RUR 22,035.37 in monthly pension.

20. On 12 February 2003 the Solnechnogorsk Town Court awarded the applicant RUR 464,010.80 (EUR 13,620) in arrears of monthly pension for the period between 1 January 2000 and 31 December 2002. From 1 January 2002 the Fund was to pay the applicant RUR 26,839.08 (EUR 788) as monthly pension. That amount was to be adjusted to take account of increases in the subsistence level.

21. On 12 May 2003 the Moscow Regional Court upheld the judgment of 12 February 2003 on appeal.

22. In August 2003 the Fund began to pay the applicant RUR 26,839.08 in monthly pension.

23. On 30 July 2004 the applicant received RUR 464,010.80 in pension arrears under the judgment of 12 February 2003.

E. Proceedings concerning arrears in monthly pension

24. In 2003 the applicant sued the Fund, seeking recovery of arrears in monthly pension. He claimed that the Fund had only begun to pay him monthly pension in the amount established in the judgment of 12 February 2003 in August 2003. He also claimed adjustment of the awarded sum.

25. On 23 December 2003 the Solnechnogorsk Town Court awarded the applicant RUR 37,937.04.

26. The judgment of 23 December 2003 was upheld on appeal on 10 February 2004 and was enforced in full on 27 May 2004.

F. Other proceedings to which the applicant was a party

27. Between 2000 and 2002 the applicant sued in tort the Fund, its officials and the Solnechnogorsk town bailiffs' office.

28. The final judgments in the proceedings were issued by the Moscow Regional Court on 16 April 2001 and 6 June 2002 and by the Solnechnogorsk Town Court on 2 October 2001.

29. On 12 May 2003 the Moscow Regional Court, in the final instance, dismissed two suits against the Solnechnogorsk town administration and the Ministry of Justice of the Russian Federation.

THE LAW

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

30. The applicant complained under Articles 3, 6 and 7 of the Convention and Article 1 of Protocol No. 1 that the judgment of 23 December 1999, as upheld on appeal on 24 April 2000, the judgment of 28 December 2000, as upheld on appeal on 22 March 2001, the judgment of 12 March 2001, as upheld on appeal on 14 June 2001 and the judgment of 12 February 2003, as upheld on appeal on 12 May 2003, had not been 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 within a reasonable time... 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

31. The Government informed the Court that the Solnechnogorsk Social Security Service had attempted to secure a friendly settlement which the applicant had refused to accept. Referring to that refusal, to the fact that the judgments in the applicant's favour had been fully enforced, and to the Court's decision in the case of *Aleksentseva and Others v. Russia* (nos. 75025/01 et seq., 4 September 2003), the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention.

32. The applicant disagreed with the Government and maintained his complaints. He claimed that the Government had not offered compensation for the loss of value of the judgment debts. The sums offered had not covered the pecuniary and non-pecuniary damage he had sustained due to protracted non-enforcement of the judgments.

33. The Court firstly observes that the parties were unable to agree on the terms of a friendly settlement of the case. Whilst under certain circumstances an application may indeed be struck out of the Court's list of cases under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued, this procedure is not, as such, intended to circumvent the applicant's opposition to a friendly settlement (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003; *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01, 75026/01 et seq., 23 March 2006; and *Androsov v. Russia*, no. 63973/00, § 44, 6 October 2005).

34. Moreover, a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court.

35. On the facts, the Court observes that the Government failed to submit any formal statement capable of falling into that category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

36. As regards the Government's argument that the judgments in question have already been enforced, the Court considers that the mere fact that the authorities complied with the judgments after a substantial delay cannot be viewed in this case as automatically depriving the applicant of his victim status under the Convention (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

37. In the light of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

38. The Court notes that the 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

39. The Government argued that the judgments in the applicant's favour had been fully enforced. The applicant had contributed to the delay in the enforcement of the judgment of 23 December 1999 because he had failed to follow the instructions of the bailiffs' service. In any event, the enforcement had been impeded by the following circumstances: difficulties of budgetary arrangements between State bodies, scarcity of financial resources and the complexity of the enforcement proceedings.

40. The applicant claimed that he could not be blamed for the complexity of the enforcement proceedings and delays caused by frequent changes in the domestic procedure of enforcement.

41. The Court observes that on 23 December 1999 the applicant obtained the judgment by which the Fund, a State body, was to pay him a lump sum in pension arrears and monthly payments in a particular amount. The Fund was also to adjust the monthly payments. The judgment became enforceable on 24 April 2000, when it was upheld on appeal. On 28 December 2000 and 12 March 2001 the Solnechnogorsk Town Court issued two judgments, confirming the operative part of the judgment of 23 December 1999. These judgments contained a mere restatement of the findings of the same court of 23 December 1999 and did not change the scope or amount of the award. Thus, the Court considers it unnecessary to examine separately whether the judgments of 28 December 2000 and 12 March 2001 had been enforced in good time.

