



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

FIRST SECTION

CASE OF SIVERIN v. RUSSIA

(Application no. 24664/02)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Siverin 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 24664/02) 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 Aleksandrovich Siverin (“the applicant”), on 15 March 2002.

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

3. On 4 November 2005 the Court decided to give notice of 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1925 and lives in Obninsk.

5. As a victim of Chernobyl, the applicant was entitled to social benefits. Considering himself underpaid, he brought two actions against a social-security authority.

6. On 24 August 1999 the Obninsk Town Court held for the applicant and ordered the authority to pay arrears and to increase the periodic

payments. This judgment became binding on 10 January 2000. According to the Government, this judgment was gradually enforced by March 2006. According to the applicant, this judgment has not been fully enforced to date, because the periodic payments lag behind the cost of living.

7. On 1 July 2003 the town court held for the applicant and ordered the authority to pay 111,328 Russian roubles (RUB) in arrears and to upgrade the periodic payments to RUB 7,698.57 with their subsequent adjustment for the cost-of-living. This judgment became binding on 18 August 2003, but has not been fully enforced to date.

II. RELEVANT DOMESTIC LAW

8. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment in two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment in three months.

THE LAW

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

9. The applicant complained under Article 1 of Protocol No. 1 about the non-enforcement of the judgments. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, as far as relevant, 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

10. The Government admitted that there had been a violation of these Articles. But they asked the Court to strike the application out of its list of cases, because the applicant had rejected the Government's settlement offers.

11. The applicant maintained his complaint. He argued that the case could not be struck merely because he had disagreed with the Government's offer.

12. The Court has earlier refused to strike out cases where applicants refused settlement (see, with further references, *Svitich v. Russia*, no. 39013/05, § 21, 31 July 2007). The Court will do so in this case too.

13. 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

14. The enforcement of the judgment of 24 August 1999 lasted six years and one month (or longer, given the applicant's allegation that the enforcement has been only partial). The enforcement of the judgment of 1 July 2003 has been lasting five years and one month.

15. The parties agree that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. In the circumstances of the present case, the Court has no reason to hold otherwise. There has accordingly been a violation of these Articles.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

16. The applicant complained under Article 13 of the Convention that he had no effective domestic remedy against the non-enforcement. This Article 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

17. The Government argued that the applicant did have a remedy. Under Article 315 of the Criminal Code he could have asked a prosecutor to prosecute the officials responsible for the non-enforcement.

18. The applicant retorted that he did apply to a prosecutor, but the prosecutor had forwarded his complaints to the social-security authority.

19. 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

20. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for a prolonged non-enforcement of a binding judgment (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

21. The Government have not, however, specified how recourse to a prosecutor would provide preventive or compensatory relief against the non-enforcement. Nor have the Government given an example from domestic practice of a successful application of that remedy (see *Kudła*, cited above, § 159).

22. It follows that there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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.”

24. The applicant claimed 520,836.99 Russian roubles in respect of pecuniary damage. This sum represented the applicant’s estimate of the difference between the sums he had received and the increasing cost of living in his region. The applicant also claimed 3,500 euros (EUR) in respect of non-pecuniary damage.

25. The Government made no comments on these claims.

26. As to pecuniary damage, the Court reiterates that violations of Article 6 are best redressed by putting an applicant in the position he would have been if Article 6 had been respected (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). This means that the Government shall secure, by appropriate means, the enforcement of outstanding judgments.

This requirement does not concern the judgment of 24 August 1999, because the parties argue as to whether it is outstanding. In the absence of domestic courts’ finding on this matter, the Court lends credence to the Government’s statement and deems the judgment enforced (see *Sirotin v. Russia* (dec.), no. 38712/03, 14 September 2006).

By contrast, the parties agree that the judgment of 1 July 2003 is outstanding. The Government shall therefore secure, by appropriate means, the enforcement of this judgment.

27. As to non-pecuniary damage, the Court accepts that the non-enforcement of the judgments must have distressed the applicant. Making its assessment on an equitable basis on an equitable basis, the Court awards EUR 3,500 under this head.

B. Default interest

28. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the judgment made by the domestic court on 1 July 2003, and in addition pay the applicant EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President