



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

FIRST SECTION

CASE OF GALINA KUZNETSOVA v. RUSSIA

(Application no. 3006/03)

JUDGMENT

STRASBOURG

29 July 2010

FINAL

29/10/2010

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

In the case of Galina Kuznetsova 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 3006/03) 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, Mrs Galina Lukyanovna Kuznetsova (“the applicant”), on 16 December 2002.

2. 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 12 October 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Zarubino in the Primorye Region.

A. Tort action and index-linking of the award

5. On 12 February 2001 the Khasanskiy District Court of the Primorye Region (the District Court) partly granted the applicant's tort action against a municipal housing maintenance company of the Khasanskiy District and awarded her 48,461.01 Russian roubles (RUB) as compensation for pecuniary damage and RUB 1,200 as compensation for non-pecuniary damage. The district court also ordered that the housing authority should repair the roof, the heating system and the water-pipes in the applicant's house.

6. On 28 March 2001 the Primorye Regional Court amended the judgment on appeal, increased the amount of compensation for pecuniary damage by RUB 8,994.12 and upheld the remainder of the judgment.

7. On 16 January 2002 the respondent company was declared insolvent and the insolvency procedure started.

8. On 26 May 2003 the District Court index-linked the award of 12 February 2001 and held that the respondent company was to pay the applicant RUB 13,441.20. The judgment became final ten days later.

9. By letter of 18 May 2005 an insolvency manager of the housing maintenance company had notified the applicant that the respondent company had been declared insolvent and that the debtor was to be released from claims that were unsatisfied in the insolvency proceedings, since there was a lack of assets. Accordingly, the applicant's claims could not be satisfied. The case materials do not contain further information on the insolvency proceedings.

10. The judgments of 12 February 2001 and 26 May 2003 have not been enforced to date.

B. Proceedings against the bailiffs

11. On an unspecified date the applicant sued the Ministry of Finance and the Primorye Regional Department of the Ministry of Justice for compensation for damage caused by the bailiffs' failure to enforce the judgment of 12 February 2001.

12. On 4 February 2003 the District Court partly granted her action. The court found that the bailiff had failed to send the enforcement documents to the applicant in time and was inactive in obtaining the execution of the judgment. The court awarded the applicant RUB 5,000 against the local department of the Ministry of Justice as compensation for non-pecuniary damage and RUB 4,678.42 as compensation for expenses related to the enforcement and court proceedings against the regional department of the Ministry of Justice. The district court also held that the respondents were not under an obligation to pay the applicant RUB 40,642.50 because the bankruptcy proceedings in respect of the municipal company were pending

and the applicant had been included in the register of the housing maintenance company creditors' claims. On 19 March 2003 the Primorye Regional Court upheld the judgment on appeal.

13. On 12 August 2003 RUB 9,678 of the court award had been paid to the applicant by the respondent authority.

14. According to the Government, at some point the bailiff was dismissed on account of her failure to ensure timely enforcement of the judgments in the applicant's favour. On 12 February 2004 the District Court held that the bailiff should repay RUB 7,078 of damages to the authorities.

THE LAW

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

15. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgments of 12 February 2001 and 4 and 26 February 2003. Insofar as relevant, these Articles 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

16. As regards the judgment of 4 February 2003, the Court notes that it has been executed in full on 12 August 2003, that is within less than five months from 19 March 2003, the date of its entry into force. Such delay cannot be said to be excessive from the Convention standpoint. It follows

that this part of the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

17. As regards the judgments of 12 February 2001 and 26 February 2003, 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

18. The Government admitted that the authorities' failure to assist the applicant in execution of the domestic awards resulted in delayed enforcement of the judgments in the applicant's favour and therefore had breached her Convention rights.

19. In the circumstances of the present case, the Court finds no reason to hold otherwise. Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement of the judgments dated 12 February 2001 and 26 February 2003.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that she had not been provided with legal assistance in the course of the proceedings concerning compensation for damages and that the court proceedings to which she had been a party had been unfair.

21. Having regard to all the material in its possession, and in so far as the matters complained of were within its competence, the Court found that they 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 57,577 Russian roubles (RUB) in respect of pecuniary damage. Of this sum, RUB 50,577 represented the unpaid amount awarded by the judgment of 12 February 2001 and RUB 7,000 an estimate cost of repair of the electrical wiring in the applicant's flat. She submitted that there was a direct link between the respondent municipal company's failure to repair her flat contrary to the domestic judgment and the above maintenance expenses. She furnished an estimate of the repair costs made by a local electricity provider. The latter certified that it would repair the flat at the applicant's expense. The applicant further claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government invited the Court to reject the claim for pecuniary damages, because there was no link between the alleged violation and the amounts claimed. They submitted, without further details, that the respondent in the domestic proceedings was a municipal company, a separate legal entity, and the State was not bound by its debts. They further submitted that the amount of EUR 900 would be sufficient to compensate the non-pecuniary damage suffered by the applicant as a result of the above violations.

25. As regards the claim for pecuniary damage, the Court notes that the judgment of 12 February 2001 remains unenforced. It further notes that the Government explicitly acknowledged the authorities' responsibility for the failure to execute the domestic judicial decision in time. Therefore, the Court finds that the Government should pay the applicant the equivalent in euros of the unpaid judgment debt in the amount claimed by the applicant. Furthermore, it is a common ground between the parties the judgment in the part ordering the repair of the flat had not been executed by the respondent company either. Turning to the applicant's claim in this respect, the Court notes a causal link between the claim submitted and the violation found. Given that the applicant substantiated her claim of RUB 7,000 with a detailed estimate by the domestic electricity provider and that the Government had not challenged the method of calculation used by the applicant, the Court also grants her claim in this part. In sum, the Court considers it appropriate to allow the applicant's claims in respect of pecuniary damage in full and awards her EUR 1,448, plus any tax that may be chargeable, under this head.

26. The Court further awards the applicant EUR 1,400 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of the claim under this head.

B. Costs and expenses

27. The applicant also claimed RUB 443.63 for the costs and expenses incurred before the Court. She produced the postal receipts for mailing correspondence to the Court. The Government submitted that the applicant's costs and expenses related to the domestic proceedings concerning the non-enforcement complaint had been compensated to the applicant pursuant to the judgment of 4 February 2003, and there was no reason to grant the amount claimed twice.

28. According to the Court's case-law, an applicant is entitled to the reimbursement of 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. Turning to the present application, the Court notes that the sum claimed under this head represented the applicant's expenses related to her correspondence with the Court, which had not been covered by the domestic award referred to by the Government. Regard being had to the documents in its possession and the above criteria, the Court allows the applicant's claim and awards her EUR 13 in respect of costs and expenses, plus any tax that may be chargeable.

C. Default interest

29. 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 non-enforcement of the judgments of 12 February 2001 and 26 February 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 on account of non-enforcement of the judgments of 12 February 2001 and 26 February 2003;
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, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 1,448 (one thousand four hundred and forty-eight euros) in respect of pecuniary damage;
- (ii) EUR 1,400 (one thousand four hundred euros) in respect of non-pecuniary damage;
- (iii) EUR 13 (thirteen euros) 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 29 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President