42. The parties disagreed on the date when the judgment of 23 December 1999, as upheld on 24 April 2000, had been enforced in full. The contentious point was the exact date when the Fund had begun to pay the applicant monthly pension in the amount established by that judgment. The applicant indicated that it had occurred in August 2003 and the Government claimed that it had happened earlier, without specifying the date. The Court does not need to settle that issue. Irrespective of the date when the applicant began to receive monthly pension in the amount set in the judgment of 23 December 1999, the lump sum awarded by the same judgment was only paid to him on 23 May 2005. The parties did not dispute that date. Thus, the Court considers that the judgment of 23 December 1999, as upheld on 24 April 2000, was fully enforced on 23 May 2005 when the

sum of the arrears was credited to the applicant's account. It thus remained unenforced for approximately five years and one month.

43. The Court also observes that on 12 February 2003 the Solnechnogorsk Town Court issued another judgment by which the applicant was to receive a lump sum in pension arrears and monthly pension in a particular amount from 1 January 2002. That judgment became enforceable on 12 May 2003. It was not disputed that in August 2003 the Fund had begun to pay the applicant monthly pension in the amount established by that judgment. It appears that on 27 May 2004 the Fund paid the applicant pension arrears for the period from 1 January 2002 to August 2003. Finally, the lump sum of pension arrears awarded by that judgment was credited to the applicant's account on 30 July 2004. Thus the judgment of 12 February 2003, as upheld on 12 May 2003, was enforced in full on 30 July 2004. It thus remained unenforced for approximately fifteen months.

44. 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 *Burdov v. Russia*, no. 59498/00, § 19 et seq., ECHR 2002-III; *Gizatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

45. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delay in enforcement of the judgment of 23 December 1999, as confirmed by the judgments of 28 December 2000 and 12 March 2001, and the judgment of 12 February 2003. The judgments were not enforced because the debtor did not have financial recourses. However, the Court reiterates that it is not open to a State authority to cite the lack of funds, as an excuse for not honouring a judgment debt (see *Plotnikovy v. Russia*, no. 43883/02, § 23, 24 February 2005). The same principle applies to difficulties experienced by the State enforcement services and the complexity of the budgetary arrangements between State bodies (see, for example, *Wasserman v. Russia*, no. 15021/02, § 38, 18 November 2004).

46. The Court finds that by failing for years to comply with the enforceable judgments 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicant also complained under Articles 6, 7, 13 and 46 of the Convention that the domestic courts had incorrectly applied the law and

assessed the facts and that the outcome of the proceedings which ended with the final judgments of 16 April and 2 October 2001, 6 June 2002 and 12 May 2003 was unfair. In his observations of 31 August 2005 he also, for the first time, complained about non-enforcement of the judgment of 23 December 2003. However, having regard to all the materials in its possession, and in so far as these complaints fall within its competence, 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 this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 791,177.40 Russian roubles (RUR) in respect of pecuniary damage, of which RUR 330,760.93 represented the judgment debts adjusted for the inflation rate from 2000 to 2005 and RUR 460,416.47 represented the penalty at the marginal interest rate of the Russian Central Bank in the same period. The applicant also claimed compensation in respect of non-pecuniary damage, leaving determination of the sum to be awarded to the discretion of the Court.

51. The Government argued that the applicant did not wish to receive just satisfaction as he had turned down the friendly-settlement offer. They insisted that the application should be struck out.

52. The Court does not consider it necessary to address the Government's request to strike the application out of the list of cases as it has already been examined and dismissed (see paragraphs 35-38 above).

53. The Court reiterates that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the awards in the applicant's favour had not been paid to him in good time. It recalls that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizatova v. Russia*, no. 5124/03, § 28, 13 January 2005; *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). Having regard to the materials in its possession and the fact that the Government did not furnish any objection to

the applicant's method of calculation of compensation, the Court awards the applicant EUR 13,000 in respect of pecuniary damage, plus any tax that may be chargeable.

54. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgments in his favour. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the awards, and making its assessment on an equitable basis, awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

55. The applicant also claimed EUR 600 for the costs and expenses incurred before the Court.

56. The Government did not comment.

57. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the applicant did not submit any materials to substantiate his claim. Thus the Court rejects the claim for costs and expenses.

C. Default interest

58. 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 delay in enforcement of the judgment of 23 December 1999, as upheld on appeal on 24 April 2000, the judgment of 28 December 2000, as upheld on appeal on 22 March 2001, the judgment of 12 March 2001, as upheld on appeal on 14 June 2001 and the judgment of 12 February 2003, as upheld on appeal on 12 May 2003, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;

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 the settlement:

(i) EUR 13,000 (thirteen thousand euros) in respect of the pecuniary damage;

(ii) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;

(iii) any tax that may be chargeable on the above amounts;

(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 28 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President